District of Columbia Code

1951 EDITION • PARTS I-IV



DISTRICT OF COLUMBIA CODE

(ANNOTATED)

1951 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), IN FORCE ON JANUARY 2, 1952

VOLUME ONE

Part I.—Government of the District
Part II.—Civil Procedure
Part III.—Probate Law and Procedure
Part IV.—Criminal Law and Procedure

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PREFACE

This is the third edition of the Code of Laws of the District of Columbia prepared and published pursuant to the Act of May 29, 1928 (45 Stat. 1007), as amended by the Act of March 2, 1929 (45 Stat. 1541). This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 2, 1951, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. The Code is prima facie evidence of existing law.

Many new features and improvements were incorporated in the 1940 edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia.

An entirely new arrangement of subject matter was adopted which presents all the procedural statutes in Volume One and the general statutes, in modern alphabetical arrangement, in Volume Two. A complete index to the statutes contained in the Code will be found at the back of Volume Two, together with complete reference tables. In addition, the 1929 edition citation is indicated in brackets next to the section number of each section of the text.

A modern method of numbering the sections was adopted. The number before the dash indicates the title; the last two numbers indicate the section; and the middle number or numbers indicates the chapter. No chapter in any title has more than 60 sections. An example: Section 11–1208 would be found as Section 8 of chapter 12 in Title 11. Section 1–240 would be Title 1, chapter 2, section 40.

Provision has been made for future annual supplements in the form of pocket parts rather than separate volumes.

The 1940 edition was the first official Code containing the annotations of the court decisions interpreting these laws. Numerous cross references and historical notes have been added to increase the usefulness of this Code. These annotations, cross references and historical notes are brought up to date in this edition and will be kept current in the future annual supplements.

The work of preparing copy was done by the Committee on the Judiciary of the House of Representatives with the assistance of the Matthew Bender & Company, Inc., of Albany, N. Y. The Committee acknowledges especially the valuable assistance rendered by Charles J. Zinn, law revision counsel for the Committee. Acknowledgment is also made to the numerous officials of the District and Federal governments and the members of the bench and bar of the District whose suggestions have been most helpful.

The Committee invites all criticisms and suggestions looking to the improvement of the Code.

Emanuel Celler

Chairman.

Joseph R. Bryson

M. C.

Chairman, Subcommittee No. 4.

WASHINGTON, D. C., *June 30, 1951.*

HISTORICAL[1]

All of the many previous efforts to compile the laws relating to the District of Columbia were balked by the difficulty of determining and setting forth the laws of Great Britain and the early laws of the State of Maryland still in force in the District by virtue of the acts of February 27, 1801, and March 3, 1901 (2 Stat. L. 103, ch. 15, sec. 2, and 31 Stat. L. 1189, respectively). Yet these laws, access to which is through a labyrinth of toil and uncertainty, have been found pertinent by the courts of the District on no less than 127 reported occasions. The task was further complicated by the fact that much of the legislation affecting the District of Columbia was buried in appropriation acts. A summary of the situation was made by an eminent member of the District bar, Mr. James S. Easby-Smith, before the committee at a hearing on July 12, 1926. An excerpt from his statement is quoted:

> The District of Columbia was created and became a Federal district in the year 1800 (1 Stat. L. 130; and 2 Stat. L. 103). The District of Columbia, as created by the First Congress, was composed of a portion of Virginia and a portion of Maryland, the same being 10 miles square. That portion of the District of Columbia which was ceded by the State of Maryland was known as the county of Washington, District of Columbia; that portion which was ceded by the State of Virginia was known as the county of Alexandria, District of Columbia. At first there was a city organized and laid out called the city of Washington, while the remaining portion of that part of Maryland which had been ceded was called the county of Washington. That portion included the city also.
>
> Now, the organic act (2 Stat. L. 103), provided that the laws governing that portion of the District of Columbia ceded by Virginia should be the Virginia statutes not locally inapplicable, the acts of Congress, and the acts of the Virginia Legislature. That applied in and for the county of Alexandria, and the organic act provided that the laws in force in the county of Washington, District of Columbia, which was that portion taken from Maryland, were, first, the principles and maxims of equity as they existed in England, and in the colonies in the year 1776, the common law of England, and the statutes of the British Parliament which were in effect in the colonies in 1776, and which were not locally inapplicable. I think that the last British statute which is applicable to the District of Columbia was passed about 1771. I think that there were no statutes which were locally applicable after that year.
>
> Therefore,
>
> First, we have the maxims and principles of equity as developed in the court of chancery.
>
> Second, the common law as it existed in 1776.
>
> Third, the British statutes in effect in 1776.
>
> Fourth, all the laws of the legislature, not only of the State of Maryland, from 1776 to 1800, but the laws of the colonial Maryland government up to the year 1800, together with such acts of Congress as had been passed, or might thereafter be passed, for the District of Columbia, or that were applicable to the District of Columbia.
>
> We have that great body of law here. In other words, in the State of Virginia and the State of Maryland, the State courts administer the State laws, while the Federal courts administer the Federal laws, but all of those laws are embraced in the jurisdiction of the courts here. . . .
>
> ALEXANDRIA COUNTY HAVING BEEN RE-CEDED TO VIRGINIA, THAT FEATURE OF THE COMPLICATION NO LONGER EXISTS. (Act of retrocession: July 9, 1846, 9 Stat. 35.)

An outline of previous compilations and their scope is as follows:

1. Code of Laws for the District of Columbia: prepared under the authority of the Act of Congress of the 29th of April, 1816. Preface signed by W. Cranch, November 19, 1818. Washington, 1819, 575 pages.

   This code was obviously designed for enactment by Congress, but no official action was taken with respect to it. It is drawn from old British statutes and acts of Maryland and Virginia, as well as from acts of Congress relating to the District of Columbia; it apparently includes all subjects of legislation except provisions relating to the municipal government of Washington, etc.

2. The Acts of Congress, in relation to the District of Columbia, 1790–1831, and of the Legislatures of Virginia and Maryland, passed especially in regard to that District. By William A. Davis. Washington City, 1831, 575 pages.

   This is merely an unofficial compilation of separate acts, with no attempt at arrangement by subject.

3. The Revised Code of the District of Columbia, prepared under the authority of the Act of Congress . . . approved March 3, 1855. Preface signed by Robt. Ould and Wm. B. B. Cross, November, 1857. Washington, 1857, 699 pages.

   The act of March 3, 1855 (10 Stat. 642–643), provided for a vote by the people of the District of Columbia as to the adoption of the code as published. The vote was adverse, according to Wilhelmus Bogart Bryan, in his History of the National Capital (v. 2, p. 439).

4. An Analytical Digest of the Laws of the District of Columbia. By M. Thompson. Washington City, 1863, 454 pages.

   This digest is entirely unofficial. It aims to give all the law in force, with a few annotations. It is not clear whether the laws have been copied verbatim, or the substance given in other words. Provisions relating to municipal government of Washington, etc., are not included.

5. Compilation of the Laws in Force in the District of Columbia, April 1, 1868. Washington, Government Printing Office, 1868, 494 pages.

   This compilation contains no preface or explanation of its scope. It gives the text of the laws, arranged by subjects. Provisions relating to the municipal government of Washington, etc., are not at all completely included.

[1] Reprinted from 1929 edition of the Code.

6. Statutes in force in the District of Columbia. Washington, 1872. 639 pages. House Miscellaneous Document No. 25—42d Congress, 3d session.

This compilation was prepared under the direction of the Legislative Assembly of the District of Columbia. While purporting to be a compilation only, it includes many innovations. It was transmitted by the Governor of the District of Columbia to the House of Representatives, but was never adopted.

7. Revised Statutes of the United States relating to the District of Columbia. Washington, 1875, 201 pages.

This revision was enacted by Congress and approved June 22, 1874. It covers all subjects of Federal legislation relating to the District, except local (i. e., portions of the District only) and private matters.

8. The Compiled Statutes in force in the District of Columbia, including the Acts of . . . 1887–'89. Compiled by William Stone Abert and Benjamin G. Lovejoy. Washington, Government Printing Office, 1894, 730 pages.

This compilation, prepared pursuant to the act of March 2, 1889 (25 Stat. 872, ch. 392), includes acts of Congress, of Maryland, of Great Britain, and of the District of Columbia legislative assembly, with a few annotations. It covers all subjects of legislation except local and private matters. This compilation is wholly unofficial, in that the completed work never received legislative sanction.

9. The District of Columbia Code, approved March 3, 1901 (31 Stat. 1189–1436).

This code does not include provisions relating to the government of the District and contains British statutes and Maryland acts by reference only. It repeals all prior legislation, with numerous exceptions.

10. The Code of Law for the District of Columbia. Indexed under the direction of the Senate Committee on the District of Columbia by Edwin C. Brandenburg. Washington, 1901, 334 pages.

Merely the text of the act of March 3, 1901, with an index.

11. Code of Laws enacted March, 1901. Amended and approved January and June, 1902. Compiled by Charles Moore. Indexed by Edwin C. Brandenburg. Washington, 1902, 386 pages. (Unofficial.)
12. The Code of Law for the District of Columbia, enacted March 3, 1901; amended . . . to and including March 3, 1905. Compiled by Charles Moore. Indexed by Edwin C. Brandenburg. Recompiled and indexed to March 3, 1905, by Daniel E. Garges. Washington, 1906, 394 pages. (Unofficial.)
13. The Code of Law for the District of Columbia, enacted March 3, 1901; amended . . . to and including June 9, 1910. Annotated and indexed by Richard A. Ford. Washington, 1910, 448 pages. (Unofficial.)

Appendix contains acts relating to the District not expressed as amendments of the code.

14. The Code of Law for the District of Columbia, enacted March 3, 1901; amended . . . to and including March 4, 1911. Recompiled . . . by William F. Meyers. Washington, 1911, 544 pages. (Unofficial.)
15. The Code of Law for the District of Columbia enacted March 3, 1901; amended . . . to and including March 4, 1919. Ed. by Wm. S. Torbert. Washington, 1919, 545 pages. (Unofficial.)
16. District of Columbia Code . . . as amended up to and including June 7, 1924. Washington, 1925, 711 pages. Senate Document 155—68th Congress.

This code was prepared under the direction of the Committee on Printing of the Senate. The appendix contains many acts applicable to the District of Columbia not expressed as amendments to the code.

On December 5, 1898, Mr. Justice Walter S. Cox, of the Supreme Court of the District of Columbia, delivered an address before the Columbia Historical Society relative to the various efforts that had been made to obtain a code of laws for the District of Columbia, from which the following excerpts are taken:

I have been requested to give some account of the efforts made in or out of Congress to procure and establish a code of laws for the District of Columbia.

That part of what was designated in some of the old statutes as the Territory of Columbia, lying in the State of Maryland, and that part lying within Virginia, having been respectively ceded by those States to the United States, Congress commenced its legislation, in relation to the District, by an act of February 27, 1801, which provided, first, that the laws of Virginia, "as they now exist," shall be and continue in force in that part of the District of Columbia which was ceded by said State to the United States and by them accepted for the permanent seat of government; and that the laws of the State of Maryland, "as they now exist," shall be and continue in force in that part of the District which was ceded by that State to the United States and accepted as aforesaid, and that said District shall be divided into two counties; one county shall contain all that part which lies on the east side of the river Potomac and shall be called the county of Washington; the other county shall contain all that part of the District which lies on the west side of the said river and shall be called the county of Alexandria.

At the same time the act created a court, to be called the Circuit Court of the District of Columbia, which was to hold several sessions annually in each of the two counties. It also created an orphans court for each county.

Thus the anomalous condition was presented of two contiguous counties, under the same legislative jurisdiction, governed by different systems of statutory law, to be administered by the same court.

One would naturally expect that Congress would speedily take steps to remedy this state of affairs and enact a uniform system of law for the entire District. But such was not the case. On the contrary, what little legislation took place for years afterward only recognized and perpetuated the distinction between the counties, by sporadic measures affecting them separately.

For some 16 years following, the laws passed by Congress affecting the District related principally to the charters of Washington, Georgetown, and Alexandria, to the militia, to insolvent debtors, and to the incorporation of banks, improvement companies, and other private organizations, and very little to the improvement of judicial proceedings. . . .

On the 29th of April, 1816, an act was passed authorizing the judges of the circuit court and the district attorney to prepare a code of laws for the District. The judges at that time were Judges Cranch, Morsell, and Thurston. . . . The district attorney at the time was Walker Jones.

In November, 1818, Judge Cranch reported to Congress a code prepared by himself, and stated that the other gentlemen named in the act of Congress, in consequence of their engagements, had not been able to assist him.

In this code he grouped together, apparently without any system, the different statutes of Virginia and Maryland and the English statutes supposed to have been in force in Maryland, which he supposed, would be properly applicable to the whole District, with all their antiquated phraseology and long-since obsolete remedial provisions, giving marginal references indicating to which class each statute belonged. The statutes are given as separate laws, each with a separate enacting clause. Occasionally appears one which seems to be original and must have been devised by Judge Cranch himself, but these are few and unimportant. There was no attempt by him to introduce any material changes in judicial proceedings and remedies; and, in fact, the spirit of reform and improvement in this direction can hardly be said to have been aroused, at this early period in our history, in the country generally. This code, therefore, if it had been adopted, would have advanced us very little. It was, however, not acted upon by Congress, and the whole subject was allowed to sleep for some 12 years, when a committee of the House of Representatives, who had been directed to inquire into the expediency of providing for the appointment of commissioners to digest and form a code of civil and criminal law for the District, etc., made a report.

They had addressed a circular, with a number of questions, to sundry citizens and members of the bar, and returned with their report the answers of the persons so addressed. Among these were Judge Cranch, Messrs. Richard S. Coke, Joseph H. Bradley, Francis Key, long the district attorney in General Jackson's time, and the well-known author of the Star-Spangled Banner, and James Dunlop, afterwards chief justice of the circuit court until its abolition.

The committee go into the history of the cession of the District to the United States and express regret that it ever was withdrawn from the legislative jurisdiction of the States. They dwell on the fact that even at that date Congress had not made many essential changes in the general laws of the District nor in their administration; that the laws then in force had been accumulating for generations, many of the sanctions of which were only suited for barbarous ages, which they illustrated by reference to the criminal statutes of Maryland prescribing capital punishment for a dozen offenses, such as arson, breaking into a shop and stealing 5 shillings' worth of goods, stealing a boat, or the case of a negro burning tobacco or stealing a horse, etc. They dwell on the complicated character of the business of the circuit court, causing interminable delays in the administration of justice, the great abuses in the practice of justices of the peace, the absence of laws to restrain gaming, the sale of ardent spirits, and various other evils unnecessary to mention. They discuss the question whether the District can be retroceded to the States of Virginia and Maryland and whether a local legislature can be established, but conclude that the best remedy which they can recommend is the appointment of capable and efficient commissioners authorized to prepare and report to Congress such a code of laws as will be best suited to the wants, habits, and feelings of the people, and which shall make little innovation upon the common and statute law and be rather a revision than a new code. They also suggest the propriety of allowing the District to be represented by a Delegate in the House of Representatives, in the same manner as the Territories.

In pursuance of this report a joint committee of the two Houses was appointed to prepare and report a system of law, civil and criminal, for the District, and this committee did report such a system at the first session of the Twenty-second Congress, in February, A. D. 1832.

In this report they say they are satisfied from their inquiries and from previous documents that the inhabitants of the District cherish an affection for the great body of the law under which they have lived and deprecate any attempt to form an entire new system—which is not a mere prejudice, but an inclination founded in nature and reason. The report of the committee on the District which led to their appointment, they say, recommended that there should be as little innovation upon the common and statute law of the District as might be consistent with a complete, simple, and uniform system, and the like principle seems in a great degree to have directed the previous compilation prepared by the chief justice of the District under the order of Congress. Looking to these sources for a sound exposition of their duty and authority, they say that they have followed the leading principles of the common law, have embodied as much of the laws of Virginia and Maryland as could be blended and harmonized, selecting the best where they could not be united, adding such improvements as either State had made since the cession, and rendering the whole consistent, uniform, and adapted to the entire District; and correcting the vices, as far as possible, of the existing legislation, and deriving aid from the code heretofore prepared by Judge Cranch and the criminal code proposed to Congress by Mr. Edward Livingston.

The proposed code puts into statutory shape the common-law rules of practice which then prevailed in the two States and the ordinary rules of practice in equity causes and introduced a few changes, in the way of improvement, in the laws regulating private rights; but a considerable part of it is taken up with matters now obsolete, such as holding to bail and imprisonment for debt, a very elaborate and unwieldy judicial organization, regulations respecting slaves and free negroes, etc. A remarkable feature of it is, first, that it contains no law of descent, and, next, that out of 685 pages, 385—largely more than one-half—are taken up with a penal code, code of criminal procedure, and code of prison discipline, which seem to have been taken from the work of Edward Livingston, before referred to. His introduction to said work is printed with the report of the committee.

. . . It is very detailed and minute, and abounds in forms of indictment for every conceivable offense. When proposed for the United States generally, it does not seem to have received favorable consideration, and when thus embodied in a code for the District it met with as little favor, for there seems to have been no congressional action at all upon the report of this committee.

I think there was a good deal of truth in the view taken by the committee as to the sentiments of the people of the District and their preference for the legal system to which they had been accustomed and their indisposition to welcome any great novelties, of which, I think, a proof was furnished somewhat later on. The committee were therefore quite conservative in the system which they proposed. . . .

For a long time there was no separate publication of laws relating to the District, but one was compelled to search in the statutes at large for such legislation.

One or two private efforts were made to remedy this inconvenience. In 1823 Mr. Samuel Burch, at one time, I believe, Secretary of the Senate, published a digest of the laws of the corporation of Washington, and in an appendix published the laws of Maryland and Virginia relating to the cities of Washington, Georgetown, and Alexandria and the cession of the counties to the United States and the acts of Congress relating to the District down to that date.

In 1831 Mr. William A. Davis, of Washington, published a collection of the acts of Congress in relation to the District, from July, 1790, to March, 1831, and of the acts of Maryland and Virginia relating to the cession of the District. He states, in his preface, that the acts of Congress in relation to District affairs had been excluded from the general edition of the laws of the United States published under authority of Congress a few years previously, and it had been difficult to ascertain the course of legislation respecting the District. He refers also to laws of Maryland and Virginia in relation to the District not to be found in subsequent editions or collections of their laws, and therefore difficult to be got at, but which it is very important to compile for convenience of reference, both for Congress and the people of the District.

This collection gives all the acts of incorporation, amendments to charters of the cities, as well as all private charters and all the legislation affecting private rights and remedies down to the date of its publication. Neither this nor Burch's digest had any authentic or official character or received any recognition from Congress; but inasmuch as we had no collection of laws so recognized these publications were of great utility in legal proceedings and were relied on as correct expositions of the laws in force and were fully cited in the courts as the law of the District whenever questions arose as to the meaning or effect of statute law.

Between 1831 and 1835 efforts were made in Congress to have commissioners appointed to prepare a code for the District, but it seemed impossible to arouse a sufficient interest in the subject in Congress to procure any action. In 1846 the county of Alexandria was retroceded to Virginia and the District thus reduced in extent. In 1855 an act was passed which authorized the appointment by the President of a commission to revise, simplify, digest, and codify the laws of the District. The author of this bill was Mr. Henry May, then a Member from Baltimore. He had been a citizen of Washington and a prominent member of our bar and was acquainted with the defects of our system. It was just about this time, too, as the dates of laws in Maryland indicate, that reforms in the old system common to Maryland and the District were being agitated in that State.

Mr. Robert Ould and Mr. William B. Cross were appointed commissioners for the object. Mr. Ould was a native of Georgetown, who had been a member of the bar for some 10 years. He was district attorney afterward under Mr. Buchanan, and after the commencement of the Civil War went South and remained in Richmond until his death. Mr. Cross was also a practitioner at our bar, the son of Colonel Cross, one of the first victims of the Mexican War.

They completed a code in 1857. The law authorizing it required it to be submitted to a popular vote, and Mr. Buchanan ordered such vote to be taken on the 15th day of February, 1858. The result of this vote just illustrated what I before referred to, viz, the disinclination of the people of the District to welcome fundamental change and novelties in their system of law.

This code abounded in these features: It swept away the whole course of common-law pleadings, in which the whole bar had been educated and trained, and substituted for it a system of informal complaints and answers which must have been borrowed from some one of the radical new States, all which was utterly repugnant to the tastes of the legal profession here. It made changes in the nature of estates, abolishing the rules growing out of the necessity of livery of seisin, which would have been a very useful change. It introduced a law of divorce which was very contrary to the public sentiment at that time. It introduced some very useful reformations as we would consider them now, but they were entirely in conflict with the tastes and sentiments of the lawyers trained in the old common law. It was not free also from some glaring mistakes. For instance, it declared that law should lie in grant as well as in livery, which was equivalent to saying that it might be conveyed either by deed or the obsolete formality of livery of seisin. It also declared that estates tail might be created as theretofore, which had been virtually obsolete for at least half a century. It is no wonder, therefore, that when a vote was taken on the code only 1,138 were cast in favor of it and 3,110 against it.

In 1862 a bill was passed authorizing the President to appoint three suitable persons to codify the laws, who were to be confirmed by the Senate. Mr. Lincoln nominated Messrs. Richard S. Coxe, John A. Wells, and Philip R. Fendall to the office, but Congress adjourned before the nomination could be acted upon.

The subject was revived, however, in the act to reorganize the courts of the District which was passed in 1863, and which prescribed that the President should appoint a suitable person to revise and codify the laws. The President appointed for this purpose Mr. Return J. Meigs, who was the clerk of the newly established Supreme Court of the District. Mr. Meigs was an old Tennessee lawyer, thoroughly trained in the old common law, and very well qualified for the task assigned him. I have been unable to find a copy of a code prepared by him, but I understand from his family that it was a small affair, of limited scope, consisting of some 200 pages only, and very few copies were printed. No action was had upon it in Congress.

At the first session of the Thirty-eighth Congress a resolution was passed authorizing the District Committees of the two Houses to revise the code prepared in pursuance of the act of 1855. The matter, however, dragged along and nothing further was heard of it.

In 1872 the Legislative Assembly of the District passed an act under which George P. Fisher, one of the judges of the Supreme Court of the District of Columbia, and Hugh Caperton, Samuel L. Phillips, E. C. Ingersoll, and R. D. Mussey, all members of our bar, prepared a report on the statutes in force in the District. It commences with the Declaration of Independence, the Articles of Confederation, and Constitution of the United States, and then gives the acts of Maryland and Virginia relating to the cession of the District. It gives the act of Congress establishing the District Territorial government and the acts of Congress relating to District affairs and acts of the District Legislature, without any distinction between them, so that it is impossible to tell what is their authority. It appears to include a good deal of the legislation of the District which is not of a municipal character and which, therefore, according to a decision rendered by our court long ago, would not be constitutionally valid. When, however, it comes to treat of real estate and titles, it does embody some modern ideas, in advance of the old common-law rules that I have before adverted to, which were evidently borrowed from the codes of some of the States and were not contained in any of the statutes in force in the District. It had no marginal notes indicating the source from which its varied provisions were derived, although it professed to be simply a compilation of existing statutes. It had no index or table of contents. . . . In December, 1872, Governor Cooke reported this code to the Speaker of the House of Representatives and it was placed on the files, but no action was had upon it.

In the fourth session of the Forty-fourth Congress, about 1877, a bill was reported in the Senate providing for a revision of the laws relating to the District, but it was recommitted, and nothing further was heard of it.

. . . Between 1861 and 1874 there was more legislation relating directly to our affairs than there had been for half a century before.

Slavery was abolished, the old circuit court and criminal court were abolished, and the present supreme court was established, modeled somewhat after the courts of New York, and a new judicial system was established, of which the principal author was a Senator from New York, without the least consultation with the people or the legal profession of the District, entirely foreign to our tastes and habits, and which it took us many years to understand. A general incorporation law was passed, the Metropolitan police created, a new law as to limited partnerships introduced and divorces authorized, the rights of married women to control their own property recognized—a complete novelty—the police court established, the jurisdiction of justices of the peace increased, new punishments prescribed for crimes, and new enactments made as to judicial proceedings, as, for instance, with reference to actions of replevin and the defenses of set-off, usury, etc., and, most important of all, a Territorial government for the District was created, and the old corporations of Washington and Georgetown and the old levy court of the county were abolished, except for the purpose of enforcing against them existing obligations.

In June, 1866, an act was passed authorizing the President to appoint three commissioners to revise and bring together all the statutes and parts of statutes which ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile contradictions, supply the omissions, and mend the imperfections of the original text.

The act does not seem, in terms, to allude to the District of Columbia, or even embrace it.

Such commissioners were appointed and proceeded with their work, which was not completed for seven years. Without having any express authority to do so, they made

a separate revision and collection of the acts of Congress relating to the District, besides the collection of general statutes relating to whole United States. Each collection was reported to Congress, to be approved and enacted into law. The concluding paragraphs of each virtually repeal every part of any act of Congress passed before December, 1873, which is not included in this collection, and the whole is enacted into law, as the body of the statute law of the United States, under the title of "Revised Statutes," as of the date June 22, 1874.

The laws relating to the District begin with the one establishing the Territorial government, of February 21, 1871, and the whole collection occupies only 149 pages in the authorized publication. This is the first collection of statute law that ever received congressional approbation. Every law previously passed was an individual act, called for by some emergency, or supposed so to be, without the least consideration of its consistency with other existing laws or its fitness to be part of a system.

But this collection of Revised Statutes in no sense deserves the name of a code. In the first place it does not even purport to give or contain all the statutory law in force in the District. The old British statutes which were in force in Maryland at the time of the cession of the District and the Maryland statutes of over a century, also in force in the territory ceded, and which were expressly continued in force, in general terms, by the act of Congress assuming jurisdiction over the District, of February 27, 1801, are not included in this collection or even alluded to. The general collection might perhaps be considered, in a limited sense, as a code for the United States, as it embraced all the laws affecting the whole United States, within the constitutional legislative jurisdiction of Congress, but there could be no complete code for the entire United States, because the subjects which would be proper to be regulated by a code in the States are entirely outside the legislative authority of Congress. But the collection of the statutes in force in the District did not profess or pretend to provide for such subjects here, even by reenacting laws already in force. And in addition to this there was a total failure to introduce any new features in the way of reform or improvement, and those changes in the law which were embraced in the proposed codes that I have already referred to were entirely wanting.

It is well known that in the very same year in which this collection was published by authority of Congress, containing the law establishing the Territorial government of the District, an act was passed abolishing that government and establishing a board of commissioners for governing temporarily the financial affairs of the District.

In 1878 the present permanent form of government for the District was established, by act of June 11 of that year, and this act provided that the commissioners to be appointed thereunder should report a draft of such additional laws or amendments to existing laws as, in their opinion, are necessary for the harmonious working of the system thereby adopted. And there was an appropriation in March, 1879, for that object, among those for the civil expenses of the Government.

In December, 1879, Mr. Dent, in the name of the commissioners, of whom he was the president, reported to the Senate a code of law and procedure for the District which had been prepared by Mr. Edward Chase Ingersoll, a member of the bar of our court, under the direction, as it was said, of Mr. N. G. Riddle, then attorney for the District. Mr. Ingersoll was a member of our bar of no special prominence, but he certainly exhibited remarkable industry in the preparation of this code. It was, however, a very singular production. It appeared to be an effort to codify the whole body of the common law and contained one treatise after another of the most abstract definitions and propositions. . . . It resembles an elementary work on law, such as would be put into the hands of students. In some places there are valuable new provisions taken from the laws of Massachusetts and New York and the code of Maryland, but they are so overlaid with the kind of matter that I have alluded to that it is a task to search them out. This is not the style in which a code should be prepared. It should consist of practical enactments, concise and brief. Dudley Field, of New York, prepared a code for that State which professed to embody the whole common law. It was not favorably received and proved to be wholly useless. The code prepared by Mr. Ingersoll met with a similar fate. It was placed on file, but no action was taken upon it.

At the second session of the Forty-sixth Congress the House District Committee reported a bill to revise the acts of Congress relating to the District, and the acts of the corporation and the levy court. It was passed in the House and reported in the Senate but did not pass.

In the Forty-seventh Congress Mr. Conners introduced a bill in the House to establish a municipal code, but it did not pass. A similar bill was introduced in the Senate, but no action was taken on it.

Senator Cameron, of Wisconsin, introduced a bill to compile and revise the statutes relating to the District, but no action was had on it.

In the first session of the Forty-seventh Congress Mr. McComas, now one of the justices of the Supreme Court of the District of Columbia, introduced a bill in the House to provide for a criminal code for the District and to appoint a person to prepare it. It was passed at the next session and was reported by the Senate Committee on the District and placed on the calendar, and that was the last of it.

In the Forty-ninth Congress Mr. Ingalls introduced a bill in the Senate to establish a municipal code, but no action was taken on it.

In the same Congress Mr. McComas again introduced his bill, which had failed at the previous session, but again no action was taken.

At the second session of the Forty-ninth Congress Mr. Hemphill, from the District Committee, introduced a bill providing for the compilation of the District laws by three commissioners. It passed the House, was reported in the Senate in the middle of February, 1887, but Congress adjourned before any action could be taken.

All this shows a remarkable interest in this subject on the part of the friends of the District in Congress, and at the same time a remarkable indifference in Congress, as the legislature of the District, about bringing its laws up to the standard recognized among the States as suitable for the progress of the age and the advanced conditions of business dealings.

In the Fiftieth Congress Mr. Hemphill, from the House Committee on the District, reported a bill providing that the Supreme Court of the District should appoint two persons to compile, arrange, and classify, with a proper index, all statutes and parts of statutes in force in the District, including acts of the second session of the Fiftieth Congress and relating to all such matters as would come properly within the scope of a civil and criminal code, the commissioners to receive a certain compensation upon the completion of the work and its approval by the court.

The court appointed Mr. William Stone Abert and Mr. B. F. Lovejoy commissioners, but Mr. Lovejoy died shortly afterwards and Mr. Reginald Fendall was appointed in his place. Mr. Fendall, however, took no part in the work, and it was prosecuted entirely by Mr. Abert. He pursued this work with marvelous patience and industry. It covered a vast field and was not completed until 1894. Mr. Abert included in his compilation the old English statutes in force in the Colonies, including Maryland, or supposed by him to be so, from Magna Charta to the thirteenth of George III, in the year 1773, and all the statutes of Maryland from the year 1704 to February 27, 1801, which had not been repealed and were declared to be in force in the District by the act of Congress of the last date, and the revised acts of Congress before referred to, reenacted in 1874, and also the acts of the Legislative Assembly of the District passed during its brief existence from June 2, 1871, to June 26, 1873, which were supposed to continue in force. The work abounds in marginal references to the various statutes and also to judicial decisions upon their meaning and effect.

The old English statutes and some of the old Maryland statutes abound in antiquated English and redundant verbiage, which it was unnecessary to reenact, and many provisions in them are now inapplicable and obsolete by reason of changes in the practice of the courts and social and political conditions, but it was historically correct to print the entire statutes containing them. The compilation was thereby rendered quite voluminous, but

is invaluable as a collection of existing law and was extremely useful to me in a work which I undertook, and will speak of presently. It did not, however, profess to introduce anything new and can not, therefore, be treated as a code in the sense in which I employ that term. It was approved by the court, as the statute required, simply because it was considered a correct compilation, and no errors were pointed out, but it never received any recognition, approval, or indorsement by Congress, like the Revised Statutes of 1874; so that it is nothing more as authority than the work of a private compiler of existing laws and is not reenacted by Congress as the existing law. Of course Congress could not delegate to the court authority to pass a law and the mere approval of the work by the court did not make the compilation a law or a code of laws.

I am not aware of any other efforts in Congress to promote the passage of a code of laws for the District.

In November, 1895, the Board of Trade of Washington extended an invitation to me to undertake the preparation of a code based upon the existing code of Maryland. The bar association seconded this application.

I did not see how such an undertaking was possible to me at that time, burdened as I was with my judicial duties and the work of the law school of Columbian University, but I accepted the invitation with the qualification that I could not do more than collect materials for doing the work at a future time when I might be entitled to retire from the bench of our court, which time would arrive in a year. I did not take that step in the fall of 1896, as I might have done, but determined to commence the work of preparing a code very gradually in the intervals between my other engagements. . . .

It appears, then, that five codes—those of Judge Cranch, the congressional committee of 1821, of Mr. Return J. Meigs, of Messrs. Fisher and others, and of Mr. Ingersoll—have been formally submitted to Congress, but simply ignored, and that prepared by Messrs. Ould and Cross was voted down by the citizens. This does not give much encouragement for new efforts, but there seems to be such an earnest desire now on the part of the bar and the Board of trade, which is a very influential representative of public sentiment in the District, that either at the present or the next session of Congress a favorable result may be hoped for.

Judge Cox spent between four and five years preparing the code to which he last referred. The code was in two parts, the first relating to the general laws and the second consisting of the laws applicable to the municipality of the District of Columbia as such.

At the request of the judges of the Supreme Court of the District of Columbia, the Bar Association appointed a committee to consider the draft, and to work in conjunction with Judge Cox, with a view to proposed changes or amendments.

The committee consisted of:

A. S. Worthington, chairman.
William F. Mattingly.
R. Ross Perry.
Nathaniel Wilson.
J. J. Darlington.
George E. Hamilton.
A. A. Birney.
Leon Tobriner.
W. G. Johnson.

The committee served without compensation over a period of nearly three months, during which time they were excused by the court from all trial work in order that they might give their entire attention to the subject. The cost of stenographic services, printing, etc., was paid by voluntary contributions by members of the committee and of the bar.

The committee allotted among its members the various chapters of the code of general laws and extended an invitation to the profession in general to submit suggestions or to appear before the committee and express their views.

The various members of the committee reported to the whole committee, who, in conjunction with Judge Cox, agreed upon a proposed code of general laws to be reported to the Supreme Court of the District of Columbia. The municipal code prepared by Judge Cox was not acted on by the committee.

The court thereupon adjourned for about two weeks, except for a short morning session for emergency matters, and after conferring with the Bar Association committee approved the code with very slight changes.

One of the members of the committee, in speaking of the services of Judge Cox, said: "Judge Cox did not retire from active participation in the making of the code when he submitted his draft. He continued to work with the committee. When the reports of the various members of the committee were submitted, and general sessions were held, Judge Cox was with us all the time, aiding, suggesting, and advising. I never saw a man so liberal in his efforts to carry through a work of this kind. I have always thought that the great credit for the preparation of the code was due to the thought, consideration, patience, and laborious efforts of Judge Cox. I think he was undoubtedly the one man whose efforts and ability made it possible for the members of the bar committee to get in shape the code as it went through."

The proposed code was introduced in the House of Representatives on March 21, 1900, by the Honorable John J. Jenkins of Wisconsin. It was reported to the House on April 14, 1900, and was passed on May 28, 1900. It was reported in the Senate on December 15, 1900, by Senator Pritchard, and passed that body on March 2, 1901. It was approved by the President on March 3, 1901.

The Committee is indebted to George E. Hamilton, Esq., and Leon Tobriner, Esq., the surviving members of the Bar Association committee, for the data from which the foregoing résumé of the activities of the Bar committee has been prepared.

ACTS RELATING TO THE ESTABLISHMENT OF THE DISTRICT OF COLUMBIA AND ITS VARIOUS FORMS OF GOVERNMENTAL ORGANIZATION

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CONSTITUTION OF THE UNITED STATES

Article 1, Section 8

The Congress shall have power—* * *

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States * * *

THE CHARTER OF MARYLAND

Charles, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. To all to whom these presents shall come, Greeting.

II. Whereas our well beloved and right trusty subject Cæcilius Calvert, baron of Baltimore, in our kingdom of Ireland, son and heir of George Calvert, knight, late baron of Baltimore, in our said kingdom of Ireland, treading in the steps of his father, being animated with a laudable and pious zeal for extending the christian religion, and also the territories of our empire, hath humbly besought leave of us, that he may transport, by his own industry and expence, a numerous colony of the English nation, to a certain region, herein after described, in a country hitherto uncultivated, in the parts of America, and partly occupied by savages, having no knowledge of the Divine Being, and that all that region, with some certain privileges and jurisdictions, appertaining unto the wholesome government, and state of his colony and region aforesaid, may by our royal highness be given, granted, and confirmed unto him, and his heirs.

III. Know ye therefore, that we, encouraging with our royal favour, the pious and noble purpose of the aforesaid barons of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted and confirmed, and by this our present charter, for us, our heirs and successors, do give, grant and confirm, unto the aforesaid Cæcilius, now baron of Baltimore, his heirs and assigns, all that part of the peninsula, or chersonese, lying in the parts of America, between the ocean on the east, and the bay of Chesopeake on the west, divided from the residue thereof by a right line drawn from the promontory, or head-land, called Watkin's Point, situate upon the bay aforesaid, near the river of Wighco, on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the æquinoctial, where New England is terminated: And all the tract of that land within the metes underwritten (that is to say,) passing from the said bay, called Delaware bay, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the river of Pattowmack, thence verging towards the south, unto the further bank of the said river, and following the same on the west and south, unto a certain place called Cinquack, situate near the mouth of the said river, where it disembogues into the aforesaid bay of Chessopeake, and thence by the shortest line unto the aforesaid promontory or place, called Watkin's Point; so that the whole tract of land, divided by the line aforesaid, between the main ocean, and Watkin's Point, unto the promontory called Cape Charles, and every the appendages thereof, may entirely remain excepted for ever to us, our heirs and successors.

IV. Also we do grant, and likewise confirm unto the said baron of Baltimore, his heirs and assigns, all islands and islets within the limits aforesaid, all and singular the islands and islets, from the eastern shore of the aforesaid region, towards the east, which have been, or shall be formed in the sea, situate within ten marine leagues from the said shore; with all and singular the ports, harbours, bays, rivers, and straits, belonging to the region or islands aforesaid, and all the soil, plains, woods, mountains, marshes, lakes, rivers, bays, and straits, situate, or being within the metes, bounds and limits aforesaid, with the fishings of every kind of fish, as well as of whales, sturgeons, and other royal fish, as of other fish, in the sea, bays, straits or rivers, within the premisses, and the fish there taken: And moreover all veins, mines, and quarries, as well opened as hidden, already found, or that shall be found within the region, islands or limits aforesaid, of gold, silver, gems and precious stones, and any other whatsoever, whether they be of stones, or metals, or of any other thing or matter whatsoever: And furthermore the patronages, and advowsons of all churches which (with the increasing worship and religion of Christ) within the said region, islands, islets and limits aforesaid, hereafter shall happen to be built, together with licence and faculty of erecting and founding churches, chapels, and places of worship, in convenient and suitable places, within the premisses, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England, with all, and singular such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets and limits aforesaid, to be had, exercised, used and enjoyed, as any bishop of Durham, within the bishoprick or county palatine of Durham in our kingdom of England, ever heretofore hath had, held, used or enjoyed, or of right could, or ought to have, hold, use or enjoy.

V. And we do by these presents, for us, our heirs and successors, make, create, and constitute him, the now baron of Baltimore, and his heirs, the true and absolute lords and proprietaries of the region aforesaid, and of all other the premisses, (except the before excepted,) saving always the faith and allegiance and sovereign dominion due to us, our heirs and successors, to have, hold, possess and enjoy, the aforesaid region, islands, islets, and other the premisses, unto the aforesaid now baron of Baltimore, and to his heirs and assigns, to the sole and proper behoof and use of him, the now baron of Baltimore, his heirs and assigns, forever: To hold of us, our heirs and successors, kings of England, as of our castle of Windsor, in our county of Berks, in free and common soccage, by fealty only for all services, and not *in capite,* nor by knight's service, yielding therefore unto us, our heirs, and successors two Indian arrows of those parts, to be delivered at the said castle of Windsor, every year, on Tuesday in Easter-week; and also the fifth part of all gold and silver ore, which shall happen from time to time, to be found within the aforesaid limits.

VI. Now, that the aforesaid region, thus by us granted and described, may be eminently distinguished above all other regions of that territory, and decorated with more ample titles, know ye, that we, of our more especial grace, certain knowledge, and mere motion, have thought fit that the said region and islands be erected into a province, as out of the plentitude of our royal power and prerogative, we do, for us, our heirs and successors, erect and incorporate the same into a province, and nominate the same Maryland, by which name we will that it shall from henceforth be called.

VII. And forasmuch as we have above made and ordained the aforesaid now baron of Baltimore, the true

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lord and proprietary of the whole province aforesaid, Know ye therefore further, that we, for us, our heirs and successors, do grant unto the said now baron, (in whose fidelity, prudence, justice, and provident circumspection of mind, we repose the greatest confidence,) and to his heirs, for the good and happy government of the said province, free, full, and absolute power, by the tenor of these presents, to ordain, make, and enact laws, of what kind soever, according to their sound discretions, whether relating to the public state of the said province, or the private utility of individuals, of and with the advice, assent, and approbation of the free-men of the same province, or of the greater part of them, or of their delegates or deputies, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now baron of Baltimore, and his heirs, and in the form which shall seem best to him or them, and the same to publish under the seal of the aforesaid now baron of Baltimore, and his heirs, and duly to execute the same upon all persons, for the time being, within the aforesaid province, and the limits thereof, or under his or their government and power, in sailing towards Maryland, or thence returning, outward bound, either to England, or elsewhere whether to any other part of our, or of any foreign dominions, wheresoever established, by the imposition of fines, imprisonment, and other punishment whatsoever; even if it be necessary, and the quality of the offence require it, by privation of member, or life, by him the aforesaid now baron of Baltimore, and his heirs, or by his or their deputy, lieutenant, judges, justices, magistrates, officers and ministers, to be constituted and appointed according to the tenor and true intent of these presents, and to constitute and ordain judges, justices, magistrates and officers, of what kind, for what cause, and with what power soever, within that land, and the sea of those parts, and in such form as to the said now baron of Baltimore, or his heirs, shall seem most fitting: And also to remit, release, pardon and abolish, all crimes and offences whatsoever against such laws, whether before, or after judgment passed; and to do all and singular other things belonging to the completion of justice, and to courts, prætorian judicatories, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated, to award process, hold pleas, and determine in those courts, prætorian judicatories, and tribunals, in all actions, suits, causes, and matters whatsoever, as well criminal as personal, real and mixed, and prætorian: Which said laws, so to be published as abovesaid, we will, enjoin, charge and command, to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors, so far as they concern them, and to be inviolably observed under the penalties therein expressed, or to be expressed. So nevertheless, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws, statutes, customs and rights of this our kingdom of England.

VIII. And forasmuch as, in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province, their delegates or deputies, can be called together for the framing of laws; neither will it be fit that so great a number of people should immediately, on such emergent occasion, be called together, we therefore, for the better government of so great a province, do will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said now baron of Baltimore, and to his heirs, that the aforesaid now baron of Baltimore, and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesom ordinances from time to time, to be kept and observed within the province aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances we will to be inviolably observed within the said province, under the pains to be expressed in the same: So that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the laws, statutes, or rights of our kingdom of England: And so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

IX. Furthermore, that the new colony may more happily increase by a multitude of people resorting thither, and at the same time may be more firmly secured from the incursions of savages, or of other enemies, pirates and ravagers: We therefore, for us, our heirs and successors, do by these presents give and grant power, licence and liberty, to all the liege-men and subjects, present and future, of us, our heirs and successors, except such to whom it shall be expressly forbidden, to transport themselves and their families to the said province, with fitting vessels, and suitable provisions, and therein to settle, dwell and inhabit; and to build and fortify castles, forts, and other places of strength, at the appointment of the aforesaid now baron of Baltimore, and his heirs, for the public and their own defence; the statute of fugitives, or any other whatsoever to the contrary of the premisses in any wise notwithstanding.

X. We will also, and of our more abundant grace, for us, our heirs and successors, do firmly charge, constitute, ordain and command, that the said province be of our allegiance; and that all and singular the subjects and liege-men of us, our heirs and successors, transplanted, or hereafter to be transplanted into the province aforesaid and the children of them and of others their descendants whether already born there or hereafter to be born be and shall be natives and liege-men of us, our heirs and successors, of our kingdom of England and Ireland; and in all things shall be held, treated, reputed, and esteemed as the faithful liege-men of us, and our heirs and successors, born within our kingdom of England; also lands, tenements, revenues, services, and other hereditaments whatsoever, within our kingdom of England, and other our dominions, to inherit, or otherwise purchase, receive, take, have, hold, buy and possess, and the same to use and enjoy, and the same to give, sell, alien and bequeath; and likewise all privileges, franchises and liberties of this our kingdom of England, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our liege-men born, or to be born within our said kingdom of England, without impediment, molestation, vexation, impeachment, or grievance of us, or any of our heirs or successors; any statute, act, ordinance or provision, to the contrary thereof notwithstanding.

XI. Furthermore, that our subjects may be incited to undertake this expedition with a ready and chearful mind: Know ye, that we, of our especial grace, certain knowledge, and mere motion, do, by the tenor of these presents, give and grant, as well to the aforesaid baron of Baltimore, and to his heirs, as to all other persons who shall from time to time repair to the said province, either for the sake of inhabiting, or of trading with the inhabitants of the province aforesaid, full license to ship and lade in any the ports of us, our heirs and successors, all and singular their goods, as well moveable as immoveable, wares and merchandises, likewise grain of what sort soever, and other things whatsoever necessary for food and cloathing, by the laws and statutes of our kingdoms and dominions, not prohibited to be transported out of the said kingdoms; and the same to transport, by themselves, or their servants or assigns, into the said province, without the impediment or molestation of us, our heirs or successors, or of any officers of us, our heirs or successors, (saving unto us, our heirs and successors, the impositions, subsidies, customs, and other dues payable for the same goods and merchandises), any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding.

XII. But because, that in so remote a region, placed among so many barbarous nations, the incursions as well of the barbarians themselves, as of other enemies, pirates and ravagers, probably will be feared, therefore, we have given, and for us, our heirs and successors, do give by these presents, as full and unrestrained power, as any captain-general of an army ever hath had, unto the aforesaid now baron of Baltimore, and to his heirs and assigns, by themselves, or by their captains, or other officers, to

summon to their standards, and to array all men, of whatsoever condition, or wheresoever born, for the time being, in the said province of Maryland, to wage war, and to pursue, even beyond the limits of their province, the enemies and ravagers aforesaid, infesting those parts by land and by sea, and (if God shall grant it) to vanquish and captivate them, and the captives to put to death, or, according to their discretion, to save, and to do all other and singular the things which appertain, or have been accustomed to appertain unto the authority and office of a captain-general of an army.

XIII. We also will, and by this our charter, do give unto the aforesaid now baron of Baltimore, and to his heirs and assigns, power, liberty and authority, that in case of rebellion, sudden tumult, or sedition, if any (which God forbid) should happen to arise, whether upon land within the province aforesaid, or upon the high sea in making a voyage to the said province of Maryland, or in returning thence, they may, by themselves, or by their captains, or other officers, thereunto deputed under their seals (to whom we for us, our heirs and successors, by these presents, do give and grant the fullest power and authority) exercise martial law as freely, and in as ample manner and form, as any captain-general of an army, by virtue of his office may, or hath accustomed to use the same, against the seditious authors of innovations in those parts, withdrawing themselves from the government of him or them, refusing to serve in war, flying over to the enemy, exceeding their leave of absence, deserters, or otherwise howsoever offending against the rule, law, or discipline of war.

XIV. Moreover, left in so remote and far distant a region, every access to honours and dignities may seem to be precluded, and utterly barred, to men well born, who are preparing to engage in the present expedition, and desirous of deserving well, both in peace and war, of us, and our kingdoms; for this cause, we, for us, our heirs and successors, do give free and plenary power to the aforesaid now baron of Baltimore, and to his heirs and assigns, to confer favours, rewards and honours, upon such subjects, inhabiting within the province aforesaid, as shall be well deserving, and to adorn them with whatsoever titles and dignities they shall appoint; (so that they be not such as are now used in England) also to erect and incorporate towns into boroughs, and boroughs into cities, with suitable privileges and immunities, according to the merits of the inhabitants, and convenience of the places; and to do all and singular other things in the premises, which to him or them shall seem fitting and convenient; even although they shall be such as, in their own nature, require a more special commandment and warrant than in these presents may be expressed.

XV. We will also, and by these presents do, for us, our heirs and successors, give and grant license by this our charter, unto the aforesaid now baron of Baltimore, his heirs and assigns, and to all persons whatsoever, who are, or shall be residents and inhabitants of the province aforesaid, freely to import and unlade, by themselves, their servants, factors or assigns, all wares and merchandises whatsoever, which shall be collected out of the fruits and commodities of the said province, whether the product of the land or the sea, into any the ports whatsoever of us, our heirs and successors, of England or Ireland, or otherwise to dispose of the same there; and, if need be, within one year, to be computed immediately from the time of unlading thereof, to lade the same merchandises again, in the same, or other ships, and to export the same to any other countries they shall think proper, whether belonging to us, or any foreign power which shall be in amity with us, our heirs or successors: *Provided always,* That they be bound to pay for the same to us, our heirs and successors, such customs and impositions, subsidies and taxes, as our other subjects of our kingdom of England, for the time being, shall be bound to pay, beyond which we will that the inhabitants of the aforesaid province of the said land, called Maryland, shall not be burthened.

XVI. And furthermore, of our more ample special grace, and of our certain knowledge, and mere motion, we do, for us, our heirs and successors, grant unto the aforesaid now baron of Baltimore, his heirs and assigns, full and absolute power and authority to make, erect and constitute, within the province of Maryland, and the islands and islets aforesaid, such, and so many sea-ports, harbours, creeks, and other places of unlading and discharge of goods and merchandises out of ships, boats, and other vessels, and of lading in the same, and in so many, and such places, and with such rights, jurisdictions, liberties, and privileges, unto such ports respecting, as to him or them shall seem most expedient: And, that all and every the ships, boats, and other vessels whatsoever, coming to, or going from the province aforesaid, for the sake of merchandising, shall be laden and unladen at such ports only as shall be so erected and constituted by the said now baron of Baltimore, his heirs and assigns, any usage, custom, or any other thing whatsoever to the contrary notwithstanding. Saving always to us, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of us, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid; and the privilege of salting and drying fish on the shores of the same province; and, for that cause, to cut down and take hedging-wood and twigs there growing, and to build huts and cabins, necessary in this behalf, in the same manner as heretofore they reasonably might, or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy, without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore, his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid, and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind, he shall incur the peril and pain of the heavy displeasure of us, our heirs and successors, and of the due chastisement of the laws, besides making satisfaction.

XVII. Moreover, we will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, that the same baron of Baltimore, his heirs and assigns, from time to time, for ever, shall have, and enjoy the taxes and subsidies payable, or arising within the ports, harbours, and other creeks and places aforesaid, within the province aforesaid, for wares bought and sold, and things there to be laden or unladen, to be reasonably assessed by them, and the people there as aforesaid, on emergent occasion; to whom we grant power by these presents, for us, our heirs and successors, to assess and impose the said taxes and subsidies there, upon just cause, and in due proportion.

XVIII. And furthermore, of our special grace, and certain knowledge, and mere motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the aforesaid now baron of Baltimore, his heirs and assigns, full and absolute licence, power and authority, that he, the aforesaid now baron of Baltimore, his heirs and assigns, from time to time hereafter, for ever, may and can. at his or their will and pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate parts and parcels of the premises, to any person or persons willing to purchase the same, as they shall think convenient, to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns, in fee-simple, or fee-tail, or for term of life, lives or years; to hold of the aforesaid now baron of Baltimore, his heirs and assigns, by so many, such, and so great services, customs and rents, of this kind, as to the same now baron of Baltimore, his heirs and assigns, shall seem fit and agreeable, and not immediately of us, our heirs or successors. And we do give, and by these presents, for us, our heirs and successors, do grant to the same person and persons, and to each and every of them, licence, authority and power, that such person and persons, may take the premisses, or any parcel thereof, of the aforesaid now baron of Baltimore, his heirs and assigns, and hold the same to them and their assigns, or their heirs, of the aforesaid baron of Baltimore, his heirs and assigns, of what estate of inheritance soever, in fee-simple or fee-tail, or otherwise, as to them and the now baron of Baltimore, his heirs and assigns, shall seem expedient; the statute made in the

parliament of lord Edward, son of king Henry, late king of England, our progenitor, commonly called the *"Statute quia emptores terrarum,"* heretofore published in our kingdom of England, or any other statute, act, ordinance, usage, law, or custom, or any other thing, cause or matter, to the contrary thereof, heretofore had, done, published, ordained, or provided to the contrary thereof notwithstanding.

XIX. We also, by these presents, do give and grant licence to the same baron of Baltimore, and to his heirs, to erect any parcels of land within the province aforesaid, into manors, and in every one of those manors, to have and to hold a court-baron, and all things which to a court-baron do belong; and to have and to keep view of frank-pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank-pledge belonging.

XX. And further we will, and do, by these presents, for us, our heirs and successors, covenant and grant to, and with the aforesaid now baron of Baltimore, his heirs and assigns, that we, our heirs and successors, at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs, or other taxations, quotas or contributions whatsoever, in or upon the residents or inhabitants of the province aforesaid for their goods, lands, or tenements within the same province, or upon any tenements, lands, goods or chattels within the province aforesaid, or in or upon any goods or merchandises within the province aforesaid, or within the ports or harbours of the said province, to be laden or unladen: And we will and do, for us, our heirs and successors, enjoin and command that this our declaration shall, from time to time, be received and allowed in all our courts and prætorian judicatories, and before all the judges whatsoever of us, our heirs and successors, for a sufficient and lawful discharge, payment, and acquittance thereof, charging all and singular the officers and ministers of us, our heirs and successors, and enjoining them, under our heavy displeasure, that they do not at any time presume to attempt any thing to the contrary of the premisses or that may in any wise contravene the same, but that they, at all times, as is fitting, do aid and assist the aforesaid now baron of Baltimore, and his heirs, and the aforesaid inhabitants and merchants of the province of Maryland aforesaid, and their servants and ministers, factors and assigns, in the fullest use and enjoyment of this our charter.

XXI. And furthermore we will, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them, that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which we do separate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immediately subject to our crown of England, and dependent on the same for ever.

XXII. And if, peradventure, hereafter it may happen, that any doubts or questions should arise concerning the true sense and meaning of any word, clause or sentence, contained in this our present charter, we will, charge and command, that interpretation to be applied, always, and in all things, and in all our courts and judicatories whatsoever, to obtain which shall be judged to be the more beneficial, profitable, and favourable to the aforesaid now baron of Baltimore, his heirs and assigns: *Provided always,* That no interpretation thereof be made, whereby God's holy and true christian religion, or the allegiance due to us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution; although express mention be not made in these presents of the true yearly value or certainty of the premisses, or of any part thereof, or of other gifts and grants made by us, our heirs and predecessors, unto the said now lord Baltimore, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause, or matter whatsoever, to the contrary thereof in any wise notwithstanding.

XXIII. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, the twentieth day of June, in the eighth year of our reign. (Kilty's Digest.)

ORIGINAL DECLARATION OF RIGHTS OF THE STATE OF MARYLAND

The parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the colonies in all cases whatsoever, and in pursuance of such claim endeavoured by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent states, and to assume government under the authority of the people, Therefore, we, the Delegates of Maryland, in free and full convention assembled, taking into our most serious consideration, the best means of establishing a good constitution in this state, for the surer foundation, and more permanent security thereof, declare,

1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.

3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law, and to the benefit of such of the English statutes as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain, and have been introduced, used, and practised by the courts of law or equity; and also to all acts of assembly in force on the first of June, seventeen hundred and seventy-four, except such as may have since expired, or have been, or may be altered by acts of convention, or this declaration of rights; subject nevertheless to the revision of, and amendment or repeal by the legislature of this state; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his majesty Charles the first, to Cæcilius Calvert, baron of Baltimore.

4. That all persons invested with the legislative or executive powers of government are the trustees of the public, and as such accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

5. That the right in the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every man having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage.

6. That the legislative, executive, and judicial powers of government, ought to be for ever separate and distinct from each other.

7. That no power of suspending laws, or the execution of laws, unless by or derived from the legislature, ought to be exercised or allowed.

8. That freedom of speech and debates or proceedings in the legislature, ought not to be impeached in any other court of judicature.

9. That a place for the meeting of the legislature ought to be fixed, the most convenient to the members thereof, and to the depository of the public records; and the legislature ought not to be convened or held at any other place but from evident necessity.

10. That for the redress of grievances, and for amending, strengthening and preserving the laws, the legislature ought to be frequently convened.

11. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

12. That no aid, charge, tax, burthen, fee or fees, ought to be set, rated or levied, under any pretence, without the consent of the legislature.

13. That the levying taxes by the poll is grievious and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government, but every other person in the state ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property within this state; yet fines, duties or taxes, may properly and justly be imposed or laid with a political view for the good government and benefit of the community.

14. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the state; and no law to inflict cruel and unusual pains and penalties ought to be made, in any case, or at any time hereafter.

15. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore no expost facto law ought to be made.

16. That no law to attaint particular persons of treason or felony, ought to be made in any case or at any time hereafter.

17. That every free man, for any injury done to him in his person, or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

18. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estate of the people.

19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment, or charge, in due time, (if required,) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases as have been usually practised in this state, or may hereafter be directed by the legislature.

21. That no freeman ought to be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

22. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the courts of law.

23. That all warrants without oath, or affirmation, to search suspected places, or to seize any person, or property, are serious and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal and ought not to be granted.

24. That there ought to be no forfeiture of any part of the estate of any person for any crime except murder, or treason against the state, and then only on conviction and attainder.

25. That a well regulated militia is the proper and natural defence of a free government.

26. That standing armies are dangerous to liberty, and ought not to be raised or kept up without consent of the legislature.

27. That in all cases and at all times the military ought to be under strict subordination to, and control of, the civil power.

28. That no soldier ought to be quartered in any house in time of peace without the consent of the owner, and in time of war in such manner only as the legislature shall direct.

29. That no person except regular soldiers, mariners and marines, in the service of this state, or militia when in actual service, ought in any case to be subject to, or punishable by martial law.

30. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore, the chancellor and all judges ought to hold commissions during good behaviour; and the said chancellor and judges shall be removed for misbehavior, on conviction in a court of law, and may be removed by the governor, upon the address of the general assembly: *Provided,* That two-thirds of all the members of each house concur in such address. That salaries, liberal, but not profuse, ought to be secured to the chancellor and the judges during the continuance of their commissions, in such manner and at such time, as the legislature shall hereafter direct, upon consideration of the circumstances of this state. No chancellor or judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.

31. That a long continuance in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom.

32. That no person ought to hold, at the same time, more than one office of profit, nor ought any person in public trust to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this state.

33. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons professing the christian religion are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace, or safety of the state, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry. Yet the legislature may, in their discretion, lay a general and equal tax for the support of the christian religion, leaving to each individual the power of appointing the payment over of the money collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county; but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England for ever. And all acts of assembly lately passed for collecting moneys for building or repairing particular churches or chapels of ease, shall continue in force and be executed, unless the legislature shall by act supersede or repeal the same; but no county court shall assess any quantity of tobacco or sum of money hereafter, on the application of any vestrymen or churchwardens; and every incumbent of the church of England, who hath remained in his parish and performed his duty, shall be entitled to receive the provision and support established by the act, entitled, An act for the support of the clergy of the church of England in this province, till the November court of this present year to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish and performed his duty.

34. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in truth for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination; and every gift or sale of goods or chattels, to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit; and also every devise of goods or chattels to, or to or for the support, use or benefit of, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination, with-

out the leave of the legislature, shall be void; except always any sale, gift, lease, or devise, of any quantity of land not exceeding two acres, for a church, meeting, or other house of worship, and for a burying ground, which shall be improved, enjoyed or used, only for such purpose, or such sale, gift, lease or devise, shall be void.

35. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this state, and such oath of office, as shall be directed by this convention or the legislature of this state, and a declaration of a belief in the christian religion.

36. That the manner of administering an oath to any person ought to be such as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation by the attestation of the Divine Being; and that the people called quakers, those called tunkers, and those called menonists, holding it unlawful to take an oath, on any occasion, ought to be allowed to make their solemn affirmation in the manner that quakers have been heretofore allowed to affirm, and to be of the same avail as an oath, in all such cases as the affirmation of quakers hath been allowed and accepted within this state instead of an oath. And further, on such affirmation warrants to search for stolen goods, or the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and quakers, tunkers, or menonists, ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses in all criminal cases not capital.

37. That the city of Annapolis ought to have all its rights, privileges and benefits, agreeable to its charter and the acts of assembly confirming and regulating the same; subject, nevertheless, to such alterations as may be made by this convention or any future legislature.

38. That the liberty of the press ought to be inviolably preserved.

39. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered.

40. That no title of nobility, or hereditary honour, ought to be granted in this state.

41. That the subsisting resolves of this and the several conventions held for this colony, ought to be in force as laws, unless altered by this convention, or the legislature of this state.

42. That this declaration of rights, or the form of government to be established by this convention, or any part of either of them, ought not to be altered, changed, or abolished by the legislature of this state but in such manner as this convention shall prescribe and direct. (Kilty's Digest; see also 1 Dorsey's Laws of Maryland, xxv; for declaration as amended to date see 1 Md. Ann. Code (1924) 43).

ACT OF CESSION FROM THE STATE OF VIRGINIA

AN ACT For the cession of ten miles square, or any lesser quantity of territory within this State, to the United States, in Congress assembled, for the permanent seat of the General Government

[Passed December 3, 1789]

I. Whereas the equal and common benefits resulting from the administration of the General Government will be best diffused, and its operations become more prompt and certain, by establishing such a situation for the seat of the said Government as will be most central and convenient to the citizens of the United States at large; having regard as well to population, extent of territory, and a free navigation to the Atlantic Ocean, through the Chesapeake Bay, as to the most direct and ready communication with our fellow-citizens on the western frontier; and whereas it appears to this assembly that a situation combining all the considerations and advantages before recited may be had on the banks of the river Potomac, above tidewater, in a country rich and fertile in soil, healthy and salubrious in climate, and abounding in all the necessaries and conveniences of life, where, in a location of ten miles square, if the wisdom of Congress shall so direct, the States of Pennsylvania, Maryland, and Virginia, may participate in such location:

II. *Be it therefore enacted by the general assembly,* That a tract of country not exceeding ten miles square, or any lesser quantity, to be located within the limits of the State, and in any part thereof, as Congress may by law direct, shall be, and the same is hereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of the Government of the United States.

III. *Provided,* That nothing herein contained shall be construed to vest in the United States any right of property in the soil, or to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States.

IV. *And provided also,* That the jurisdiction of the laws of this commonwealth over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress, having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited. (Burch's Digest, p. 213.)

ACT AUTHORIZING CESSION FROM STATE OF MARYLAND

AN ACT To cede to Congress a district of ten miles square in this State for the seat of the Government of the United States

Be it enacted, by the General Assembly of Maryland, That the representatives of this state in the house of representatives in the congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be and they are hereby authorized and required, on the behalf of this state, to cede to the congress of the United States, any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States. (Md. act, December 23, 1788, ch. 46.)

ACT OF MARYLAND RATIFYING THE CESSION

AN ACT Concerning the Territory of Columbia and the city of Washington

[Passed December 19, 1791]

Whereas the President of the United States, by virtue of several acts of Congress, and acts of the assemblies of Maryland and Virginia, by his proclamation, dated at Georgetown on the thirtieth day of March, seventeen hundred and ninety-one, did declare and make known that the whole of the territory of ten miles square, for the permanent seat of government of the United States, shall be located and included within the four lines following, that is to say: Beginning at Jones Point, being the upper point of Hunting Creek, in Virginia, and at an angle at the outset forty-five degrees west of north, and running a direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line at a right angle with the first across the Potomac ten miles for the second line; then from the terminations of the said first and second lines running two other direct lines ten miles each, the one across the Eastern Branch and the other Potomac, and meeting each

other in a point, which has since been called the Territory of Columbia; and,

Whereas Notley Young, Daniel Carroll, of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other parts to be sold to raise money as a donation to be employed according to the act of Congress for establishing the temporary and permanent seat of the Government of the United States, under and upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburg and Hamburg have also come into an agreement, subjecting their lots to be laid out anew, giving up one-half of the quantity thereof to be sold, and the money thence arising to be applied as a donation as aforesaid, and they to be reinstated in one-half of the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the Commissioners and them, and in case of disagreement, that then a just and full compensation shall be made in money; yet some of the proprietors in Carrollsburg and Hamburg, as well as some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great number of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out comprehending all the lands beginning on the east side of Rock Creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburgh; thence along the middle of the said road to a stone standing on the east side of the Reedy Branch of Goose Creek; thence southeasterly, making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburgh to the Eastern Branch ferry; then south to a stone eighty poles north of the east and west line already drawn from the mouth of Goose Creek to the Eastern Branch; then east, parallel to the said east and west line, to the Eastern Branch; then with the waters of the Eastern Branch, Potomac River, and Rock Creek to the beginning, which has since been called the City of Washington; and

Whereas it appears to this general assembly highly just and expedient that all the lands within the said city should contribute, in due proportion, in the means which have already greatly enhanced the value of the whole; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof; and that many temporary provisions will be necessary till Congress exercise the jurisdiction and government over the said territory; and

Whereas in the cession of this State, heretofore made, of territory for the Government of the United States, the lines of such cession could not be particularly designated; and it being expedient and proper that the same should be recognized in the acts of this State—

2. *Be it enacted by the General Assembly of Maryland,* That all that part of the said territory called Columbia which lies within the limits of this State shall be, and the same is hereby, acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States: *Provided,* That nothing herein contained shall be so construed to vest in the United States any right of property in the soil as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States: *And provided also,* That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.

3. *And be it enacted,* That all the lands belonging to minors, persons absent out of the State, married women, or persons non compos mentis, or the lands the property of this State, within the limits of Carrollsburg and Hamburg, shall be and are hereby subjected to the terms and conditions hereinbefore recited, as to the lots where the proprietors thereof have agreed concerning the same; and all the other lands, belonging as aforesaid, within the limits of the said city of Washington, shall be, and are hereby, subjected to the same terms and conditions as the said Notley Young, Daniel Carroll, of Duddington, and others, have by their said agreements and deeds, subjected their lands to, and where no conveyances have been made, the legal estate and trust are hereby invested in the said Thomas Beall, son of George, and John Mackall Gantt, in the same manner as if each proprietor had been competent to make, and had made a legal conveyance of his or her land, according to the form of those already mentioned, with proper acknowledgments of the execution thereof, and where necessary, of release of dower, and in every case where the proprietor is an infant, a married woman, insane, absent out of the State, or shall not attend on three months' advertisement of notice in the Maryland Journal and Baltimore Advertiser, the Maryland Herald, and in the Georgetown and Alexandria papers, so that allotment can not take place by agreement, the commissioners, aforesaid, or any two of them, may allot or assign the portion or share of such proprietor as near the old situation as may be, in Carrollsburg and Hamburg, and to the full value of what the party might claim under the terms before recited; and as to the other lands within the said city, the commissioners aforesaid, or any two of them, shall make such allotment and assignment, within the lands belonging to the same person, in alternate lots, determined by lot or ballot, whether the party shall begin with the lowest number: *Provided,* That in the cases of coverture and infancy, if the husband, guardian, or next friend will agree with the commissioners, or any two of them, then an effectual division may be made by consent; and in case of contrary claims, if the claimants will not jointly agree, the commissioners may proceed as if the proprietor was absent; and all persons to whom allotments and assignments of lands shall be made by the commissioners, or any two of them, on consent and agreement, or pursuant to this act without consent, shall hold the same in their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, and incumbrances as their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, incumbrances as their former estates and interests were subject to, and as if the same had been actually reconveyed pursuant to the said deed in trust.

4. *And be it enacted,* That where the proprietor or proprietors, possessor or possessors, of any lands within the limits of the city of Washington, or within the limits of Carrollsburg or Hamburg, who have not already, or who shall not, within three months of this act, execute deeds in trust to the aforesaid Thomas Beall and John M. Gantt, of all their land within the limits of the said city of Washington, and on the terms and conditions mentioned in the deeds already executed by Notley Young and others, and execute deeds in trust to the said Thomas Beall and John M. Gantt of all their lots in the towns of Carrollsburg and Hamburg on the same terms and conditions contained in the deeds already executed by the greater part of the proprietors of lots in the said towns, the said commissioners, or any two of them, shall and may, at any time or times thereafter, issue a process, directed to the sheriff of Prince Georges County, commanding him, in the name of the State, to summon five good substantial freeholders, who are not of kin to any proprietor or proprietors of the lands aforesaid, and who are not proprietors themselves, to meet on a certain day, and at a certain place within the limits of the said city, to inquire of the value of the estate of such proprietor or proprietors, possessor or possessors, on which day and place the said sheriff shall attend, with the freeholders by him summoned, which freeholders shall take the following oath, or affirmation, on the land to be by them valued, to wit:

"I, A. B., do solemnly swear (or affirm) that I will, to the best of my judgment, value the lands of C. D. now to be valued so as to do equal right and justice to the said C. D. and to the public, taking into consideration all circumstances," and shall then proceed to value the said lands; and such valuation, under their hands and seals and under the hand and seal of the said sheriff, shall be annexed to the said process and returned by the sheriff to the clerk appointed by virtue of this act, who shall make record of the same, and the said lands shall, on the payment of such valuation, be and is hereby vested in the said commissioners in trust, to be disposed of by them or otherwise employed to the use of the said city of Washington; and the sheriff aforesaid and freeholders aforesaid shall be allowed the same fees for their trouble as are allowed to a sheriff and juryman in executing a writ of inquiry; and in all cases where the proprietor or possessor is tenant in right of dower or by the courtesy the freeholders aforesaid shall ascertain the annual value of the lands and the gross value of such estate therein, and upon paying such gross value or securing to the possessor the payment of the annual valuation, at the option of the proprietor or possessor, the commissioners shall be and are hereby vested with the whole estate of such tenant, in manner and for the uses and purposes aforesaid.

5. *And be it enacted,* That all the squares, lots, and parcels of land within the said city which have been or shall be appropriated for the use of the United States, and all the lots and parcels which have been or shall be sold to raise money as a donation as aforesaid shall remain and be to the purchasers, according to the terms and conditions of their respective purchase; and purchases and leases from private persons claiming to be proprietors, and having, or those under whom they claim having, been in the possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and on the terms and conditions of such purchases and leases, respectively, without impeachment, and against any contrary title now existing; but if any person hath made a conveyance, or shall make a conveyance or lease, of any lands within the said city, not having right and title to do so, the person who might be entitled to recover the land under a contrary title now existing may, either by way of ejectment against the tenant or in an action for money had and received for his use against the bargainer or lessor, his heirs, executors, administrators, or devisees, as the case may require, recover all money received by him for the squares, pieces, or parcels appropriated for the use of the United States, as well as for lots or parcels sold and rents received by the person not having title as aforesaid, with interest from the time of receipt; and, on such recovery in ejectment, where the land is in lease, the tenant shall thereafter hold under, and pay the rent reserved to, the person making title to and recovering the land; but the possession bona fide acquired in none of the said cases shall be changed.

6. *And be it enacted,* That any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said territory which lies within this State in the same manner as if he were a citizen of this State; and the same lands may be conveyed by him, and transmitted to, and inherited by his heirs or relations, as if he and they were citizens of this State; provided that no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen.

7. *And be it enacted,* That the said commissioners, or any two of them, may appoint a clerk for recording deeds of land within the said territory, who shall provide a proper book for the purpose, and therein record, in a strong, legible hand, all deeds duly acknowledged, of lands in the said territory, delivered to him to be recorded, and in the same book make due entries of all divisions and allotments of lands and lots made by the commissioners in pursuance of this act, and certificates granted by them of sales, and the purchase money having been paid, with a proper alphabet in the same book of the deeds and entries aforesaid; and the same book shall carefully preserve and deliver over to the commissioners aforesaid, or their successors, or such person or persons as Congress shall hereafter appoint, which clerk shall continue such during good behaviour, and shall be removable only on a conviction of misbehaviour in a court of law; but before he acts as such he shall take an oath or affirmation well and truly to execute his office, and he shall be entitled to the same fees as are or may be allowed to the clerks of the county courts for searches, copying, and recording.

8. *And be it enacted,* That acknowledgments of deeds made before a person in the manner and certified as the laws of this State direct or made before, and certified by, either of the commissioners shall be effectual; and that no deed hereafter to be made, of or for lands within that part of the said territory which lies within this State, shall operate as a legal conveyance, nor shall any lease for more than seven years be effectual, unless the deed shall have been acknowledged as aforesaid, and delivered to the said clerk to be recorded within six calendar months from the date thereof.

9. *And be it enacted,* That the commissioners aforesaid, or some two of them, shall direct an entry to be made in the said record book of every allotment and assignment to the respective proprietors in pursuance of this act.

10. And for the encouragement of master builders to undertake the building and finishing houses within the said city by securing to them a just and effectual remedy for their advances and earnings, *Be it enacted,* That for all sums due and owing on written contracts for the building any house in the said city, or the brickwork or carpenters' or joiners' work thereon, the undertaker or workmen employed by the person for whose use the house shall be built shall have a lien on the house and the ground on which the same is erected, as well as for the materials found by him: *Provided,* The said written contract shall have been acknowledged before one of the commissioners, a justice of the peace, or an alderman of the corporation of Georgetown and recorded in the office of the clerk for recording deeds, herein created, within six calendar months from the time of acknowledgment as aforesaid, and if within two years after the last of the work is done he proceeds in equity he shall have as upon a mortgage, or if he proceeds at law within the same time he may have execution against the house and land, in whose hands soever the same may be; but this remedy shall be considered as additional only, nor shall, as to the land, take place of any legal incumbrance made prior to the commencement of such claim.

11. *And be it enacted,* That the treasurer of the western shore be empowered and required to pay the seventy-two thousand dollars agreed to be advanced to the President by resolutions of the last sessions of assembly, in sums as the same may come to his hands on the appointed funds, without waiting for the day appointed for the payment thereof.

12. *And be it enacted,* That the Commissioners aforesaid for the time being, or any two of them, shall from time to time, until Congress shall exercise the jurisdiction and government within the said Territory, have power to license the building of wharves in the waters of the Potomac and the Eastern Branch, adjoining the said city, of the materials, in the manner and of the extent they may judge durable, convenient, and agreeing with the general order; but no license shall be granted to one to build a wharf before the land of another, nor shall any wharf be built in the waters without license as aforesaid; and if any wharf shall be built without such license, or different therefrom, the same is hereby declared a common nuisance. They may also, from time to time, make regulations for the discharge and laying of ballast from ships or vessels lying in the Potomac River above the lower line of the said Territory and Georgetown, and from ships and vessels lying in the Eastern Branch. They may also, from time to time, make regulations for landing and laying materials for building the said city, for disposing and laying earth which may be dug out of the wells, cellars, and foundations and for ascertaining the thickness of the walls of houses, and to enforce the observance of all such regulations by appointing penalties for the breach of any one of them not exceeding ten pounds current money, which may be recovered in the name of the said Commissioners, by warrant, before a justice of the peace, as in case of small debts, and disposed of as a donation for the purpose of the said act of

Congress. And the said Commissioners, or any two of them, may grant licenses for retailing distilled spirits within the limits of the said city, and suspend or declare the same void. And if any person shall retail or sell any distilled spirits, mixed or unmixed, in less than ten gallons to the same person, or at the same time actually delivered, he or she shall forfeit for every such sale three pounds, to be recovered and applied as aforesaid.

13. *And be it enacted,* That an act of assembly of this State to condemn lands, if necessary, for the public buildings of the United States be, and is hereby, repealed. (Md. act, 1791, ch. 45.)

MARYLAND ACT OF 1792 SUPPLEMENTARY TO ACT OF CESSION

A supplement to the act entitled "An act concerning the Territory of Columbia and the city of Washington"

[Passed December 23, 1792]

Whereas, doubts have arisen upon the act to which this is a supplement, whether it be essential to the validity of deeds and other conveyances of land in that part of the Territory of Columbia which lies within this state, that the same be recorded in the manner prescribed by the laws of this state before the passage of the said act; to remove which doubts—

2. *Be it enacted, by the General Assembly of Maryland,* That all deeds and other conveyances of land lying within the said territory, and recorded agreeably to the directions and provisions of the said act by the clerk appointed in the manner therein provided for the recording of deeds within the said territory, shall be as good, valid, and sufficient, in law, for the purposes of passing the estates therein mentioned, and for all other purposes, as if the same were also recorded in the manner prescribed by the laws of this state, before the passage of the said act for the recording of deeds and other conveyances of land within this state. (Md. act, 1792, ch. 49.)

MARYLAND ACT OF 1793 SUPPLEMENTARY TO ACT OF CESSION

A further supplement to the act concerning the Territory of Columbia and the city of Washington

Be it enacted, by the General Assembly of Maryland, That the certificates granted, or which may be granted, by the said commissioners, or any two of them, to purchasers of lots in the said city, with acknowledgment of the payment of the whole purchase money, and interest, if any shall have arisen thereon, and recorded agreeably to the directions of the act concerning the territory of Columbia and city of Washington, shall be sufficient and effectual to vest the legal estate in the purchasers, their heirs and assigns, according to the import of such certificates, without any deed or formal conveyance.

II. *And be it enacted,* That on sales of lots in the said city by the said commissioners, or any two of them, under terms or conditions of payment being therefor at any day or days after such contract entered into, if any sum of the purchase money or interest shall not be paid for the space of thirty days after the same ought to be paid, the commissioners, or any two of them, may sell the same lots at public vendue, in the city of Washington, at any time after sixty days notice of such sale, in some of the public newspapers of George-town and Baltimore-town, and retain in their hands sufficient of the money produced by such new sale to satisfy all principal and interest due on the first contract, together with the expenses of advertisements and sale, and the original purchaser, or his assigns, shall be entitled to receive from the said commissioners, at their treasury, on demand, the balance of the money which may have been actually received by them, or under their order, on the said second sale; and all lots, so sold, shall be freed and acquitted of all claim, legal and equitable, of the first purchaser, his heirs and assigns.

III. *And be it enacted,* That the commissioners aforesaid, or any two of them, may appoint a certain day for the allotment and assignment of one half of the quantity of each lot of ground in Carrollsburgh and Hamburgh, not before that time divided or assigned, pursuant to the said act concerning the territory of Columbia and the city of Washington, and on notice thereof in the Annapolis, some one of the Baltimore, the Eastern and Georgetown news-papers, for at least three weeks, the same commissioners may proceed to the allotment and assignment of ground within the said city, on the day appointed for that purpose, and therein proceed at convenient times till the whole be finished, as if the proprietors of such lots actually resided out of this state; provided, that if the proprietor of any such lot shall object in person, or by writing delivered to the commissioners, against their so proceeding as to his lot, before they shall have made an assignment of ground for the same, then they shall forbear as to such lot, and may proceed according to the before-mentioned act.

IV. *And be it enacted,* That the said commissioners may make a seal of office of the clerk for recording deeds within the district of Columbia, which shall be kept by him; and that the like fees shall be paid for, and the like credit shall be given to, certificates under seal, as to the like acts under the seal of a county court, and the said clerk shall be entitled to demand and receive his fees when the services enjoined him by this act, and the act to which this is a further supplement, shall be performed. (Md. act, 1793, ch. 58.)

CONGRESSIONAL ACCEPTANCE OF CEDED TERRITORY

AN ACT For establishing the temporary and permanent seat of the Government of the United States

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States. *Provided nevertheless,* That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

SEC. 2. *And be it further enacted,* That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited and located, shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.

SEC. 3. *And be it* [*further*] *enacted,* That the said commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the United States, and according to such plans as the President shall approve, the said commissioners, or any two of them, shall, prior to the first Monday in December, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government of the United States.

SEC. 4. *And be it [further] enacted,* That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

SEC. 5. *And be it [further] enacted,* That prior to the first Monday in December next, all offices attached to the seat of the government of the United States, shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the state of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

SEC. 6. *And be it [further] enacted,* That on the said first Monday in December, in the year one thousand eight hundred, the seat of the government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere; and that the necessary expense of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated.

Approved, July 16, 1790 (1 Stat. 139, ch. 28).

PROCLAMATION BY THE PRESIDENT RESPECTING A SURVEY, AND DEFINING THE LIMITS OF, THE DISTRICT OF COLUMBIA

A proclamation

WHEREAS the General Assembly of the State of Maryland, by an act passed on the twenty-third day of December, in the year one thousand seven hundred and eighty-eight, intituled "An act to cede to Congress a District of ten miles square in this State, for the seat of the government of the United States," did enact, that the Representatives of the said State, in the House of Representatives of the Congress of the United States, appointed to assemble at New York, on the first Wednesday of March then next ensuing, should be and they were thereby authorized and required on the behalf of the said State, to cede to the Congress of the United States, any District in the said State, not exceeding ten miles square, which the Congress might fix upon and accept for the seat of Government of the United States.

And the General Assembly of the Commonwealth of Virginia, by an act passed on the third day of December, one thousand seven hundred and eighty-nine, and intituled "An act for the cession of ten miles square, or any lesser quantity of territory within this State, to the United States in Congress assembled, for the permanent seat of the General Government," did enact that a tract of country not exceeding ten miles square, or any lesser quantity to be located within the limits of the said State, and in any part thereof, as Congress might by law direct, should be and the same was thereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States.

And the Congress of the United States, by their act passed the sixteenth day of July, one thousand seven hundred and ninety, and intituled "An act for establishing the temporary and permanent seat of the Government of the United States," authorized the President of the United States to appoint three commissioners to survey under his direction, and by proper metes and bounds to limit a district of territory, not exceeding ten miles square, on the River Potomac, at some place between the mouths of the Eastern Branch and Connogocheque, which District, so to be located and limited, was accepted by the said act of Congress, as the District for the permanent seat of the Government of the United States.

Now, therefore, in pursuance of the powers to me confided, and after duly examining and weighing the advantages and disadvantages of the several situations within the limits aforesaid, I do hereby declare and make known, that the location of one part of the said District of ten miles square, shall be found by running four lines of experiment in the following manner, that is to say, running from the Court-house of Alexandria in Virginia, due southwest half a mile, and thence a due southeast course, till it shall strike Hunting Creek, to fix the beginning of the said four lines of experiment:

Then beginning the first of the said four lines of experiment at the point on Hunting Creek, where the said southeast course shall have struck the same, and running the said first line due northwest ten miles; thence the second line into Maryland due northeast ten miles; thence the third line due southeast ten miles; and thence the fourth line due southwest ten miles, to the beginning on Hunting Creek.

And the said four lines of experiment being so run, I do hereby declare and make known, that all that part within the said four lines of experiment which shall be within the State of Maryland and above the Eastern Branch, and all that part within the same four lines of experiment which shall be within the Commonwealth of Virginia, and above a line to be run from the point of land forming the Upper Cape of the mouth of the Eastern Branch due southwest, and no more, is now fixed upon, and directed to be surveyed, defined, limited and located for a part of the said District accepted by the said act of Congress for the permanent seat of the Government of the United States; (hereby expressly reserving the direction of the survey and location of the remaining part of the said District, to be made hereafter contiguous to such part or parts of the present location as is or shall be agreeable to law.)

And I do accordingly direct the said commissioners, appointed agreeably to the tenor of the said act, to proceed forthwith to run the said lines of experiment, and the same being run, to survey, and by proper metes and bounds to define and limit the part within the same, which is hereinbefore directed for immediate location and acceptance; and thereof to make due report to me, under their hands and seals.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at the [L. S.] city of Philadelphia, the twenty-fourth day of January, in the year of our Lord one thousand seven hundred and ninety-one, and of the independence of the United States the fifteenth.

GEO. WASHINGTON.

By the President:
THOMAS JEFFERSON.

ACTS RELATIVE TO BOUNDARIES OF THE DISTRICT OF COLUMBIA

AN ACT To amend "An act for establishing the temporary and permanent seat of the Government of the United States"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act, intitled "An act for establishing the temporary and permanent seat of the government of the United States," as requires that the whole of the district of territory, not exceeding ten miles square, to be located on the river Potomac, for the permanent seat of the government of the United States, shall be located above the mouth of the Eastern Branch, be and is hereby repealed, and that it shall be lawful for the President to make any part of the territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria, and the territory so to be included, shall form a part of the district not exceeding ten miles square, for the permanent seat of the

government of the United States, in like manner and to all intents and purposes, as if the same had been within the purview of the above recited act: *Provided,* That nothing herein contained, shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac, as required by the aforesaid act.

Approved, March 3, 1791 (1 Stat. 214, ch. 17).

PROCLAMATION FIXING BOUNDARIES OF THE DISTRICT OF COLUMBIA

A proclamation by the President of the United States

Whereas, by a proclamation bearing date the twenty-fourth day of January of this present year, and in pursuance of certain acts of the States of Maryland and Virginia, and of the Congress of the United States therein mentioned, certain lines of experiment were directed to be run in the neighborhood of Georgetown, in Maryland, for the purpose of locating a part of the territory, of ten miles square, for the permanent seat of Government of the United States, and a certain part was directed to be located within the said lines of experiment on both sides of the Potomac, and above the limit of the Eastern Branch, prescribed by the said act of Congress;

And Congress, by an amendatory act, passed on the third day of this present month of March, have given further authority to the President of the United States "to make any part of the said territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch and of the lands lying on the lower side thereof, and also the town of Alexandria:

Now, therefore, for the purpose of amending and completing the location of the whole of the said territory, of ten miles square, in conformity with the said amendatory act of Congress, I do hereby declare and make known, that the whole of the said territory shall be located and included within the four lines following; that is to say:

Beginning at Jones's Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of forty-five degrees west of the north, and running in a direct line ten miles, for the first line; then beginning again at the same Jones's Point and running another direct line, at a right angle with the first, across the Potomac, ten miles, for the second line; thence from the termination of the said first and second lines, running two other direct lines of ten miles each, the one crossing the Eastern Branch aforesaid, and the other the Potomac, and meeting each other in a point.

And I do accordingly direct the commissioners named under the authority of the said first-mentioned act of Congress to proceed forthwith to have the said four lines run, and by proper metes and bounds defined and limited; and thereof to make due report, under their hands and seals; and the territory so to be located, defined, and limited shall be the whole territory accepted by the said act of Congress as the district for the permanent seat of the Government of the United States.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at Georgetown aforesaid, the thirtieth day of March, in the year of our Lord seventeen hundred and ninety-one, and of the Independence of the United States the fifteenth.

[SEAL.] GEORGE WASHINGTON.

By the President:

THOMAS JEFFERSON.

ORGANIC ACT OF 1801

AN ACT Concerning the District of Columbia

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia, which was ceded by the said state to the United States, and by them accepted for the permanent seat of government; and that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States, and by them accepted as aforesaid.

SEC. 2. *And be it further enacted,* That the said district of Columbia shall be formed into two counties; one county shall contain all that part of said district, which lies on the east side of the river Potomac, together with the islands therein, and shall be called the county of Washington; the other county shall contain all that part of said district, which lies on the west side of said river, and shall be called the county of Alexandria; and the said river in its whole course through said district shall be taken and deemed to all intents and purposes to be within both of said counties.

SEC. 3. *Be it further enacted,* That there shall be a court in said district, which shall be called the circuit court of the district of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States. Said court shall consist of one chief judge and two assistant judges resident within said district, to hold their respective offices during good behaviour; any two of whom shall constitute a quorum; and each of the said judges shall, before he enter on his office, take the oath or affirmation provided by law to be taken by the judges of the circuit courts of the United States; and said court shall have power to appoint a clerk of the court in each of said counties, who shall take the oath and give a bond with sureties, in the manner directed for clerks of the district courts in the act to establish the judiciary of the United States.

SEC. 4. *Be it further enacted,* That said court shall, annually, hold four sessions in each of said counties, to commence as follows, to wit: for the county of Washington, at the city of Washington, on the fourth Mondays of March, June, September and December; for the county of Alexandria, at Alexandria, on the second Mondays of January, April, July, and the first Monday of October.

SEC. 5. *Be it further enacted,* That said court shall have cognizance of all crimes and offences committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.

SEC. 6. *Provided, and be it further enacted,* That all local actions shall be commenced in their proper counties, and that no action or suit shall be brought before said court, by any original process against any person, who shall not be an inhabitant of, or found within said district, at the time of serving the writ.

SEC. 7. *Be it further enacted,* That there shall be a marshal for the said district, who shall have the custody of the gaols of said counties, and be accountable for the safe keeping of all prisoners legally committed therein; and he shall be appointed for the same term, shall take the same oath, give a bond with sureties in the same manner, shall have generally, within said district, the same powers, and perform the same duties, as is by law directed and provided in the case of marshals of the United States.

SEC. 8. *Be it further enacted,* That any final judgment, order or decree in said circuit court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the supreme court of the United States, by writ of error or appeal, which shall be prosecuted in the same manner, under the same regulations, and the same proceedings shall be had therein, as is or shall be provided in the case of writs of error on judgments, or appeals upon

orders or decrees, rendered in the circuit court of the United States.

Sec. 9. *Be it further enacted,* That there shall be appointed an attorney of the United States for said district, who shall take the oath and perform all the duties required of the district attornies of the United States; and the said attorney, marshal and clerks, shall be entitled to receive for their respective services, the same fees, perquisites and emoluments, which are by law allowed respectively to the attorney, marshal and clerk of the United States, for the district of Maryland.

Sec. 10. *Be it further enacted,* That the chief judge, to be appointed by virtue of this act, shall receive an annual salary of two thousand dollars, and the two assistant judges, of sixteen hundred dollars each, to be paid quarterly, at the treasury of the United States.

Sec. 11. *Be it further enacted,* That there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time think expedient, to continue in office five years; and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall, in all matters, civil and criminal, and in whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws herein before continued in force in those parts of said district, for which they shall have been respectively appointed; and they shall have cognizance in personal demands to the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding; and they shall be entitled to receive for their services the fees allowed for like services by the laws herein before adopted and continued, in the eastern part of said district.

Sec. 12. *And be it further enacted,* That there shall be appointed in and for each of the said counties a register of wills, and a judge to be called the judge of the orphans' court, who shall each take an oath for the faithful and impartial discharge of the duties of his office; and shall have all the powers, perform all the duties, and receive the like fees, as are exercised, performed, and received, by the registers of wills and judges of the orphans' court, within the state of Maryland; and appeals from the said courts shall be to the circuit court of said district, who shall therein have all the powers of the chancellor of the said state.

Sec. 13. *And be it further enacted,* That in all cases where judgments or decrees have been obtained, or hereafter shall be obtained, on suits now depending in any of the courts of the commonwealth of Virginia, or of the state of Maryland, where the defendant resides or has property within the district of Columbia, it shall be lawful for the plaintiff in such case upon filing an exemplification of the record and proceedings in such suits, with the clerk of the court of the county where the defendant resides, or his property may be found, to sue out writs of execution thereon, returnable to the said court, which shall be proceeded on, in the same manner as if the judgment or decree had originally been obtained in said court.

Sec. 14. *And be it further enacted,* That all actions, suits, process, pleadings, and other proceedings of what nature or kind soever, depending or existing in the courts of Hustings for the towns of Alexandria and Georgetown, shall be, and hereby are continued over to the circuit courts to be holden by virtue of this act, within the district of Columbia, in manner following; that is to say: all such as shall then be depending and undetermined, before the court of Hustings for the town of Alexandria, to the next circuit court hereby directed to be holden in the town of Alexandria; and all such as shall then be depending and undetermined, before the court of Hustings for Georgetown, to the next circuit court hereby directed to be holden in the city of Washington: *Provided nevertheless,* that where the personal demand in such cases, exclusive of costs, does not exceed the value of twenty dollars, the justices of the peace within their respective counties, shall have cognizance thereof.

Sec. 15. *And be it further enacted,* That all writs and processes whatsoever, which shall hereafter issue from the courts hereby established within the district, shall be tested in the name of the chief judge of the district of Columbia.

Sec. 16. *And be it further enacted,* That nothing in this act contained shall in any wise alter, impeach or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown, or of any other body corporate or politic, within the said district, except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria.

Approved, February 27, 1801 (2 Stat. 103, ch. 15).

ACT OF 1802 INCORPORATING THE CITY OF WASHINGTON

AN ACT To incorporate the inhabitants of the city of Washington, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the city of Washington be constituted a body politic and corporate, by the name of a mayor and council of the city of Washington, and by their corporate name, may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons, and may purchase and hold real, personal and mixed property, or dispose of the same for the benefit of the said city; and may have and use a city seal, which may be broken or altered at pleasure; the city of Washington shall be divided into three divisions or wards, as now divided by the levy court for the county, for the purpose of assessment; but the number may be increased hereafter, as in the wisdom of the city council shall seem most conducive to the general interest and convenience.

Sec. 2. *And be it further enacted,* That the council of the city of Washington shall consist of twelve members, residents of the city, and upwards of twenty-five years of age, to be divided into two chambers, the first chamber to consist of seven members, and the second chamber of five members; the second chamber to be chosen from the whole number of councillors elected, by their joint ballot. The city council to be elected annually, by ballot, in a general ticket, by the free white male inhabitants of full age, who have resided twelve months in the city, and paid taxes therein the year preceding the election's being held: the justices of the county of Washington, resident in the city, or any three of them, to preside as judges of election, with such associates as the council may, from time to time, appoint.

Sec. 3. *And be it further enacted,* That the first election of members for the city council shall be held on the first Monday in June next, and in every year afterwards, at such place in each ward as the judges of the election may prescribe.

Sec. 4. *And be it further enacted,* That the polls shall be kept open from eight o'clock in the morning till seven o'clock in the evening, and no longer, for the reception of ballots. On the closing of the poll, the judges shall close and seal their ballot-boxes, and meet on the day following in the presence of the marshal of the district, on the first election, and the council afterwards, when the seals shall be broken, and the votes counted: within three days after such election, they shall give notice to the persons having the greatest number of legal votes, that they are duly elected, and shall make their return to the mayor of the city .

Sec. 5. *And be it further enacted,* That the mayor of the city shall be appointed, annually, by the President of the United States. He must be a citizen of the United States, and a resident of the city, prior to his appointment.

Sec. 6. *And be it further enacted,* That the city council shall hold their sessions in the city hall, or, until such building is erected, in such place as the mayor may provide for that purpose, on the second Monday in June, in every year; but the mayor may convene them oftener, if the public good require their deliberations. Three fourths of the members of each council may be a quorum to do business, but a smaller number may adjourn from day to day: they may compel the attendance of absent members,

in such manner, and under such penalties, as they may, by ordinance, provide: they shall appoint their respective presidents, who shall preside during their sessions, and shall vote on all questions where there is an equal division; they shall settle their rules of proceedings, appoint their own officers, regulate their respective fees, and remove them at pleasure: they shall judge of the elections, returns and qualifications of their own members, and may, with the concurrence of three fourths of the whole, expel any member for disorderly behaviour, or mal-conduct in office, but not a second time for the same offence: they shall keep a journal of their proceedings, and enter the yeas and nays on any question, resolve or ordinance, at the request of any member, and their deliberations shall be public. The mayor shall appoint to all offices under the corporation. All ordinances or acts passed by the city council shall be sent to the mayor, for his approbation, and when approved by him, shall then be obligatory as such. But if the said mayor shall not approve of such ordinance or act, he shall return the same within five days, with his reasons in writing therefor; and if three fourths of both branches of the city council, on reconsideration thereof, approve of the same, it shall be in force in like manner as if he had approved it, unless the city council, by their adjournment, prevent its return.

SEC. 7. *And be it further enacted,* That the corporation aforesaid shall have full power and authority to pass all by-laws and ordinances; to prevent and remove nuisances; to prevent the introduction of contagious diseases within the city; to establish night watches or patrols, and erect lamps; to regulate the stationing, anchorage, and mooring of vessels; to provide for licensing and regulating auctions, retailers of liquors, hackney carriages, wagons, carts and drays, and pawnbrokers within the city; to restrain or prohibit gambling, and to provide for licensing, regulating or restraining theatrical or other public amusements within the city; to regulate and establish markets; to erect and repair bridges; to keep in repair all necessary streets, avenues, drains and sewers, and to pass regulations necessary for the preservation of the same, agreeably to the plan of the said city; to provide for the safe keeping of the standard of weights and measures fixed by Congress, and for the regulation of all weights and measures used in the city; to provide for the licensing and regulating the sweeping of chimneys and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks that are to be made and used in the city; to sink wells, and erect and repair pumps in the streets; to impose and appropriate fines, penalties and forfeitures for breach of their ordinances; to lay and collect taxes; to enact by-laws for the prevention and extinguishment of fire; and to pass all ordinances necessary to give effect and operation to all the powers vested in the corporation of the city of Washington: *Provided,* that the by-laws or ordinance of the said corporation, shall be, in no wise, obligatory upon the persons of non-residents of the said city, unless in cases of intentional violation of by-laws or ordinances previously promulgated. All the fines, penalties and forfeitures, imposed by the corporation of the city of Washington, if not exceeding twenty dollars, shall be recovered before a single magistrate, as small debts are, by law, recoverable; and if such fines, penalties and forfeitures exceed the sum of twenty dollars, the same shall be recovered by action of debt in the district court of Columbia, for the county of Washington, in the name of the corporation, and for the use of the city of Washington.

SEC. 8. *And be it further enacted,* That the person or persons appointed to collect any tax imposed in virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith; no sale shall be made unless ten days previous notice thereof be given; no law shall be passed by the city council subjecting vacant or unimproved city lots, or parts of lots, to be sold for taxes.

SEC. 9. *And be it further enacted,* That the city council shall provide for the support of the poor, infirm and diseased of the city.

SEC. 10. *Provided always, and be it further enacted,* That no tax shall be imposed by the city council on real property in the said city, at any higher rate than three quarters of one per centum on the assessment valuation of such property.

SEC. 11. *And be it further enacted,* That this act shall be in force for two years, from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

APPROVED, May 3, 1802 (2 Stat. 195, ch. 53).

ACT OF 1812 AMENDING THE CHARTER OF WASHINGTON

AN ACT Further to amend the charter of the city of Washington

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first Monday of June next, the corporation of the city of Washington shall be composed of a mayor, a board of aldermen and a board of common council, to be elected by ballot, as herein after directed. The board of aldermen shall consist of eight members, to be elected for two years, two to be residents of and chosen from each ward by the qualified voters resident therein; and the board of common council shall consist of twelve members, to be elected for one year, three to be residents of and chosen from each ward in manner aforesaid: and each board shall meet at the council chamber on the second Monday in June next (for the despatch of business) at ten o'clock in the morning, and on the same day and at the same hour annually thereafter. A majority of each board shall be necessary to form a quorum to do business, but a less number may adjourn from day to day. The board of aldermen, immediately after they shall have assembled in consequence of the first election shall divide themselves by lot into two classes; the seats of the first class shall be vacated at the expiration of one year, and the seats of the second class shall be vacated at the expiration of two years, so that one half may be chosen every year. Each board shall appoint its own president from among its own members, who shall preside during the sessions of the board, and shall have a casting vote on all questions where there is an equal division: *Provided,* such equality shall not have been occasioned by his previous vote.

SEC. 2. *And be it further enacted,* That no person shall be eligible to a seat in the board of aldermen or board of common council, unless he shall be more than twenty-five years of age, a free white male citizen of the United States and shall have been a resident of the city of Washington one whole year next preceding the day of election, and shall, at the time of his election, be a resident of the ward for which he shall be elected, and possessed of a freehold estate in the said city of Washington, and shall have been assessed two months preceding the day of election. And every free white male citizen of lawful age, who shall have resided in the city of Washington for the space of one year next preceding the day of election, and shall be a resident of the ward in which he shall offer to vote, and who shall have been assessed on the books of the corporation not less than two months prior to the day of election, shall be qualified to vote for members to serve in the said board of aldermen and board of common council, and no other person whatever shall exercise the right of suffrage at such election.

SEC. 3. *And be it further enacted,* That the present mayor of the city of Washington shall be, and continue such until the second Monday in June next, on which day, and on the second Monday in June annually thereafter, the mayor of the said city shall be elected by ballot of the board of aldermen and board of common council in joint meeting, and a majority of the votes of all the members of both boards shall be necessary to a choice; and if there should be an equality of votes between two persons, after the third ballot, the two boards shall determine the choice by lot. He shall, before he enters upon the duties of his office, take an oath or affirmation, in the presence of both boards, "lawfully to

execute the duties of his office to the best of his skill and judgment, without favour or partiality." He shall, ex-officio, have and exercise all the powers, authority and jurisdiction of a justice of the peace for the county of Washington, within the said county. He shall nominate, and, with the consent of a majority of the members of the board of aldermen, appoint to all offices under the corporation, (except the commissioners of election,) and any such officer shall be removed from office on the concurrent remonstrance of a majority of the two boards. He shall see that the laws of the corporation be duly executed, and shall report the negligence or misconduct of any officer to the two boards. He shall appoint proper persons to fill up all vacancies during the recess of the board of aldermen, to hold such appointment until the end of the then ensuing session. He shall have power to convene the two boards, when in his opinion the good of the community may require it; and he shall lay before them from time to time, in writing, such alterations in the laws of the corporation, as he shall deem necessary or proper, and shall receive for his services annually, a just and reasonable compensation, to be allowed and fixed by the two boards, which shall neither be increased nor diminished during the period for which he shall have been elected. Any person shall be eligible to the office of mayor, who is a free white male citizen of the United States, who shall have attained to the age of thirty years, and who shall be the bona fide owner of a freehold estate in the said city, and shall have been resident in the said city two years immediately preceding his election: and no other person shall be eligible to the said office. In case of the refusal of any person to accept the office of mayor upon his election thereto, or of his death, resignation, inability or removal from the city, the said two boards shall elect another in his place to serve the remainder of the year.

SEC. 4. *And be it further enacted*, That the first election for members of the board of aldermen and board of common council, shall be held on the first Monday in June next, and on the first Monday in June annually thereafter: the first election to be held by three commissioners, to be appointed in each ward by the mayor of the city, and at such place in each ward as he may direct; and all subsequent elections shall be held by a like number of commissioners, to be appointed in each ward by the two boards in joint meeting, which several appointments, except the first, shall be at least ten days previous to the day of each election. And it shall be the duty of the mayor, for the first election, and of the commissioners for all subsequent elections, to give at least five days' previous public notice of the place in each ward where such elections are to be held. The said commissioners shall, before they receive any ballot, severally take the following oath or affirmation, to be administered by the mayor of the city or any justice of the peace for the county of Washington: "I, A. B., do solemnly swear, or affirm (as the case may be), that I will truly and faithfully receive and return the votes of such persons as are by law entitled to vote for members of the board of aldermen and board of common council in ward, No. according to the best of my judgment and understanding; and that I will not, knowingly, receive or return the vote of any person who is not legally entitled to the same, so help me God." The polls shall be opened at ten o'clock in the morning, and be closed at seven o'clock in the evening of the same day. Immediately on closing the polls, the commissioners of each ward, or a majority of them, shall count the ballots and make out under their hands and seals a correct return of the two persons for the first election, and of the one person for all subsequent elections, having the greatest number of legal votes, together with the number of votes given to each, as members of the board of aldermen; and of the three persons having the greatest number of legal votes, together with the number of votes given to each, as members of the board of common council; and the two persons at the first election and the one person at all subsequent elections, having the greatest number of legal votes for the board of aldermen; and the three persons having the greatest number of legal votes for the board of common council, shall be duly elected; and in all cases of an equality of votes the commissioners shall decide by lot. The said returns shall be delivered to the mayor of the city on the succeeding day, who shall cause the same to be published in some newspaper printed in the city of Washington. A duplicate return, together with a list of the persons who voted at such election, shall also be made by the said commissioners to the register of the city, on the day succeeding the election, who shall preserve and record the same; and shall within two days thereafter notify the several persons so returned, of their election. And each board shall judge the legality of the elections, returns and qualifications of its own members; and shall supply vacancies in its own body, by causing elections to be made to fill the same in the ward and for the board in which such vacancies shall happen, giving at least five days' notice previous thereto; and each board shall have full power to pass all rules necessary and requisite to enable itself to come to a just decision in cases of a contested election of its members; and the several members of each board shall, before entering upon the duties of their office, take the following oath or affirmation: "I do swear, (or solemnly, sincerely and truly affirm and declare, as the case may be) that I will faithfully execute the office of to the best of my knowledge and ability," which oath or affirmation shall be administered by the mayor or some justice of the peace for the county of Washington.

SEC. 5. *And be it further enacted*, That in addition to the powers heretofore granted to the corporation of the city of Washington, by an act, entituled "An act to incorporate the inhabitants of the city of Washington, in the District of Columbia," and an act, entituled "An act supplementary to an act, entituled An act to incorporate the inhabitants of the city of Washington, in the District of Columbia," the said corporation shall have power to lay taxes on particular wards, parts or sections of the city, for their particular local improvements; that after providing for all objects of a general nature, the taxes raised on the assessable property in each ward shall be expended therein, and in no other, in regulating, filling up and repairing of streets and avenues, building of bridges, sinking of wells, erecting pumps and keeping them in repair; in conveying water in pipes, and in the preservation of springs; in erecting and repairing wharves; in providing fire engines and other apparatus for the extinction of fires; and for other local improvements and purposes, in such manner as the said board of aldermen and board of common council shall provide; but the sums raised for the support of the poor, aged and infirm, shall be a charge on each ward in proportion to its population or taxation, as the two boards shall decide. That whenever the proprietors of two thirds of the inhabited houses, fronting on both sides of a street or part of a street, shall, by petition to the two branches, express their desire of improving the same by laying the curbstone of the foot pavement, and paving the gutters or carriage-way thereof, or otherwise improving said street agreeably to its graduation, the said corporation shall have power to cause to be done at any expense not exceeding two dollars and fifty cents per front foot, of the lots fronting on each improved street or part of a street, and charge the same to the owners of the lots fronting on said street or part of a street in due proportion; and also on a like petition, to provide for erecting lamps for lighting any street or part of a street, and to defray the expense thereof, by a tax on the proprietors or inhabitants of such houses, in proportion to their rental or valuation, as the two boards shall decide.

SEC. 6. *And be it further enacted*, That the said corporation shall have full power and authority to erect and establish hospitals or pest houses, workhouses, houses of correction, penitentiary and other public buildings, for the use of the city, and to lay and collect taxes for defraying the expenses thereof; to regulate party and other fences, and to determine by whom the same shall be made and kept in repair; to lay open streets, avenues, lanes and alleys, and to regulate or prohibit all enclosures thereof; and to occupy and improve for public purposes, by and with the consent of the President of the United States, any part of the public and open spaces or squares in said city not interfering with any private rights; to regulate the measurement of, and weight by which all articles brought into the city for sale shall be disposed of; to provide for the appointment of appraisers and measurers of builder's work and materials, and also of wood, coals,

grain and lumber; to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes and mulattoes, and to punish such slaves by whipping, not exceeding forty stripes, or by imprisonment, not exceeding six calendar months, for any one offence; and to punish such free negroes and mulattoes for such offences, by fixed penalties, not exceeding twenty dollars for any one offence; and in case of the inability of any such free negro or mulatto to pay and satisfy any such penalty and cost thereon, to cause such free negro or mulatto to be confined to labour for such reasonable time, not exceeding six calendar months for any one offence, as may be deemed equivalent to such penalty and costs; to cause all vagrants, idle or disorderly persons, all persons of evil life or ill fame, and all such as have no visible means of support, or are likely to become chargeable to the city as paupers, or are found begging or drunk in or about the streets, or loitering in or about tippling houses, or who can show no reasonable cause of business or employment in the city; and all suspicious persons; and all who have no fixed place of residence, or cannot give a good account of themselves; all evesdroppers and night walkers; all who are guilty of open profanity or grossly indecent language or behaviour publicly in the streets; all public prostitutes and such as lead a notoriously lewd or lascivious course of life; and all such as keep public gaming tables or gaming houses, to give security for their good behaviour for a reasonable time, and to indemnify the city against any charge for their support; and in case of their refusal or inability to give such security, to cause them to be confined to labour for a limited time, not exceeding one year at a time, unless such security should be sooner given; but if they shall afterwards be found again offending, such security may be again required, and for want thereof, the like proceedings may be again had, from time to time, as often as may be necessary; to prescribe the terms and conditions upon which free negroes, mulattoes and others, who can show no visible means of support, may reside in the city; to cause the avenues, streets, lanes and alleys to be kept clean, and to appoint officers for that purpose; to authorize the drawing of lotteries for effecting any important improvement in the city, which the ordinary funds or revenue thereof will not accomplish: (*a*) *Provided,* that the amount to be raised in each year, shall not exceed the sum of ten thousand dollars: *And provided also,* that the object for which the money is intended to be raised, shall be first submitted to the President of the United States, and shall be approved of by him; to take care of, preserve and regulate the several burying grounds within the city; to provide for registering of births, deaths and marriages; to cause abstracts or minutes of all transfers of real property, both freehold and leasehold, to be lodged in the registry of the city at stated periods; to authorize night watches and patrols, and the taking up, and confining by them in the night time of all suspected persons; to punish by law; corporeally, any servant or slave guilty of a breach of any of their by-laws or ordinances, unless the owner or holder of such servant or slave, shall pay the fine annexed to the offence; and to pass all laws which shall be deemed necessary and proper for carrying into execution the foregoing powers, and all other powers vested in the corporation or any of its officers, either by this act or any former act.

SEC. 7. *And be it further enacted,* That the marshal of the district of Columbia shall receive and safely keep within the jail for Washington county, at the expense of the city, all persons committed thereto under the sixth section of this act, until other arrangements be made by the corporation, for the confinement of offenders within the provisions of the said section. And in all cases where suit shall be brought before a justice of the peace, for the recovery of any fine or penalty arising or incurred for a breach of any by-law or ordinance of the corporation, upon a return of nulla bona to any fieri facias issued against the property of the defendant or defendants, it shall be the duty of the clerk of the circuit court for the county of Washington, when required, to issue a writ of capias ad satisfaciendum against every such defendant, returnable to the next circuit court for the county of Washington, thereafter, and which shall be proceeded on as in other writs of the like kind.

SEC. 8. *And be it further enacted,* That unimproved lots in the city of Washington, on which two years' taxes remain due and unpaid, or so much thereof as may be necessary to pay such taxes, may be sold at public sale for such taxes due thereon: *Provided,* that public notice be given of the time and place of sale, by advertising in some newspaper printed in the city of Washington, at least six months, where the property belongs to persons residing out of the United States; three months, where the property belongs to persons residing in the United States, but without the limits of the district of Columbia; and six weeks, where the property belongs to persons residing within the district of Columbia or city of Washington; in which notice shall be stated, the number of the lot or lots, the number of the square or squares, the name of the person or persons to whom the same may have been assessed; and also the amount of taxes due thereon: *And provided also,* that the purchaser shall not be obliged to pay at the time of such sale, more than the taxes due, and the expenses of sale; and that if within two years from the day of such sale the proprietor or proprietors of such lot or lots, or his or their heirs, representatives or agents, shall repay to such purchaser the monies paid for the taxes and expenses as aforesaid, together with ten per centum per annum as interest thereon, or make a tender of the same, he shall be reinstated in his original right and title; but if no such payment or tender be made within two years next after the said sale, then the purchaser shall pay the balance of the purchase money of such lot or lots, into the city treasury, where it shall remain subject to the order of the original proprietor or proprietors, his or their heirs or legal representatives; and the purchaser shall receive a title in fee simple to the said lot or lots, under the hand of the mayor and seal of the corporation, which shall be deemed good and valid in law and equity.

SEC. 9. *And be it further enacted,* That the said corporation shall in future be named and styled "The Mayor, Aldermen and Common Council of the City of Washington;" and that if there shall have been a non-election or informality in the election of a city council on the first Monday in June last, it shall not be taken, construed or adjudged, in any manner, to have operated as a dissolution of the said corporation, or to affect any of its rights, privileges or laws, passed previous to the second Monday in June last, but the same are hereby declared to exist in full force.

SEC. 10. *And be it further enacted,* That the corporation shall, from time to time, cause the several wards of the city to be so located as to give, as nearly as may be, an equal number of voters to each ward: and it shall be the duty of the register of the city, or such officer as the corporation may hereafter appoint, to furnish the commissioners of election, for each ward, on the first Monday in June annually, previous to the opening of the polls, a list of the persons having a right to vote, agreeably to the provisions of the second section of this act.

SEC. 11. *And be it further enacted,* That so much of any former act, as shall be repugnant to the provisions of this act, be, and the same is hereby repealed.

Approved, May 4, 1812 (2 Stat. 721, Ch. 75).

ACT OF 1812 RELATIVE TO LEVY COURT FOR COUNTY OF WASHINGTON

AN ACT Conferring certain powers on the levy court for the county of Washington, in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the board of commissioners or levy court for the county of Washington, in the district of Columbia, be, and hereby are empowered to erect and maintain a penitentiary, to be erected in such place as the mayor, aldermen and common council of the city of Washington shall designate.

SEC. 2. *And be it further enacted,* That the board of commissioners or levy court for the said county be vested with full power to lay out, straighten and repair public

roads within the said county, except within the corporate limits of the city of Washington and Georgetown, under the conditions herein after prescribed.

SEC. 3. *And be it further enacted,* That the said board or levy court be empowered to lay out and mark roads through any such part of the said county: *Provided,* they shall not exceed one hundred feet in width, and shall not pass through any building, garden or yard, without the consent of the owner; and a reasonable compensation, if required by the owner, shall be made for the land thus marked and laid out, which shall be fixed in the following manner: On laying out and marking any road, six weeks' notice thereof shall be given in some public print, published in the county. In case any owner of land, through which the said road passes, shall require compensation therefor, he shall within two weeks thereafter apply to the levy court, who may agree with him for the purchase thereof; and in case of disagreement, or in case the owner shall be a feme covert, under age, or non compos, or out of the county, on application to any justice of the county, to be made within two weeks after expiration of the aforesaid two weeks, the said justice shall issue his warrant, under his hand, to the marshal of the district of Columbia, commissioning him to summon twelve freeholders, inhabitants of the county, not related to the said owner, nor in any manner interested, to meet on the land to be valued at a day to be expressed in the warrant, of which ten days' notice shall be given by the marshal to the levy court, and to the owner of the said land, or left at his, or her place of abode, or given to his or her guardian, if an infant, or if out of the county, by publishing notice thereof, for six weeks in some public print of the county; and the marshal, on receiving the said warrant, shall summon the said jury, and when met, shall administer an oath or affirmation to every juryman, who shall swear or affirm, as the case may be, that he will justly, faithfully, and impartially, value the land, and all damages the owner thereto will sustain by the road passing through the same, having regard to all circumstances of convenience, benefit or disadvantage, according to the best of his skill and judgment; and the inquisition thereupon taken shall be signed by the marshal and seven or more of the said jury, and shall be conclusive; and the same shall be returned to the clerk of the county, to be by him recorded at the expense of the levy court; and the valuation expressed in such inquisition shall be paid by the said levy court to the owner of the land, or his legal representative, before the levy court proceed to open the said road: in case no such application shall be made within the aforesaid periods, the land thus appropriated shall be adjudged to be conclusively condemned, and no compensation be hereafter required therefor.

SEC. 4. *And be it further enacted,* That the board of commissioners or levy court, as soon as they shall have laid out, marked and opened a road, and complied with the foregoing provisions shall return the courses, bounds and plat thereof to the clerk of the county, to be by him recorded at the expense of the said court; and the said road, so laid out and returned, as aforesaid, shall be thereafter taken, held and adjudged, a public road and common highway.

SEC. 5. *And be it further enacted,* That in all cases, where stone, gravel or other material, shall be necessary for making or repairing a road, the levy court may agree with the owner for the purchase thereof, or with the owner of the land on which the same may be, for the purchase of the said land; and in case of disagreement, or in case the owner should be a feme covert, under age, or non compos, or out of the county, on application to a justice of the county, may proceed, in all respects, in the same manner for condemning the said materials for the use of said road, as in like cases where lands are directed to be taken and condemned as aforesaid, for making the said road: and the said parties respectively, shall have the same benefit and advantage of the said proceedings as they have under, and in virtue of the said provision for condemning land herein before mentioned.

SEC. 6. *And be it further enacted,* That if a road shall be carried through any fields of ground in actual cultivation, such fields shall not be laid open, or used as a public road, until after the usual time of taking off crops then growing thereon.

SEC. 7. *And be it further enacted,* That if any person shall alter or change, or in any manner obstruct or encroach on a public road, or cut, destroy, deface or remove any mile stones set up on said road, or put or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted in the circuit court for the district of Columbia, and being convicted thereof shall be fined or imprisoned in the discretion of the court, according to the nature of the offence.

SEC. 8. *And be it further enacted,* That the board of commissioners or levy court may, for the aforesaid and all other general county purposes, annually lay a tax on all the real and personal property in the said county, except within the limits of the city of Washington, any existing law to the contrary notwithstanding, not exceeding twenty-five cents in the hundred dollars value of said property, for the collection, safe keeping and disbursement of which they are hereby empowered to appoint the necessary officers, and to use all the means now in force and necessary for the assessment and collection of taxes in the said county, and to insure a due and regular accountability for the same, and all existing laws, so far as they vest in the said levy court a power to lay taxes, shall be, and the same are hereby repealed.

SEC. 9. *And be it further enacted,* That the board of commissioners or levy court shall be, and hereby are released from any obligation to provide for the support of the poor of any other part of the county of Washington, other than that part without the limits of the city of Washington, to provide for whom they are hereby authorized to lay and collect a special tax, to be imposed on said part of the county.

SEC. 10. *And be it further enacted,* That the board of commissioners or levy court of the county of Washington shall be hereafter composed of seven members, to be designated immediately after the passing of this act, by the President of the United States, from among the existing magistrates of the county, and annually afterwards on the first Monday in May, that is to say, there shall be two members designated from among the magistrates residing in that part of the county lying eastward of Rock creek, and without the limits of the city of Washington; two from among the magistrates residing in that part of the county lying westward of Rock creek, and without the limits of Georgetown; and three from among the magistrates residing within the limits of Georgetown. A majority of the members so designated shall constitute a quorum to do business.

SEC. 11. *And be it further enacted,* That the general county expenses and charges, other than for the expenses of roads and bridges out of the limits of Washington and Georgetown, respectively, shall be borne and defrayed by the said city of Washington, and the other parts of the county equally, that is to say; one moiety of said expenses and charges shall be borne by the city, and paid over to whomsoever the board of commissioners or levy court may appoint as treasurer of the court; and the other moiety, by the other parts of the county: which said general expenses shall be ascertained annually by the said board of commissioners or levy court and the corporation of the said city. And in case of any difference of opinion as to what are or may be properly called general expenses, and applicable to the whole county, agreeably to the provisions of this and other acts relating to the subject, it shall be the duty of the circuit court for the said county, upon joint application, or upon the application of either party, and due notice to the other party; to inquire, determine and settle in a summary way the matter in difference.

SEC. 12. *And be it further enacted,* That the two bridges over Rock creek, immediately between the city of Washington and Georgetown, shall be kept in repair and rebuilt, in like manner as at present, at the joint expense and cost of the said city and Georgetown; and the sums required for such repairs or rebuildings shall from time to time be ascertained by the said board of commissioners or levy court for the county, and the amount required from each corporation shall be paid over, after sixty days' notice, to the treasurer of the county.

SEC. 13. *And be it further enacted,* That it shall and may be lawful at any time hereafter for the corporation

of the city of Washington, and the corporation of Georgetown, jointly or separately, and at their joint or separate expense, as the case may be, to erect a permanent bridge across Rock creek, and between the two places, at such sites as the corporation first choosing to build shall determine and fix upon; and if it should be necessary to obtain private property on which to fix either or both the abutments of the said permanent bridge or bridges, or for other purposes connected with the work, the said corporation so choosing to build shall have power to agree with the owner or owners for the purchase of such property; and in case of disagreement, or in case the owner shall be a feme covert, under age or non compos, or out of the county, the mayor of the said corporation shall thereupon summon a jury to be composed of twelve freeholders, inhabitants of the said county, not related to the said owner, nor in any manner interested, who shall meet on the ground to be valued, at a day to be expressed by the mayor in the said summons, of which ten days' notice shall be given by the mayor to the owner or owners of the said ground, or left at his, her or their place of abode, or given to his, her or their guardian, if an infant, or if out of the county, by publishing notice thereof for six weeks in some newspaper printed in the county, and when the jury shall have met pursuant to the aforesaid summons, each juryman shall swear or affirm, that he will justly, faithfully and impartially value all the ground held as private property and intended and required to be used or occupied by reason of the contemplated erection of the permanent bridge, and the amount of damages the proprietor or proprietors of said ground will sustain (taking into view at the same time the benefits which the said proprietor or proprietors will derive from the erection of the said bridge) according to the best of his skill and judgment. And the inquisition and valuation thereupon taken, shall be signed by the mayor and seven or more of the said jury, and shall be binding and conclusive upon all parties concerned; and the same shall be transmitted to the clerk of the county, to be by him recorded: and the valuation expressed in the aforesaid inquisition shall be paid or tendered to the owner or owners of the ground so condemned, or his or their legal representatives, by the corporation intending to build such bridge, within thirty days after such valuation shall have been made, and before any work is commenced on the grounds so valued.

Approved, July 1, 1812 (2 Stat. 771, ch. 117).

ACT OF 1820 REORGANIZING THE GOVERNMENT OF THE CITY OF WASHINGTON

AN ACT To incorporate the inhabitants of the city of Washington, and to repeal all acts heretofore passed for that purpose

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act, entitled "An act to incorporate the inhabitants of the city of Washington, in the District of Columbia," and the act supplementary to the same, passed on the twenty-fourth of February, in the year one thousand eight hundred and four, and the act, entitled "An act further to amend the charter of the city of Washington," and all other acts, or parts of acts, inconsistent with the provisions of this act, be, and the same are hereby, repealed: *Provided, however,* That the mayor, the members of the board of aldermen, and the members of the board of common council, of the corporation of the said city, shall and may remain and continue as such, for and during the terms for which they have been respectively appointed, subject to the terms and conditions in such cases legally made and provided; and all acts or things done, or which may be done, by them in pursuance of the provisions, or by virtue of the authority, of the said acts, or either of them, and not inconsistent with the provisions of this act, shall be valid, and of as full force and effect as if the said acts had not been repealed.

SEC. 2. *And be it further enacted,* That the inhabitants of the city of Washington shall continue to be a body politic and corporate, by the name of the "Mayor, board of aldermen, and board of common council, of the city of Washington," to be elected by ballot, as hereinafter directed, and, by their corporate name, may sue and be sued, implead and be impleaded, grant, receive, and do all other acts, as natural persons; and may purchase and hold real, personal, and mixed, property, or dispose of the same, for the benefit of the city; and may have and use a city seal, and break and alter the same at pleasure.

SEC. 3. *And be it further enacted,* That the mayor of the said city shall be elected on the first Monday in June next, and on the same day in every second year thereafter, at the same time and place, in the same manner, and by the persons qualified to vote for members of the board of aldermen and the board of common council. That the commissioners hereinafter mentioned shall make out duplicate certificates of the result of the election of mayor; and shall return one to the board of aldermen and the other to the board of common council, on the Monday next ensuing the election; and the person having the greatest number of votes shall be the mayor: but in case two or more persons, highest in vote, shall have an equal number of votes, then it shall be lawful for the board of aldermen and the board of common council to proceed forthwith, by ballot, in joint meeting, to determine the choice between such persons. The mayor shall, on the Monday next ensuing his election, before he enters on the duties of his office, in the presence of the boards of aldermen and common council, in joint meeting, take an oath, to be administered by a justice of the peace, "lawfully to execute the duties of his office, to the best of his skill and judgment, without favour or partiality." He shall, ex officio, have and exercise all the powers, authority, and jurisdiction, of a justice of the peace for the county of Washington, within the said county. He shall nominate, and with the consent of the board of aldermen, appoint to all offices under the corporation, (except commissioners of election,) and may remove any such officer from office at his will and pleasure. He shall appoint persons to fill up all vacancies which may occur during the recess of the board of aldermen, to hold such appointments until the end of the then ensuing session. He may convene the two boards when, in his opinion, the public good may require it; and he shall lay before them, from time to time, in writing, such alterations in the laws of the corporation as he may deem necessary and proper; and he shall receive, for his services, annually a just and reasonable compensation, to be allowed and fixed by the two boards, which shall neither be increased nor diminished during his continuance in office. Any person shall be eligible to the office of mayor who is a free white male citizen of the United States, who shall have attained to the age of thirty years, who shall have resided in the said city for two years immediately preceding his election, and who shall be the bona fide owner of a freehold estate in the said city; and no other person shall be eligible to the said office. In case of the refusal of any person to accept the office of mayor, upon his election thereto, or of his death, resignation, inability, or removal from the city, the said boards shall assemble and elect another in his place, to serve for the remainder of the term, or during such inability.

SEC. 4. *And be it further enacted,* That the board of aldermen shall consist of two members to be residents in, and chosen from, each ward, by the qualified voters therein, and to be elected for two years, from the Monday next ensuing their election: and the board of common council shall consist of three members, to be residents in, and chosen from, each ward, by the qualified voters therein, and to be elected for one year, from the Monday next ensuing their election; and each board shall meet at the council chamber, on the second Monday in June next, for the despatch of business, at ten o'clock in the morning, and at the same hour on the second Monday in June, in every year thereafter; and at such other times as the two boards may, by law, direct. A majority of each board shall be necessary to form a quorum to do business, but a less number may adjourn from day to day; they may compel the attendance of absent members, in such manner, and under such penalties, and allow such compensation for the attendance of the members, as they may, by

law, provide; each board shall appoint its own President, who shall preside during its sessions, and who shall be entitled to vote on all questions; they shall settle their rules of proceedings, appoint their own officers, regulate their respective compensations, and remove them at pleasure; and may, with the concurrence of three-fourths of the whole, expel any member for disorderly behaviour or malconduct in office, but not a second time for the same offence; each board shall keep a journal of its proceedings, and the yeas and nays shall be entered thereon, at the request of any member; and their deliberations shall be public. All ordinances or acts, passed by the two boards, shall be sent to the mayor for his approbation, and, when approved by him, shall be obligatory as such. But, if the mayor shall not approve of any ordinance or act, so sent to him, he shall return the same, within five days, with his reasons in writing therefor; and if two thirds of both boards, on reconsideration thereof, agree to pass the same, it shall be in force, in like manner as if he had approved it; but, if the two boards shall, by their adjournment, prevent its return, the same shall not be obligatory.

SEC. 5. *And be it further enacted,* That no person shall be eligible to a seat in the board of aldermen, or board of common council, unless he shall be more than twenty-five years of age, a free white male citizen of the United States, and shall have been a resident of the city of Washington for one year next preceding the day of election, and shall, at the time of his election, be a resident of the ward for which he shall be elected, and be then the bona fide owner of a freehold estate in the said city, and shall have been assessed on the books of the corporation, for the year ending on the thirty-first day of December next preceding the day of election. And every free white male citizen of the United States, of lawful age, who shall have resided in the city of Washington for one year next preceding the day of election, and shall be a resident of the ward in which he shall offer to vote, and who shall have been assessed on the books of the corporation, for the year ending on the thirty-first day of December next preceding the day of election, and who shall have paid all taxes legally assessed and due on personal property, when legally required to pay the same, and no other person shall be entitled to vote at any election for members of the two boards. And it shall be the duty of the register of the city, or such officer as the corporation may hereafter direct, to furnish the commissioners of election in each ward, previous to opening the polls at every election, a list of the persons having a right to vote, agreeably to the provisions of this section.

SEC. 6. *And be it further enacted,* That an election for members of the board of aldermen and board of common council shall be held on the first Monday of June next, and on the first Monday in June annually thereafter; and all elections shall be held by three commissioners to be appointed in each ward by the two boards in joint meeting, which appointment shall be at least ten days previous to the day of each election. And it shall be the duty of the commissioners so appointed, to give at least five days' previous notice of the place in each ward where such elections are to be held. The said commissioners shall, before they receive any ballot, severally take an oath or affirmation, to be administered by some justice of the peace for the county of Washington, "truly and faithfully to receive and return the votes of such persons as are by law entitled to vote for members of the board of aldermen and board of common council, in their respective wards, according to the best of their judgment and understanding; and not knowingly to receive or return the vote of any person who is not legally entitled to the same." The polls shall be opened at ten o'clock in the morning, and be closed at seven o'clock in the evening of the same day. Immediately on closing the polls, the said commissioners for each ward, or a majority of them, shall count the ballots, and make out, under their hands and seals, a correct return of the persons having the greatest number of legal votes for members of the board of aldermen and for members of the board of common council, respectively, together with the number of votes given to each person voted for; and the persons having the greatest number of votes for the two boards, respectively, shall be duly elected; and, in all cases of an equality of votes, the commissioners shall decide the choice by lot. The said returns shall be delivered to the mayor, on the day succeeding the election, who shall cause the result of the election to be published in some newspaper printed in the city of Washington; a duplicate return shall, together with a list of the persons who voted at such election, also to be made, on the day succeeding the election, to the register of the city, who shall preserve and record the same; and shall, within two days thereafter, notify the several persons, so returned, of their election. And each board shall judge of the legality of the elections, returns, and qualifications of its own members, and shall supply vacancies in its own body, by causing elections to be held to fill the same, and appoint commissioners to hold the same, and such commissioners shall give at least five days' public notice of the time and place of holding such elections; each of the members of either board, shall, before entering on the duties of his office, take an oath or affirmation, "faithfully to execute the duties of his office, to the best of his knowledge and ability;" which oath or affirmation shall be administered by the mayor or some justice of the peace for the county of Washington.

SEC. 7. *And be it further enacted,* That the corporation aforesaid shall have full power and authority to lay and collect taxes upon the real and personal property within the said city; provided that no tax shall be laid upon real property, at a higher rate than three quarters of one per centum on the assessment valuation thereof, except for the special purposes hereinafter provided; and that no tax shall be laid upon the wearing apparel, or necessary tools and implements used in carrying on the trade or occupation, of any person; nor shall the same be subject to distress and sale for any tax; and, after providing for all objects of a general nature, the taxes raised on the assessable property in each ward shall be expended therein, and in no other; to establish a board of health, with competent authority to enforce its regulations, and to establish such other regulations as may be necessary to prevent the introduction of contagious diseases, and for the preservation of the health of the city; to prevent and remove nuisances; to establish night watches or patrols, and erect lamps in the streets; to preserve the navigation of the Potomac and Anacostia rivers adjoining the city; to erect, repair, and regulate, public wharves, and to deepen creeks, docks, and basins; to regulate the manner of erecting, and the rates of wharfage, at private wharves; to regulate the stationing, anchorage, and mooring of vessels; to provide for licensing, taxing, and regulation, auctions, retailers, ordinaries, and taverns, hackney carriages, wagons, carts, and drays, pawn-brokers, venders of lottery tickets, money-changers, and hawkers and pedlars; to provide for licensing, taxing, regulating, or restraining, theatrical or public shows and amusements; to restrain or prohibit tippling houses, lotteries, and all kinds of gaming; to regulate and establish markets; to erect and repair bridges; to open and keep in repair streets, avenues, lanes, alleys, drains, and sewers, agreeably to the plan of the city, to supply the city with water; to provide for the safe-keeping of the standard weights and measures as fixed by Congress, and for the regulation of all weights and measures used in the city; to regulate the sweeping of chimneys, and fix the rates or fees therefor; to provide for the prevention and extinguishment of fires; to regulate the size of bricks to be made or used; and to provide for the inspection of lumber and other building materials to be sold in the city; to regulate, with the approbation of the President of the United States, the manner of erecting, and the materials to be used in the erection, of houses; to regulate the inspection of tobacco, flour, butter, and lard, in casks or boxes, and salted provisions; to regulate the gauging of casks and liquors; the storage of gunpowder, and all naval and military stores, not the property of the United States; and the weight and quality of bread; to impose and appropriate fines, penalties, and forfeitures, for the breach of their laws or ordinances; and to provide for the appointment of inspectors, constables, and such other officers, as may be necessary to execute the laws of the corporation.

SEC. 8. *And be it further enacted,* That the said corporation shall have full power and authority to lay taxes on particular wards, parts, or sections, of the city, for their particular local improvements; and, upon application of

the owners of more than one half of the property upon any portion of a street, to cause the curb-stones to be set, and the footways to be paved, on such portion of a street, and to lay a tax on such property, to the amount of the expense thereof: *Provided,* That such tax shall not exceed three dollars per front foot; and, upon a like application to cause the carriage-way of any portion of a street to be paved, or lamps to be erected therein, and light the same, and lay a tax, not exceeding the whole expense thereof, in due proportion, on the lots fronting on such portion of a street; and, also, to impose an addition or interest on the amounts of any such taxes, not exceeding ten per centum per annum, when the same shall not have been paid within thirty days after the same shall become due. The said corporation shall also have power and authority to provide for the establishment and superintendence of public schools, and to endow the same; to establish and erect hospitals or pest-houses, watch and workhouses, houses of correction, penitentiary, and other public buildings, and to lay and collect taxes for the expenses thereof; to regulate party or other walls and fences, and to determine by whom the same shall be kept in repair; to cause new alleys to be opened through the squares, and to extend those already laid out, upon the application of the owners of more than one half the property in such squares: *Provided,* That the damages which may accrue thereby, to any individual or individuals, shall be first ascertained by a jury, to be summoned and impannelled by the marshal of the District of Columbia, (and it is hereby made his duty to summon and impannel the same, in all such cases, upon application to him in writing by the mayor of the city,) and such damages to be paid by the corporation; the amount thereof, and the expenses accruing, shall be levied, in due proportion, upon the individuals whose property on such squares shall be benefited thereby, and collected as other taxes are; to occupy and improve, for public purposes, by and with the consent of the President of the United States, any part of the public and open spaces and squares in said city, not interfering with any private rights; to regulate the admeasurement and weight by which all articles brought into the city for sale shall be disposed of; to provide for the appointment of appraisers and measurers of builders' work and materials, and also of wood, coal, grain, and lumber; to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes, and to punish such slaves by whipping, not exceeding forty stripes, or by imprisonment, not exceeding six months, for any one offense; and to punish such free negroes and mulattoes, by penalties, not exceeding twenty dollars for any one offense; and in case of the inability of any such free negro or mulatto to pay any such penalty and cost thereon, to cause him or her to be confined to labour for any time not exceeding six calendar months; to cause all vagrants, idle or disorderly persons, all persons of evil life or ill-fame, and all such as have no visible means of support, or are likely to become chargeable to the corporations as paupers, or are found begging or drunk in or about the streets, or loitering in or about tippling houses, or who can show no reasonable cause of business or employment in the city, and all suspicious persons who have no fixed place of residence, or who cannot give a good account of themselves; all evesdroppers and nightwalkers; all who shall be guilty of open profanity, or grossly indecent language or behaviour publicly in the streets; all public prostitutes, and such as lead a notoriously lewd or lascivious course of life, and all such as keep public gaming tables, or gaming houses, to give security for their good behaviour for a reasonable time, and to indemnify the city against any charge for their support; and, in case of their refusal or inability to give such security, to cause them to be confined to labour until such security shall be given, not exceeding, however, one year at a time; but if they shall be found again offending, the like proceedings may be again had, and from time to time, as often as may be necessary to enforce the departure of such vagrants and paupers as may come into the city to reside, unless they shall give ample security that they will not become chargeable on the corporation for their support; to provide for the binding out as apprentices of poor orphan children, and the children of drunkards, vagrants, and paupers; to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city; to authorize, with the approbation of the President of the United States, the drawing of lotteries for the erection of bridges and effecting any important improvements in the city, which the ordinary revenue thereof will not accomplish, for the term of ten years: *Provided,* that the amount so authorized to be raised in each year shall not exceed the sum of ten thousand dollars, clear of expenses; to take care of and regulate burial grounds; to provide for the registering of births, deaths, and marriages; to punish corporeally any coloured servant or slave for a breach of any of their laws or ordinances, unless the owner or holder of such servant or slave shall pay the fine in such cases provided; and to pass all laws which shall be deemed necessary and proper for carrying into execution the powers vested by this act in the said corporation or its officers.

SEC. 9. *And be it further enacted,* That the marshal of the District of Columbia shall receive and safely keep within the jail for the county of Washington, at the expense of the said corporation, all persons committed thereto under or by authority of the provisions of this act. And in all cases where suit shall be brought before a justice of the peace, for the recovery of any fine or penalty arising or incurred for a breach of any law or ordinance of the corporation, execution shall and may be issued, as in all other cases of small debts.

SEC. 10. *And be it further enacted,* That real property, whether improved or unimproved, in the city of Washington, on which two or more years' taxes shall have remained due and unpaid, or on which any special tax, imposed by virtue of authority of the provisions of this act, shall have remained unpaid for two or more years after the same shall have become due, or so much thereof, not less than a lot, (when the property upon which the tax has accrued is not less than that quantity,) as may be necessary to pay any such taxes, with all legal costs and charges arising thereon, may be sold at public sale to satisfy the corporation therefor: *Provided,* That public notice be given of the time and place of sale, by advertising once a week in some newspaper printed in the city of Washington, for at least six months, where the property is assessed to persons residing out of the United States; for three months, where the property is assessed to persons residing in the United States, but without the District of Columbia; and for six weeks, where the property is assessed to persons residing within the District of Columbia; in which advertisement shall be stated the number of the lot or lots, (if the square has been divided into lots,) the number of the square or squares, or other sufficient or definite description of the property selected for sale, the name of the person or persons to whom the same may have been assessed, for the respective years' taxes due thereon, as also the name of the person to whom the same is assessed, and the aggregate amount of taxes due. The purchaser or purchasers of any such property shall pay, at the time of such sale, the amount of the taxes due on the property so purchased by him, her, or them, respectively, with the amount of the expenses of sale; and he, she, or they, shall pay the residue of the purchase money within ten days after the expiration of two years from the day of sale, to the collector of taxes, or other officer of the corporation authorized to receive the same; and the amount of such residue shall be placed in the city treasury, where it shall remain, subject to the order of the original proprietor or proprietors, his, her, or their, legal representatives; and the purchaser or purchasers shall receive a title in fee simple, in and to the lot or lots so sold and purchased, under the hand of the mayor and seal of the corporation, which shall be deemed good and valid in law and equity: *Provided nevertheless,* That if, within two years from the day of any such sale, or before such purchaser or purchasers shall have paid the residue of the purchase money as aforesaid, the proprietor or proprietors of any property which shall have been sold as aforesaid, his, her, or their heirs, agents, or legal representatives, shall repay to such purchaser or purchasers the moneys paid for the taxes, and expenses as aforesaid, together with ten per centum per annum, as interest thereon, or make a tender thereof, or shall deposit the same in the hands of the mayor of the city, or other officer of the corporation appointed to receive the same, for the use of such purchaser or purchasers,

and subject to his, her, or their, heirs, or legal representatives' order, of which such purchaser, his heirs or legal representatives, shall be immediately informed, by notice in some newspaper printed in the city of Washington, or otherwise; he, she, or they, shall be reinstated in his, her, or their, original right and title, as if no such sale had been made. And if any such purchaser shall fail to pay the residue of the purchase money as aforesaid, within the time required by this section, for any property so purchased by him, he shall pay ten per centum per annum, as interest thereon, and in addition to such residue, to be computed from the expiration of the two years as aforesaid, until the actual payment of such residue, and the receiving of a conveyance from the corporation; and the said interest shall alike be subject to the order of the original proprietor or proprietors, as the residue of the purchase money as aforesaid: *Provided, also,* That no sale shall be made, in pursuance of this section, of any improved property whereon there is personal property of sufficient value to pay the said taxes: and that minors, mortgagees, or others having equitable interest in real property, which property shall be sold for taxes as aforesaid, shall be allowed one year after such minors' coming to, or being of full age, or after such mortgagees, and others having equitable interests, obtaining possession of, or a decree for the sale of, such property, to redeem the property so sold from the purchaser or purchasers, his, her, or their, assigns, on paying the amount of purchase money so paid therefor, with ten per cent. interest thereon as aforesaid, and all the taxes that have been paid thereon by the purchaser, or his assigns, between the day of sale and the period of such redemption, with ten per cent. interest on the amount of such taxes, and also the full value of the improvements which may have been made or erected on such property, by the purchaser or his assigns, while the same was in his or their possession. *And provided, moreover,* That where the estate of the tenant in default, as for years, or for life or lives, shall be sufficient to defray the taxes chargeable thereupon, such estate only shall be liable to be sold under the provisions of this act.

SEC. 11. *And be it further enacted,* That it shall be lawful for the collector or other officer (duly authorized) to postpone, after such advertisement, the sale of any property advertised according to the provisions of the foregoing section, to any future day, for the want of bidders, he giving public notice of such postponement, and the sale made at such postponed time shall be equally valid as if made on the day stated in the advertisement.

SEC. 12. *And be it further enacted,* That the person or persons appointed to collect any tax imposed by virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith; but no such sale shall be made unless ten days' previous notice thereof be given in some newspaper printed in the city of Washington. And the provisions of the acts of Assembly of Maryland, now in force within the county of Washington, relating to the right of replevying personal property taken in execution for public taxes, shall apply to all cases of personal property taken by distress to satisfy taxes imposed by virtue of this act.

SEC. 13. *And be it further enacted,* That the levy court of the county of Washington, in the District of Columbia, shall not possess the power of assessing any tax on property in the city of Washington; nor shall the corporation of the said city be obliged to contribute, in any manner, towards the expenses or expenditures of said court, except for the one-half part of the expenses incurred on account of the orphans' court, the office of coroner, the jail of said county, and the opening and repairing of roads in the county of Washington, east of Rock creek, leading directly to the city of Washington, but the said corporation shall have the sole control and management of the bridge across or over Rock creek, at the termination of K street north; and shall be chargeable with the expense of keeping the same in repair, and rebuilding it when necessary.

SEC. 14. *And be it further enacted,* That the clerk of the circuit court, and the register of wills for the county of Washington, respectively, shall furnish the register of the city, or other officer of the corporation, appointed to receive the same, on or about the first Monday in January and July, in every year, correct lists of the transfers of real property in the city, during the next preceding half year, so far as can be ascertained by the records in their respective offices, and the said corporation shall make to the said clerk and register of wills such compensation therefor as shall be agreed on between the respective parties, not exceeding six cents for each transfer on such lists.

SEC. 15. *And be it further enacted,* That the commissioner of the public buildings, or other person appointed to superintend the United States' disbursements in the city of Washington, shall reimburse to the said corporation a just proportion of any expense which may hereafter be incurred, in laying open, paving, or otherwise improving any of the streets or avenues in front of, or adjoining to, or which may pass through or between any of the public squares or reservations, which proportion shall be determined by a comparison of the length of the front, or fronts, of the said squares or reservations of the United States, on any such street or avenue, with the whole extent of the two sides thereof; and he shall cause the curb stones to be set, and foot ways to be paved, on the side or sides of any such street or avenue, whenever the said corporation shall, by law, direct such improvements to be made by the proprietors of the lots on the opposite side of any such street or avenue, or adjacent to any such square or reservation; and he shall cause the footways to be paved, and the curb stones to be set, in front of any lot or lots belonging to the United States, when the like improvements shall be ordered by the corporation in front of the lots adjoining, or squares adjacent thereto; and he shall defray the expenses directed by this section, out of any moneys arising from the sale of lots in the city of Washington, belonging to the United States, and from no other fund.

SEC. 16. *And be it further enacted,* That the present boards of aldermen and common council shall, before the last Monday in May next, divide the said city into as many wards as in their opinion shall be most conducive to the interests of the city; and the boards of aldermen and common council, may, from time to time, as the interests of the city shall require, alter the number and boundaries of the said wards: *Provided,* That the said wards shall, at all times, be so laid off, altered, and bounded, that each ward shall comprise, as near as may be, an equal number of the inhabitants of the said city: *And provided, however,* That if such division shall not be made prior to the said last Monday in May, then the said city shall be divided into six wards, in manner following, to wit: All that part of said city to the westward of Sixteenth street west, shall constitute the first: that part to the eastward of Sixteenth street west, and to the westward of Tenth street west, shall constitute the second; that part to the eastward of Tenth street west, to the westward of First street west, and to the northward of E street south, shall constitute the third; that part to the eastward of First street west, to the westward of Eighth street east, and to the northward of E street south, shall constitute the fourth; that part to the eastward of Tenth street west, to the westward of Fourth street east, and to the southward of E street south, shall constitute the fifth; and the residue of the city shall constitute the sixth ward. The expenses which may be incurred in improving and repairing the streets which form the boundaries of the several wards, shall be defrayed out of the taxes raised in the wards which adjoin the same, respectively, in equal proportions; and the present boards of aldermen and common council shall, before the first Monday in June next, apportion, by law, such portions of the debt of the city, as have been heretofore chargeable to the existing wards, amongst the wards established by this section, upon just and equitable principles. And the board of aldermen shall, so soon as the same shall have been organized, on the second Monday in June next, divide the members into two classes, in manner following, to wit: Those members who are now in office, and, by virtue of their election in June last, shall be entitled to take their seats in the new board, as members from the wards in which they shall, respectively, reside, shall be placed in the first class; and those members who shall be elected from the same wards in June next, shall be placed in the second class; and the other members shall be placed in their respective classes by lot; and the seats

of the first class shall be vacated at the end of the first year, and the seats of the second class shall be vacated at the end of the second year; so that one member shall be elected in each ward every year thereafter. And the members of the board of aldermen shall be hereafter, ex officio, justices of the peace of the county of Washington, unless holding commissions in the army or navy of the United States.

SEC. 17. *And be it further enacted,* That this act shall continue in force for and during the term of twenty years, and until Congress shall, by law, determine otherwise.

Approved, May 15, 1820 (3 Stat. 583, ch. 104).

ACT OF 1848 REORGANIZING THE GOVERNMENT OF THE CITY OF WASHINGTON

AN ACT To continue, alter and amend the charter of the city of Washington

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of May fifteenth, eighteen hundred and twenty, entitled "An Act to incorporate the inhabitants of the city of Washington, and to repeal all acts heretofore passed for that purpose," and the act of May twenty-sixth, eighteen hundred and twenty-four, entitled "An Act supplementary to 'An Act to incorporate the inhabitants of the city of Washington,' passed the fifteenth of May, one thousand eight hundred and twenty, and for other purposes," and the act or acts supplemental or additional to said acts which were in force on the fourteenth day of May, eighteen hundred and forty, or which may, at the passing of this act, be in force, be and the same are hereby continued in force for the term of twenty years from the date hereof, or until Congress shall by law determine otherwise, with the alterations, additions, explanations, and amendments following, that is to say:

SEC. 2. *And be it further enacted,* That the said corporation shall have full power and authority to lay and collect a tax of not exceeding three fourths of one per centum per annum upon the assessed value of all stocks which may be owned and possessed by any person whatever in any banking, insurance, or other incorporated or unincorporated company in the city of Washington; and to compel all such banking, insurance, or other incorporated or unincorporated company to furnish, when so required to do, within ten days thereafter, a full and complete list of the names of the stockholders in such company, and the amount of stock owned by each, under a penalty not exceeding fifty dollars for each and every week such company shall neglect or refuse or fail to furnish the same. And in default of payment of the tax due on said stock by the banking, insurance or other company, or by the holder or holders of the stock, the said corporation shall have full power and authority to sell the said stock, or so many shares thereof as shall be sufficient to pay the taxes due thereon, and costs of collection, as provided in the case of personal property. The said corporation shall also have power to lay and collect a tax not exceeding three fourths of one per centum per annum on the assessed value of all bonds and mortgages, of stocks of all kinds, and all public and private securities, and on every description of property within the said city, or which may be owned or held by the inhabitants thereof, except the wearing apparel and necessary tools and implements used in carrying on the trade or occupation of any person; and to compel persons to furnish, when required by the assessors, a full and correct list of all property by law taxable, held by them, and to punish with suitable fines and penalties persons refusing or omitting to furnish such lists. The said corporation shall have power to lay and collect a school-tax upon every free white male citizen of the age of twenty-one years and upwards, of one dollar per annum; to provide for licensing, taxing and regulating livery stables, and wholesale and retail dealers, in a ratio according to the annual average amount of the capital invested in the business of such wholesale and retail dealers; to license, tax and regulate agencies of all kinds of insurance companies; to tax private bankers, brokers and money lenders, not exceeding three fourths of one per centum per annum on the assessed amount of capital employed in the business of said private bankers, brokers and money lenders; to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers; to regulate and graduate the licenses of nonresident merchants and traders, and the taxes on the same; to regulate and establish fish wharves and docks; to restrain and prohibit gaming-houses, and bawdy-houses; to punish those who may sell intoxicating liquors without having obtained license therefor, by fines not less than five dollars; and in default of the payment thereof, by imprisonment and labor in the workhouse for a term not exceeding ninety days; to provide for the punishing by fines and penalties, and by confinement to labor in the workhouse, any person and all persons who shall molest or disturb any church or other place of worship while the congregation are engaged in any religious exercises or proceedings; to provide for the weighing of all kinds of live stock brought into the city; to cause to be pulled down unsafe, dilapidated, or dangerous buildings; to take up and relay foot pavements and paved carriage-ways, and to keep them in repair, and to lay and collect taxes for paying the expenses thereof, on the property fronting on such foot-ways and carriage-ways; to lay and collect taxes for the support of public schools; to cause new alleys to be opened into the squares, and to open, change, or close those already laid out, upon the application of the owners of more than one half of the property in such squares, subject to the second proviso of the eighth section of the act of May the fifteenth, eighteen hundred and twenty, incorporating the inhabitants of the city of Washington. And the said corporation shall have full power and authority to make all necessary laws for the protection of public and private property, the preservation of order, the safety of persons, and the observance of decency in the streets, avenues, alleys, public spaces, and other places in the said city, and for the punishment of all persons violating the same, as well as for the punishment of persons guilty of public profanity and prostitution.

SEC. 3. *And be it further enacted,* That at the first general election held after the passage of this act, a Board of Assessors, to consist of one member from each ward, shall be elected by the qualified voters therein, to serve for two years; and the returns of election for assessors shall be made in the same manner and form as the returns of the election for members of the Board of Aldermen and Board of Common Council; and the person having the greatest number of legal votes in each ward for assessor, shall be duly elected assessor; but in case two or more persons, highest in vote, shall have an equal number of votes, the commissioners of election for the ward in which such equality shall exist, shall decide the choice by lot. No person who is not eligible to a seat in the Board of Aldermen or Board of Common Council, shall be eligible to election as assessor. And on the first Monday of May next succeeding the first election of assessors under this act, the said board, or a majority of the members thereof, shall meet in the City Hall, and in the presence of the mayor and register, shall draw by lot the names of three members thereof, if the number of wards be seven, or if the number of wards exceed seven, the names of one half, as near as may be, of the members of said board; and the members whose names shall be thus drawn, shall thereupon cease to be members of said board; and at the next general election a member shall be elected to serve for two years in each of the wards in which the members so drawn shall have been elected; and at every regular annual election thereafter in such wards as the time of the assessors is about to expire, an assessor shall be elected to serve for two years. No person holding any other office under the corporation, shall be elected to or hold the office of assessor. In the event of the death, resignation, inability, or refusal to serve of any person elected an assessor, the vacancy shall be filled immediately by the Board of Aldermen and Board of Common Council, in joint meeting, in which manner all vacancies in the board of assessors shall

be filled: *Provided,* That until the assessors authorized to be elected by this act, shall have been duly elected and qualified to enter upon their duties, full power and authority are hereby given to the said corporation to provide for the temporary appointment of assessors to perform the duties required of the assessors to be elected under this act. The board of assessors shall assess and value, and make return of all and every species of property by law taxable, at such times, and under such regulations, as the said corporation shall prescribe, and shall make return of all persons subject to a school-tax, in the said city, under such regulations as the said corporation shall prescribe; and if the said assessors, or either of them, shall refuse or wilfully neglect to assess and value, and make return of all and every species of property by law taxable, which may be known to them, or either of them, or come to their knowledge, or shall refuse or wilfully neglect to make return of any person subject to a school-tax, they, or the one so offending, shall be subject to a fine not exceeding one hundred dollars for each offence, at the discretion of the Circuit Court of the District of Columbia for the county of Washington, and shall thereafter be incapable of holding any office under the corporation; and the Board of Aldermen and Board of Common Council may, by joint resolution, remove any assessor from office for any misconduct in office.

SEC. 4. *And be it further enacted,* That the register, collector, and surveyor of the said city shall severally be elected on the first Monday in June next, and on the same day in every second year thereafter, at the same time and place, in the same manner, and by the persons qualified to vote for mayor and members of the Board of Aldermen and Board of Common Council: *Provided,* That if the said first Monday in June next shall be the regular day for the election of mayor of the said city, then the next election thereafter, of register, collector, and surveyor, shall take place on the same day in the following year, and then on the same day in every second year thereafter, as above provided; and the commissioners of election shall make out duplicate certificates of the result of the election for register, collector, and surveyor, and shall return one to the Board of Aldermen, and the other to the Board of Common Council on the Monday next ensuing the day of election; and the persons having the greatest number of votes for those offices respectively, shall be register, collector, or surveyor, as the case may be; but in case two or more persons highest in vote shall have an equal number of votes for either of said offices, then it shall be lawful for the Board of Aldermen and Board of Common Council to proceed forthwith by ballot, in joint meeting, to determine the choice between such persons; and the said register, collector and surveyor shall respectively hold their offices until their respective successors are duly elected and qualified, unless sooner removed from office; and full power and authority are hereby granted to the Corporation of Washington to pass all such laws as may be necessary to define and regulate the respective duties, powers, and authority of the said register, collector, and surveyor; and also to prescribe the amount of bond and security to be given to the said corporation by each before entering upon the duties of their respective offices, and generally to pass all such laws as may be necessary to insure an efficient and faithful discharge of the duties of their respective offices, by the said register, collector, and surveyor; and in case the said officers, or either of them, shall fail or refuse to comply with any law, resolution, or order of the said corporation, or shall fail or refuse to obey any order of the mayor of the said city, or shall fail to discharge the duties of their respective offices with fidelity and a strict regard to the interests of the said corporation, or shall prove unable or incompetent, from any cause whatever, to discharge such duties, or shall be guilty of any malversation in office, or shall be convicted of any high crime or misdemeanor, it shall be lawful for the majority of the Board of Aldermen and Board of Common Council, by joint resolution, to remove such officer, and to order an election to fill the vacancy; and in case of the refusal or failure of any person elected to either of said offices to accept of the same, or to give such bond and security as may be required by said corporation within twenty days after his election, or in case of the death, resignation, or removal from the said city of any person elected to or holding either of said offices, it shall be lawful for the Board of Aldermen and Board of Common Council to declare said office vacant, and to order an election to fill the vacancy. And in all cases where it shall become necessary to hold an election to fill a vacancy in either of said offices, the same regulations shall be observed as to the appointment of commissioners to hold said elections, and as to holding the elections and the returns of the same, as are observed at the regular elections: *Provided,* That authority is hereby given to the mayor of the said city to appoint temporarily, under such regulations as the said corporation may prescribe, some discreet person to discharge the duties of such vacant office until an election can be had and a successor duly elected and qualified to enter upon his duties.

SEC. 5. *And be it further enacted,* That every free white male citizen of the United States, who shall have attained the age of twenty-one years, and shall have resided in the city of Washington one year immediately preceding the day of election, and shall be a resident of the ward in which he shall offer to vote, and shall have been returned on the books of the corporation during the year ending the thirty-first of December next preceding the day of election as subject to a school-tax for that year, (except persons *non compos mentis,* vagrants, paupers, or persons who shall have been convicted of any infamous crime,) and who shall have paid the school-taxes, and all taxes on personal property due from him, shall be entitled to vote for mayor, members of the Board of Aldermen and Board of Common Council, and assessors, and for every officer authorized to be elected at any election under this act, or the act or acts to which this is amendatory or supplementary: *Provided,* That if, during the year ending on the thirty-first day of December next preceding the day of the first election after the passage of this act, no persons shall have been returned on the books of the said corporation as subject to a school-tax, then all persons who shall have been returned on the books of the said corporation as subject to a school-tax before the day of the said first election, and who shall in all other respects be qualified under this act to vote, and who shall have paid the said school-tax and all taxes due on personal property, shall be entitled to vote at the said first election after the passage of this act. And if any person shall buy or sell a vote, or shall vote more than once at any corporation election, held in pursuance of law, or shall give or receive any consideration therefor in money, goods, or any other thing of value, or shall promise any valuable consideration, or vote in consideration of such promise, he shall be disqualified forever thereafter from voting and holding any office under said corporation; and on complaint thereof to the attorney of the United States for the District of Columbia, it shall be the duty of said attorney to proceed against such offender or offenders by indictment and trial, as in other criminal cases; and if found guilty, it shall be the duty of the court to sentence him to pay a fine of not less than ten dollars, and to imprisonment not more than two months nor less than ten days.

SEC. 6. *And be it further enacted,* That in case of the refusal of any person to accept the office of mayor upon his election thereto, or of his death, resignation, inability, or removal from the city, the Board of Aldermen and Board of Common Council shall assemble in joint meeting and elect another in his place to serve for the remainder of the term or during such disability; but in case of temporary absence from the city, or sickness, the mayor may, in writing, depute the president of the Board of Aldermen to act as mayor during such temporary absence or sickness.

SEC. 7. *And be it further enacted,* That so much of the tenth section of the act incorporating the inhabitants of the city of Washington, approved May fifteenth, eighteen hundred and twenty, as is in the following words, viz.: "That real property, whether improved or unimproved, in the city of Washington, on which two or more years' taxes shall have remained due and unpaid, or on which any special tax, imposed by virtue of authority of the provisions of this act, shall have remained unpaid for two or more years after the same shall have become due, or so much thereof, not less than a lot, (when the property on which the tax has accrued is not less than that quantity,) as may be necessary to pay any such taxes,

with all legal costs and charges arising thereon, may be sold at public sale to satisfy the corporation therefor," be and the same is hereby amended, so as to read as follows, viz.: "That real property, whether improved or unimproved, in the city of Washington, on which one or more years' taxes shall have become due and remain unpaid, or on which any special tax imposed by virtue of authority of the provisions of this act, shall have become due and remain unpaid, or so much thereof, not less than a lot, (when the property on which the tax has accrued is not less than that quantity,) as may be necessary to pay any such taxes, with all interests, costs, and charges arising thereon, may be sold at public sale to satisfy the corporation therefor." And so much of the third proviso of the tenth section of the said act incorporating the inhabitants of the city of Washington, approved May the fifteenth, eighteen hundred and twenty, as is in the following words, viz.: "That no sale shall be made, in pursuance of this section, of any improved property whereon there is personal property of sufficient value to pay the said taxes," be and the same is hereby repealed. And the authority given to the collector in the eleventh section of said act to postpone the sale of any property to a future day "for want of bidders," shall be so construed as to authorize the postponement for any other reasonable cause, if, in the opinion of the mayor, the collector, or other officer duly authorized, there shall be other reasonable cause for such postponement; but public notice shall in all cases be given of such postponement, and the sales made at such postponed time shall be equally valid as if made the day first designated for such sale; and no sale of any real property for taxes hereafter made shall be impaired or made void by reason of any error of the mayor, or other officer of the corporation, in making a calculation of computation of the amount of taxes due, the expenses attendant on the advertisement and sale, or of the purchase money and the interest thereon, notwithstanding the sum erroneously calculated or computed may have been paid by the purchaser, his heirs or assigns; but all such sales, and the deeds which may be granted on the certificates then issued, shall be valid and binding as if no such error had been made; and it shall be lawful for the heirs or assigns of any purchaser or purchasers of property sold for taxes in the said city, to receive, do, or perform any thing which by the said act of the fifteenth of May, eighteen hundred and twenty, incorporating the inhabitants of the city of Washington, or by any act or acts supplementary to or in execution of the same, it may be lawful for such purchaser or purchasers to receive, do, or perform.

Sec. 8. *And be it further enacted,* That the said corporation shall have power to cause to be made out plats of all the squares in the city of Washington, on which shall be shown the lines of all the subdivisions of said squares as the same shall actually exist at the date of the completion of the plat of each square, and to prescribe and regulate the manner in which description shall be made of all real estate sold or transferred in the said city: *Provided,* That the said plats shall be made out and drawn upon a uniform scale of not less than one inch to fifty feet; and that the method of description of real estate sold or transferred within the corporate limits which shall be prescribed by the said corporation shall be such that the plats shall at all times show the lines of property as actually existing in the squares; and the office of the surveyor of the city of Washington shall be the legal office of record of the plats of all property in the city of Washington.

Sec. 9. *And be it further enacted,* That the school-tax which may be levied and collected in pursuance of the powers in this act given, shall constitute a fund, or be added to any other fund now or hereafter to be constituted by any act of the corporation, for the establishment and support of common schools, and for no other purpose, under such regulations as may from time to time be established and provided by the corporation.

Sec. 10. *And be it further enacted,* That the corporation shall not have power to increase the present funded debt of the said corporation, either by borrowing money or otherwise, unless it shall be agreed to do so by two thirds of the legal voters in the said city at an annual election; and the said corporation shall annually apply a sum not less than ten thousand dollars of its revenues to the redemption of the present debt of the corporation.

Sec. 11. *And be it further enacted,* That all taxes, except taxes on real property, imposed by virtue of the powers granted by this act, or the acts to which this is amendatory or supplementary, in default of payment thereof within the time limited by act of the incorporation for payment, may be collected by distress and sale of the goods, and chattels, and personal effects of the person or persons chargeable therewith, under such regulations and limitations as the corporation may prescribe; but no such sale shall be made unless ten days' previous notice thereof be given in some newspaper printed and published in the city of Washington.

Sec. 12. *And be it further enacted,* That the commissioner of public buildings, or other officer having charge and authority over the lands and property of the United States lying within the city of Washington, shall from time to time cause to be opened and improved such avenues and streets, or parts or portions thereof, as the President of the United States, upon application of the corporation of the said city, shall deem necessary for the public convenience, and direct to be done; and he shall defray the expenses thereof out of any money arising, or which shall have arisen, from the sale of lots in the city of Washington, belonging, or which may have belonged, to the United States, and from no other fund. And it shall be the duty of the said commissioner, or other United States officer, as aforesaid, upon the application of the mayor, to repair and keep in repair the pavements, water-gutters, water-ways, and flag footways which have been made or shall be made opposite or along the public squares, reservations, or other property belonging to the United States; as also, on like application, to repair and keep in repair such streets and avenues, or parts thereof, as may have been, or shall hereafter be, opened and improved by the United States; the expense of all such repairs to be paid out of the fund before mentioned.

Sec. 13. *And be it further enacted,* That the commissioner of public buildings be, and he is hereby, required to perform the duties required of the city commissioner by the fourteenth section of the act of the twenty-sixth of May, eighteen hundred and twenty-four, supplementary to the act of the fifteenth of May, eighteen hundred and twenty, incorporating the inhabitants of the city of Washington. And it shall be the duty of the commissioner of public buildings, within ninety days after the sale of any lots or squares belonging to the United States in the city of Washington, to report the fact to the corporation of Washington, giving the date of sale, the number of the lot and square, the name of the purchaser or purchasers, and the said lots or squares shall be liable to taxation by the said corporation from the date of such sale. And no open space, public reservation, or other public ground in the said city, shall be occupied by any private person, or for any private purposes whatever.

Sec. 14. *And be it further enacted,* That the justices of the peace, whether they be members of the Board of Aldermen or Board of Common Council or not, who may be selected from time to time by the said corporation, to enforce the police regulations and penal laws of the said city, as also to issue warrants and to hear and determine cases within the jurisdiction of justices of the peace, in which the mayor, Board of Aldermen and Board of Common Council of the said city shall be plaintiffs, shall have power to issue all such warrants, and all other warrants or processes deemed necessary and proper in cases of violations of the police regulations and penal laws of the corporation, and to hear and determine all such cases, and under the orders of the corporation to issue execution or other final process thereon; and the said justices shall also have power to compel the attendance of witnesses by attachment, and to punish them by fine not exceeding ten dollars, or by imprisonment not exceeding ten days, for refusing obedience to a summons.

Sec. 15. *And be it further enacted,* That hereafter the justices of the peace for the county of Washington, in the District of Columbia, shall be appointed for three years; and upon indictment and conviction of any justice of the peace, before any court of competent jurisdiction, of incompetency, habitual drunkenness, corruption in of-

fice, or of any other wilful misconduct in the discharge of his duties as justice of the peace, his commission shall be void, and he shall cease to exercise the office and powers of justice of the peace; and for all criminal process or business issued or tried by or before any justice of the peace in the city and county of Washington, in the District of Columbia, the said justice and the constable who shall execute the process shall respectively be entitled to charge and receive the same fees as are authorized to be charged and received in the case of process issued and served by them respectively in cases of small debts; and the said costs shall be certified by the said justices to the District attorney, for his revision and approval, and when approved shall be paid by the marshal of the District of Columbia.

SEC. 16. *And be it further enacted,* That, in addition to the seven members now authorized to be appointed to the Levy Court of the county of Washington, from and after May, eighteen hundred and forty-eight, the President of the United States is hereby authorized and required annually to appoint four additional members from the city of Washington; and the said court shall thereafter consist of eleven members.

SEC. 17. *And be it further enacted,* That the corporation of the said city of Washington shall have full power and authority to pass all laws which may be needful and necessary to carry into full and complete effect the powers granted to the said corporation, or to any of its officers or servants, by this act, or by the act or acts to which this act is amendatory or supplementary. And all acts or parts of acts in conflict with the provisions of this act, be, and the same are hereby, repealed.

Approved, May 17, 1848 (9 Stat. 223, ch. 42).

ACT OF RETROCESSION OF COUNTY OF ALEXANDRIA

AN ACT To retrocede the county of Alexandria, in the District of Columbia, to the State of Virginia

Whereas no more territory ought to be held under the exclusive legislation given to Congress over the District which is the seat of the General Government than may be necessary and proper for the purposes of such a seat; and whereas experience hath shown that the portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be, necessary for that purpose; and whereas the State of Virginia, by an act passed on the third day of February, eighteen hundred and forty-six, entitled "An act accepting by the State of Virginia the county of Alexandria, in the District of Columbia, when the same shall be receded by the Congress of the United States," hath signified her willingness to take back the said territory ceded as aforesaid: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, all of that portion of the District of Columbia, ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon.

SEC. 2. *And be it further enacted,* That nothing herein contained shall be construed to vest in the State of Virginia any right of property in the custom-house and post-office of the United States within the town of Alexandria, or in the soil of the territory hereby re-ceded, so as to affect the rights of individuals or corporations therein, otherwise than as the same shall or may be transferred by such individuals or corporations to the State of Virginia.

SEC. 3. *And be it further enacted,* That the jurisdiction and laws now existing in the said territory, ceded to the United States by the State of Virginia, as aforesaid, over the persons and property of individuals therein residing, shall not cease or determine until the State of Virginia shall hereafter provide, by law, for the extension of her jurisdiction and judicial system over the said territory hereby re-ceded.

SEC. 4. *And be it further enacted,* That this act shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it, in the mode hereinafter provided. Immediately after the close of the present session of Congress, the President of the United States shall appoint five commissioners, (any three of whom may act,) citizens of the said town or county of Alexandria, and freeholders within the same, who shall be sworn, before some justice of the peace in and for the said town or county, to discharge the duties hereby imposed upon them faithfully, impartially, and to the best of their ability. These commissioners, or any of them, shall proceed, within ten days after they are notified of their appointment, to fix upon the time, place, and manner, of taking the vote within the town or county of Alexandria, and shall give notice of the same by advertisement in the newspapers of the said town. And on the day and at the place so appointed, every free white male citizen of the United States, who shall have resided in said county of Alexandria for six months preceding the time when he offers his vote, insane persons and paupers excepted, shall vote *viva voce* upon the question of accepting or rejecting the provisions of this act. The said commissioners shall preside when this vote is taken, and decide all questions arising in relation to the right of voting under this act. Within three days after this vote is taken as aforesaid, the said commissioners shall make out three statements of the result of this poll, upon oath, and under their seals. Of these, one shall be transmitted to the President of the United States, one to the governor of the Commonwealth of Virginia, and one shall be deposited in the clerk's office of the county court of Alexandria. If a majority of the votes so given shall be cast against accepting the provisions of this act, then it shall be void and of no effect; but if a majority of the said votes should be in favor of accepting the provisions of this act, then this act shall be in full force, and it shall be the duty of the President of the United States to inform the governor of Virginia that this act is in full force and effect, and to make proclamation of the fact.

SEC. 5. *And be it further enacted,* That, in such case, the right of property in the half square in Alexandria on which stands the courthouse, bounded by Columbus, Queen, and Princess streets, and the half square on which stands the jail, bounded by Princess, St. Asaph, and Pitt streets, shall be conveyed to the governor of Virginia, and his successors, for the use of the county and corporation of Alexandria forever; and the Solicitor of the Treasury of the United States is hereby authorized and required, in the name and on the behalf of the United States, to make all the proper and necessary conveyances for that purpose.

SEC. 6. *And be it further enacted,* That Congress will in no event assume and pay the debt, or any part thereof, now due by the corporation of the city of Alexandria. (July 9, 1846, 9 Stat. 35, ch. 35.)

VIRGINIA ACT ACCEPTING RETROCESSION

AN ACT Accepting by the State of Virginia the county of Alexandria, in the District of Columbia, when the same shall be re-ceded by the Congress of the United States

[Passed February 3, 1846]

Whereas the general assembly of this commonwealth, on the third day of December, in the year seventeen hundred and eighty-nine, passed an act, entitled "an act for the cession of ten miles square, or any lesser quantity of territory within this state, to the United States, in congress assembled, for the permanent seat of the general government;" and by the said act it was enacted, that "a tract of country not exceeding ten miles square, or any lesser quantity, to be located within the limits of this state, and in any part thereof as congress may by

law direct, shall be and the same is hereby forever ceded and relinquished to the congress and government of the United States, in full and absolute right, and exclusive jurisdiction as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States." And whereas the congress of the United States did, under the provisions of the said act, locate that portion of the territory of Virginia now known as the county of Alexandria in the District of Columbia, lying south and west of the river Potomac, and bounded by said river and the lines which separate the District of Columbia from Virginia: And whereas the congress of the United States, on the twenty-seventh day of February, in the year eighteen hundred and one, passed an act, entitled "an act concerning the District of Columbia," by the provisions of which act the exclusive jurisdiction of the United States was extended over the territory so located as aforesaid, which territory has since formed a part of the District of Columbia: And whereas a petition has been presented to the general assembly by the citizens residing in said county of Alexandria, representing that they now have pending before the congress of the United States an application for the re-cession of the said county of Alexandria to the commonwealth of Virginia, and praying the consent of the general assembly to such re-cession, and for the passage of a law to give effect thereto, if the same should be granted by congress; and as the prayer of the said petition is deemed reasonable,

1. *Be it therefore enacted by the general assembly,* That so soon as the congress of the United States shall by law re-cede to the commonwealth of Virginia the said county of Alexandria, and relinquish their exclusive jurisdiction, as well of territory as of persons residing or to reside thereon, the same shall be re-annexed to the said commonwealth, and constitute a portion thereof, subject to such reservation and provisions respecting the public property of the United States, as congress may enact in their act of re-cession.

2. *Be it further enacted,* That the general assembly hereby assents that the jurisdiction and laws of the United States, as well as the rights and privileges of the citizens of said county, and bodies politic and corporate thereof, shall continue in force and be exercised in like manner, and to the same extent, as they now exist, until the general assembly of Virginia shall by law provide for the government of said county under the constitution and laws of this commonwealth.

3. This act shall be in force from the passing thereof. (Virginia act, February 3, 1846, ch. 64.)

PROCLAMATION RELATIVE TO RETROCESSION

A proclamation by the President of the United States of America declaring Alexandria County to be retroceded to Virginia

Whereas, by the act of Congress, approved July 9, 1846, entitled "An Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia," it is enacted, That, with the assent of the people of the county and town of Alexandria, to be ascertained in the manner therein prescribed, all that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, shall be ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon: And whereas, it is further provided, that the said act "shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it, in the mode therein provided;" and if a majority of the votes should be in favor of accepting the provisions of the said act, it shall be the duty of the President to make proclamation of the fact:

And whereas, on the 17th day of August, 1846, after the close of the late session of the Congress of the United States, I duly appointed five citizens of the county or town of Alexandria, being freeholders within the same, as commissioners, who, being duly sworn to perform the duties imposed on them, as prescribed in the said act, did proceed, within ten days after they were notified, to fix upon the first and second days of September, 1846, as the time, the court-house of the county of Alexandria, as the place, and *viva voce* as the manner of voting; and gave due notice of the same; and at the time, and at the place, in conformity with the said notice, the said commissioners presiding, and deciding all questions arising in relation to the right of voting under the said act, the votes of the citizens qualified to vote were taken *viva voce,* and recorded in poll-books, duly kept, and on the third day or [of] September instant, after the said polls were closed, the said commissioners did make out, and on the next day did transmit to me, a statement of the polls so held, upon oath, and under their seals; and of the votes so cast and polled, there were, in favor of accepting the provisions of the said act, seven hundred and sixty-three votes, and against accepting the same, two hundred and twenty-two—showing a majority of five hundred and forty-one votes for the acceptance of the same:

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, in fulfilment of the duty imposed upon me by the said act of Congress, do hereby make proclamation of the "result" of said "poll," as above stated, and do call upon all and singular the persons whom it doth or may concern, to take notice, that the act aforesaid, "is in full force and effect."

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this seventh day of September, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States, the seventy-first.

JAMES K. POLK.

By the President.

N. P. TRIST,
Acting Secretary of State.

ACT OF 1862 RELATIVE TO HIGHWAYS IN THE COUNTY OF WASHINGTON

AN ACT Relating to highways in the county of Washington and District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act, it shall be lawful for the levy court of Washington county, in the District of Columbia, to alter, repair, widen, and regulate the public roads and highways in said county, and to lay out additional roads as hereinafter specified.

SEC. 2. *And be it further enacted,* That all roads within said county of Washington which have been used by the public for a period of twenty-five years or more as a highway, and have been recognized by the said levy court as public county roads, and for the repairs of which the said levy court has appropriated and expended money, are declared public highways, whether the same have been recorded or not; and any person who shall obstruct the free use of said highways, or any one of them, without authority from said levy court, shall be subject to a fine for each and every offence of not less than one hundred or more than two hundred and fifty dollars, to be imprisoned till the said fine and the costs of suit and collection of the same are paid; said fines to be collected in the name of the United States, for the use of the levy court.

SEC. 3. *And be it further enacted,* That within one year from the passage of this act the levy court shall cause the surveyor of the said county of Washington to survey and plat all such roads as are named in the last preceding section, and have the same recorded among the records

of said county now used for recording surveys and plats of other public county roads; and, in making said survey, the county surveyor shall follow, as nearly as possible, the lines and boundaries heretofore used and known as a highway, and he shall cause the lines and boundaries of the same to be permanently marked and fixed by the erection of stones or posts at the different angles thereof.

SEC. 4. *And be it further enacted,* That all such roads as are named in the second section of this act as have been obstructed by any person or persons in any manner within the last six years shall be re-opened by the levy court, if, in the judgment of said court, the public convenience requires it; and the expenses thereby incurred shall be paid by the person or persons who shall have obstructed the same, which expenses shall be collected as fines are required to be collected under the second section of this act.

SEC. 5. *And be it further enacted,* That hereafter, in laying out new roads in said county of Washington, the levy court shall cause such roads to be of a width of not less than fifty nor more than one hundred feet, and it may also cause the width of any of the existing roads in said county to be increased to not more than one hundred feet, and change the location of any of them, as the said levy court may deem best for the public interest; and, for the purpose of opening or widening such roads, the said levy court is hereby empowered to cause to be condemned any land or lands necessary for the same, as other lands are now condemned by law.

SEC. 6. *And be it further enacted,* That in any case where materials shall be necessary for making or repairing a public road, if the levy court cannot agree with the owner as to their purchase, the said court may proceed in the same manner for condemning said materials as in cases of condemnation of land for the purposes of a public road.

SEC. 7. *And be it further enacted,* That no field or garden or yard, in actual cultivation, shall be laid open or used as a public highway until after the usual time of taking off the crops growing thereon.

SEC. 8. *And be it further enacted,* That the requirement in the existing laws, that members of the levy court shall be appointed from amongst the justices of the peace in the county of Washington, is hereby repealed.

Approved, May 3, 1862 (12 Stat. 383, ch. 63).

ACT OF 1863 DEFINING POWERS OF LEVY COURT

AN ACT To define the powers and duties of the levy court of the county of Washington, District of Columbia, in regard to roads, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the levy court of the county of Washington, District of Columbia, shall hereafter consist of nine members, to be appointed by the President of the United States, by and with the advice and consent of the Senate, who shall hold their offices for the term of three years. But of the members to be first appointed one third shall be appointed and hold their offices for one year, or until the thirty-first day of December, eighteen hundred and sixty-three; one third for two years, or until the thirty-first of December, eighteen hundred and sixty-four; and one third for three years, or until the thirty-first of December, eighteen hundred and sixty-five. The terms of members shall commence on the first day of January, and end on the thirty-first day of December; and it shall be the duty of the President to nominate members, to fill the places of those whose term is about to expire, as early as the fifteenth day of December; and he may renominate any out-going member, should he think proper to do so. Of the nine members of the court, five shall be residents of the county, three of the city of Washington, and one of the city of Georgetown. In case of vacancies happening, the President shall fill them as other vacancies are filled; and the term of the person appointed to fill any vacancy shall expire when the term of him in whose place he is appointed would have expired.

SEC. 2. *And be it further enacted,* That every person appointed as a member of the levy court shall, before he enters on his duties, take an oath faithfully to discharge the duties of the office, and also to support the Constitution of the United States; and he shall also take the oath of allegiance prescribed by the act of July second, eighteen hundred and sixty-two. The members of said court shall hereafter be entitled to receive four dollars a day, each, for every day they shall attend a sitting of the court, and not absent themselves without permission of the court, and four dollars for every day they shall serve on a committee, to be paid by the county treasurer upon the certificate of the president of said court.

SEC. 3. *And be it further enacted,* That the said court shall have the care and charge of, and the exclusive jurisdiction over, all the roads and bridges in said county, except such roads and bridges as belong to and are under the care of the United States. And the said court shall have power, and it shall be their duty—

First. To lay out, alter, repair, discontinue, and regulate any of the public roads and highways within said county, and at any time hereafter to inquire and to decide whether any road in said county held by any incorporated company, has been, and is at the time of such inquiry, kept in the condition required by the charter thereof, and if not, to take legal proceedings to acquire possession of the same as other county roads.

Second. To levy and collect taxes for that purpose upon and from the inhabitants of said county, of the age of twenty-one years and over; those having no property to assess to be assessed to labor.

Third. To appoint, annually, and take bond and security from, a clerk and treasurer, and also to appoint a collector of taxes, who shall have power to collect all the taxes (not to be paid in labor) levied by said court, and to proceed to collect the same, in such manner and within such periods of time as the said levy court may direct.

Fourth. To appoint, annually, a general superintendent of roads and such number of supervisors of roads as they may deem expedient; to remove them, as well as the clerk and treasurer and tax collector, whenever, in their judgment, there is sufficient cause, or the public interests will be subserved thereby.

Fifth. To cause bridges to be erected whenever necessary or convenient, and to keep all bridges in good repair.

Sixth. To fix, from time to time, the pay of the clerk, treasurer, tax collector, superintendent, and supervisors of roads, and the rates per day or hour, to be paid for labor to be performed by men or teams when employed upon roads or bridges.

Seventh. To levy a tax upon all lands and other assessable property lying in said county, at a rate not exceeding one dollar in the hundred dollars of their valuation, and also a tax of not exceeding one dollar each on dogs.

Eighth. To require reports or the rendition of accounts from the collector of taxes, the treasurer of the county, and from supervisors of roads, whenever they shall deem it expedient or proper. Also, reports from supervisors as to the condition of the roads and bridges in their respective districts, and estimates of the probable amount that will be required to put and keep the same in good repair for the ensuing year.

Ninth. To pass ordinances imposing fines for trespassing upon or obstructing or injuring any road or trees therein, or bridge, in said county, and to empower and require the tax collector to collect the same in the same manner as other fines are now collected, and to exercise a general police power over all roads and bridges in said county.

Tenth. To lay out private roads.

Eleventh. To provide for the maintenance and support of the poor; to erect a "poor-house" for that purpose, if deemed by said court necessary and proper; and, in addition to the tax otherwise herein authorized, to levy and collect a tax on real and personal property in said county to pay for the same. The powers herein given are to apply only to that portion of the county not included within the corporate bounds of Washington and Georgetown.

SEC. 4. *And be it further enacted,* That the said court may authorize any portion, not exceeding three fourths of the taxes levied for road and bridge purposes, to be

paid in labor, of men, horses, mules, oxen, the use of ploughs, cars, and wagons, at rates per day or hour, for each to be fixed by said court. But in case any one assessed shall have no visible property, and shall prefer it, he may pay the whole of his tax in labor. All labor upon roads and bridges shall be performed at such times and places as the superintendent of roads shall direct, and under his supervision, or that of the supervisor of the road, or such other person as may be appointed to superintend the work. And it shall be the duty of the superintendent to notify all persons liable to pay road tax, or to labor on roads, of the time and place, when and where they must appear and perform such labor, at least one week before the day they are required to appear. And he may notify such as have teams of horses, mules, or oxen, or may have a cart or wagon, to come or send an able-bodied hand with such team, cart or wagon, to be used in repairing or making roads or bridges; such notice to be given personally or in writing left at the residence of the individual notified. If the person so notified shall fail to appear at the time and place, or send an able-bodied substitute, or shall not conform to the directions of the person having charge of the work, or shall not labor diligently, in the latter case he shall be dismissed, and in either case he shall pay the whole amount of his road tax in cash, with an addition of twenty per centum thereon. For the convenience of the tax collector and the superintendent of roads, it shall be the duty of all tax-payers who desire to work out that portion of their road tax which is herein provided they may work out, as early as the first Monday of April of each year, to give notice to the supervisor of their district of such desire, and such supervisor shall notify the tax collector. But in case any one shall fail to perform the labor required of him, the tax collector shall, upon being notified thereof, collect the said tax in cash, with the twenty per centum added.

SEC. 5. *And be it further enacted,* That it shall be the duty of the superintendent and supervisors of roads to have at least three fourths of the work to be done on them during the year performed as early as the middle of July; and in making and repairing the roads they shall be raised full twelve inches higher in the middle than at the sides, and shall be gradually rounded off to the gutters, which shall be made capacious enough to carry off all the falling water.

SEC. 6. *And be it further enacted,* That no bill for labor performed upon any road or bridge shall be allowed or paid to any supervisor by the levy court which is not accompanied by a certificate of the superintendent of roads that he has personally examined the road or bridge so made or repaired, and that the work has been well done and according to law, and that the charges are reasonable and just: *Provided, however,* That one or more members of the court, to be appointed for that purpose, may, after personal examination, make such certificate.

SEC. 7. *And be it further enacted,* That on extraordinary occasions, when any public road or bridge shall be destroyed, or so injured as to require immediate repair, it shall be the duty of the superintendent as well as the supervisor of the road to cause the necessary repairs to be forthwith made; and if there are no funds in hand with which to hire laborers and teams, or if laborers and teams cannot be otherwise procured, the said supervisor shall immediately summon a sufficient number of men living nearest the place to appear and labor on said road or bridge until it shall be repaired; and he may also require any person owning a team and living within a reasonable distance to appear with said team and cart or wagon and plough. And if any one thus called upon, having received two days' notice, shall neglect or refuse to appear and labor, or send an ablebodied substitute, or shall refuse his team, cart, wagon, or plough, he shall forfeit and pay to the levy court a sum not less than three dollars, nor more than ten, to be recovered before any justice of the peace in said county, with costs. For labor, the use of teams, and other necessary implements, performed and furnished on such occasions, a just and fair compensation shall be paid, to be fixed by the said court.

SEC. 8. *And be it further enacted,* That whenever the levy court shall deem it conducive to the public interests to open a new road, or change the course of an old one, they shall direct the route of such road to be surveyed by the county surveyor, and a plat or map of the same to be prepared. They shall then cause notice to be given, by advertisement, twice a week for three weeks, of the proposed opening of the new road, or of the alteration of an existing one, calling upon all persons who may have any objections thereto to present them to the court at its next regular meeting. If any objections are made, the court shall then and there hear them. If the route only is objected to, and another or others suggested as more advantageous, the court may adopt it, or appoint five discreet, disinterested men, of whom the county surveyor shall be one, to examine all the proposed routes, and report such an one as they shall deem most feasible and advantageous to the county, and such report shall be made to the court at its next session. If no objection to the opening or altering a road by the owners of the land through which it must pass after such notice [is made], it shall be taken for granted that no damages are or will be claimed, and the road may be recorded and opened, and shall then be a public road or highway; but if any owner or owners of the land shall object and claim damages, and the court cannot agree with such owner or owners upon the amount, then the court shall direct the marshal of the District to summon a jury of seven judicious, disinterested men, not related to any party interested, to be and appear on the premises on a day specified to assess the damages, if any, which each owner of land through which the road is to pass may sustain by reason thereof. And the marshal shall summon such jury, and administer an oath or affirmation to them that they will, without favor or partiality to any one, to the best of their judgment, decide what damage, if any, each owner may sustain by reason of running the road through his premises; but in doing this they shall take into consideration the benefit it may be to him or her by enhancing the value of his or her land, or otherwise, and give their verdict accordingly. It shall be the duty of the marshal, upon receiving the order from the court, to give the owner or owners aforesaid not less than ten days' notice of the time and place of the meeting of the jury to assess their damages. In cases where notice cannot be served on the owner or owners, the same proceedings shall be had as is provided in this section in the case of minors. The jury, having been upon the premises and assessed the damages, shall make out a written verdict, to be signed by them, or a majority of them, and attested by the marshal, which the marshal shall transmit to the court at its next session and which shall be recorded. If the court or any owner or owners of the land aforesaid are dissatisfied with the verdict thus rendered, and no arrangement being made between the court and the said owner or owners, the court shall order the marshal to summon a second jury of twelve judicious, disinterested men, not related to any one interested, to meet and view the premises, giving the parties interested at least ten days' notice of the time and place of meeting. And the marshal and jury shall proceed as before directed in regard to the first jury. And the verdict, signed by each of the jurors, or a majority of them, shall be returned to the court at its next session, and recorded as final and conclusive, and the road shall then be declared a public road, and the court shall order it to be opened as such. And the same mode of proceeding shall be observed in cases where application shall be made to the court by the residents of the county to lay out a new, or alter any existing road. In all cases where the land through which it is proposed to run a road shall belong to a minor or minors, it shall be presumed that objection is made, and the damages assessed accordingly. In all cases where it becomes necessary to summon a second jury to assess damages, if the amount assessed by the second jury shall not be greater than the amount assessed by the first, the costs of the second jury shall be paid by the party or parties objecting to the first verdict; but if greater, they shall be paid by the county. All expenses up to the second jury shall be paid by the county.

MARSHAL'S FEES

For summoning each juror the marshal shall be entitled to fifty cents.

For travel, per mile, going and coming to the premises to be examined, twelve and a half cents.

For each day's attendance, two dollars and fifty cents.

JUROR'S FEES

For each day's attendance, two dollars.

SEC. 9. *And be it further enacted,* That in any case where materials of any kind shall be deemed necessary for making or repairing a public road, if the levy court cannot agree with the owner as to their purchase, the said court may proceed in the same manner for condemning said materials as in cases of condemnation of land for the purposes of a public road, as is provided for in the next preceding section of this act.

SEC. 10. *And be it further enacted,* That said levy court shall have full power to make sanitary rules and regulations in said county, to abate nuisances, and to pass such ordinances as it may deem necessary for their condemnation and removal, and for the punishment of persons creating them or suffering them to exist on their premises; which punishment shall not exceed a fine of twenty dollars, for the use of the county, or imprisonment in the county jail thirty days for each offence. Said levy court shall also have power to pass such ordinances as it may deem necessary to effectually prevent Sabbath-breaking in said county by hunting, gaming, fishing, or otherwise, on Sunday; to prohibit the killing of such game as said court may think proper during certain periods; to regulate fishing in the waters of said county, and to provide for sufficient penalties for the violation thereof. And it shall be the duty of the metropolitan police of the District of Columbia to enforce any and all of the ordinances of the said levy court in the same manner as they are now required to enforce the ordinances of the cities of Washington and Georgetown; the funds required for that purpose to be paid by said levy court from the county treasury. And from and after the passage of this act the duties of county constable shall be confined exclusively to the service of civil process and the collection of strictly private debts within the said District of Columbia. And each of the county constables holding office at the time of the passage of this act, and each of said constables hereafter appointed, shall, before performing any duties required to be performed in his said office, take the oath of allegiance required by the act of July second, eighteen hundred and sixty-two, in addition to any oath of office required of him at the time, and shall moreover enter into a bond to the United States in the sum of five thousand dollars, with security to be approved by the clerk of the circuit court, conditioned for the faithful performance of the duties of his office, and for the punctual payment of all moneys coming into his hands to the persons entitled to receive the same, and shall renew the said bond on the thirty-first day of June in every alternate year of his continuance in office.

SEC. 11. *And be it further enacted,* That the act entitled "An act to authorize the levy court to issue tavern and other licenses in the District of Columbia," approved June twelfth, eighteen hundred and sixty, be so extended as to authorize the levy court to grant licenses to wholesale and retail dealers in goods, wares, or merchandise in the county of Washington outside the limits of the cities of Washington and Georgetown, under such restrictions and penalties as the said levy court may deem expedient

SEC. 12. *And be it further enacted,* That fines, under any of the ordinances of the levy court, may be recovered in the name, and for the use, of said levy court, before any magistrate of said county of Washington, and the person or persons against whom a fine may be imposed shall pay the same at the time it is so imposed with costs, or give security for the payment of such fine and costs, as required by the sixth section of an act entitled "An act to amend 'An act to create a metropolitan police district of the District of Columbia, and to establish a police therefor,'" approved August six, eighteen hundred and sixty-one, or shall stand committed till the whole is paid.

SEC. 13. *And be it further enacted,* That all laws inconsistent with this act are hereby repealed.

Approved, March 3, 1863 (12 Stat. 799, ch. 106).

REGULATION OF ELECTIVE FRANCHISE

AN ACT To regulate the elective franchise in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act each and every male person, excepting paupers and persons under guardianship, of the age of twenty-one years and upwards, who has not been convicted of any infamous crime or offence, and excepting persons who may have voluntarily given aid and comfort to the rebels in the late rebellion, and who shall have been born or naturalized in the United States, and who shall have resided in the said District for the period of one year, and three months in the ward or election precinct in which he shall offer to vote, next preceding any election therein, shall be entitled to the elective franchise, and shall be deemed an elector and entitled to vote at any election in said District, without any distinction on account of color or race.

SEC. 2. *And be it further enacted,* That any person whose duty it shall be to receive votes at any election within the District of Columbia, who shall wilfully refuse to receive, or who shall wilfully reject, the vote of any person entitled to such right under this act, shall be liable to an action of tort by the person injured, and shall be liable, on indictment and conviction, if such act was done knowingly, to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year in the jail of said District, or to both.

SEC. 3. *And be it further enacted,* That if any person or persons shall wilfully interrupt or disturb any such elector in the exercise of such franchise, he or they shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not to exceed one thousand dollars, or be imprisoned in the jail in said District for a period not to exceed thirty days, or both, at the discretion of the court.

SEC. 4. *And be it further enacted,* That it shall be the duty of the several courts having criminal jurisdiction in said District to give this act in special charge to the grand jury at the commencement of each term of the court next preceding the holding of any general or city election in said District.

SEC. 5. *And be it further enacted,* That the mayors and aldermen of the cities of Washington and Georgetown, respectively, on or before the first day of March, in each year, shall prepare a list of the persons they judge to be qualified to vote in the several wards of said cities in any election; and said mayors and aldermen shall be in open session to receive evidence of the qualification of persons claiming the right to vote in any election therein, and for correcting said list, on two days in each year, not exceeding five days prior to the annual election for the choice of city officers, giving previous notice of the time and place of each session in some newspaper printed in said District.

SEC. 6. *And be it further enacted,* That on or before the first day of March the mayors and aldermen of said cities shall post up a list of voters thus prepared in one or more public places in said cities, respectively, at least ten days prior to said annual election.

SEC. 7. *And be it further enacted,* That the officers presiding at any election, shall keep and use the check-list herein required at the polls during the election of all officers, and no vote shall be received unless delivered by the voter in person, and not until the presiding officer has had opportunity to be satisfied of his identity, and shall find his name on the list, and mark it, and ascertain that his vote is single.

SEC. 8. *And be it further enacted,* That it is hereby declared unlawful for any person, directly or indirectly, to promise, offer, or give, or procure or cause to be promised, offered, or given, any money, goods, right in action, bribe, present, or reward, or any promise, understanding, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to any person with intent

to influence his vote to be given at any election hereafter to be held within the District of Columbia; and every person so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, or imprisoned not exceeding two years, or both, at the discretion of the court.

SEC. 9. *And be it further enacted,* That any person who shall accept, directly or indirectly, any money, goods, right in action, bribe, present, or reward, or any promise, understanding, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to influence his vote at any election hereafter to be held in the District of Columbia, shall, on conviction, be imprisoned not less than one year and be forever disfranchised.

SEC. 10. *And be it further enacted,* That all acts and parts of acts inconsistent with this act be, and the same are hereby repealed.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate, pro tempore.

IN SENATE OF THE UNITED STATES,
January 7, 1867.

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act to regulate the elective franchise in the District of Columbia," with his objections thereto, the Senate proceeded in pursuance of the Constitution to reconsider the same, and

Resolved, That the said bill do pass, two thirds of the Senate agreeing to pass the same.

Attest:

J. W. FORNEY,
Secretary of the Senate.

IN THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
January 8, 1867.

The House of Representatives having proceeded, in pursuance of the Constitution to reconsider the bill entitled "An Act to regulate the elective franchise in the District of Columbia," returned to the Senate by the President of the United States, with his objections, and sent by the Senate to the House of Representatives, with the message of the President returning the bill:

Resolved, That the bill do pass, two thirds of the House of Representatives agreeing to pass the same.

Attest:

EDWD. MCPHERSON, *Clerk.*

(January 8, 1867, 14 Stat. 375, ch. 6.)

AMENDMENT OF REGULATION OF ELECTIVE FRANCHISE

A RESOLUTION Relative to the payment of expenses incurred by the judges of election for the cities of Washington and Georgetown, District of Columbia

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the corporations of the cities of Washington and Georgetown, District of Columbia, be, and the same are hereby, required to pay, or cause to be paid, all necessary expenses, including printing, clerk hire, room rent, stationery, and a per diem compensation to each of the judges of election in the respective cities, appointed under the act of Congress entitled "An act to punish illegal voting in the District of Columbia, and for other purposes," approved February fifth, eighteen hundred and sixty-seven, of five dollars per day for every day they shall be actually employed in the discharge of their duties, and the certificate of the judges of election of either city, or a majority thereof, of the correctness of any account arising out of the action of said judges, shall be deemed sufficient to constitute the same a legal debt against the city to which the judges so certifying shall belong. And it shall be lawful for any of the said judges of election to administer oaths in all cases relating to the duties assigned them by law, and any person wilfully making a false statement under oath, before any of said judges, shall be deemed guilty of perjury, and on conviction thereof shall be subject to imprisonment for the term of not less than one nor more than five years.

SEC. 2. *And be it further resolved,* That the judges of the supreme court of the District of Columbia shall appoint three commissioners of election in each voting precinct in said cities of Washington and Georgetown, who shall hold their offices for two years and until their successors are appointed and qualified, whose duty it shall be to take charge of the ballot-boxes at the polls at each election, to receive and deposit in said boxes the ballots of legalized voters in their respective precincts, to count the votes after the polls are closed, and declare the result, and make returns thereof as now provided by law. And the said commissioners of election shall receive the votes of all persons whose names are on the list of voters in said precinct, prepared by the judges of election aforesaid, and none others; they shall have power to administer oaths, and to examine persons offering to vote, and other witnesses as to the identity of voters, and shall receive from their respective cities the same compensation for their services as is now paid to the commissioners of election in said cities; and any person swearing falsely relative to the same shall be deemed guilty of perjury, and shall, on conviction thereof, be subject to imprisonment for the term of not less than one nor more than five years. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved, March 29, 1867 (15 Stat. 27, Resolution No. 26).

ACT OF 1871 CREATING LEGISLATIVE ASSEMBLY

AN ACT To provide a government for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the limits of the District of Columbia be, and the same is hereby, created into a government by the name of the District of Columbia, by which name it is hereby constituted a body corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this act.

SEC. 2. *And be it further enacted,* That the executive power and authority in and over said District of Columbia shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall hold his office for four years, and until his successor shall be appointed and qualified. The governor shall be a citizen of and shall have resided within said District twelve months before his appointment, and have the qualifications of an elector. He may grant pardons and respites for offenses against the laws of said District enacted by the legislative assembly thereof; he shall commission all officers who shall be elected or appointed to office under the laws of the said District enacted as aforesaid, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted,* That every bill which shall have passed the council and house of delegates shall, before it becomes a law, be presented to the governor of the District of Columbia; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds

of all the members appointed or elected to the house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of all the members appointed or elected to that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislative assembly by their adjournment prevent its return, in which case it shall not be a law.

SEC. 4. *And be it further enacted,* That there shall be appointed by the President, by and with the advice and consent of the Senate, a secretary of said District, who shall reside therein and possess the qualification of an elector, and shall hold his office for four years, and until his successor shall be appointed and qualified; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semiannually, on the first days of January and July in each year, to the President of the United States, and four copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress; and in case of the death, removal, resignation, disability, or absence, of the governor from the District, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy, disability, or absence, or until another governor shall be duly appointed and qualified to fill such vacancy. And in case the offices of governor and secretary shall both become vacant, the powers, duties, and emoluments of the office of governor shall devolve upon the presiding officer of the council, and in case that office shall also be vacant, upon the presiding officer of the house of delegates, until the office shall be filled by a new appointment.

SEC. 5. *And be it further enacted,* That legislative power and authority in said District shall be vested in a legislative assembly as hereinafter provided. The assembly shall consist of a council and house of delegates. The council shall consist of eleven members, of whom two shall be residents of the city of Georgetown, and two residents of the county outside of the cities of Washington and Georgetown, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall have the qualification of voters as hereinafter prescribed, five of whom shall be first appointed for the term of one year, and six for the period of two years, provided that all subsequent appointments shall be for the term of two years. The house of delegates shall consist of twenty-two members, possessing the same qualifications as prescribed for the members of the council, whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable into eleven districts for the appointment of the council, and into twenty-two districts for the election of delegates, giving to each section of the District representation in the ratio of its population as nearly as may be. And the members of the council and of the house of delegates shall reside in and be inhabitants of the districts from which they are appointed or elected, respectively. For the purposes of the first election to be held under this act, the governor and judges of the supreme court of the District of Columbia shall designate the districts for members of the house of delegates, appoint a board of registration and persons to superintend the election and the returns thereof, prescribe the time, places, and manner of conducting such election, and make all needful rules and regulations for carrying into effect the provisions of the act not otherwise herein provided for: *Provided,* That the first election shall be held within sixty days from the passage of this act. In the first and all subsequent elections the persons having the highest number of legal votes for the house of delegates, respectively, shall be declared by the governor duly elected members of said house. In case two or more persons voted for shall have an equal number of votes for the same office, or if a vacancy shall occur in the house of delegates, the governor shall order a new election. And the persons thus appointed and elected to the legislative assembly shall meet at such time and at such place within the District as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the formation of the districts for members of the council and house of delegates, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided,* That no session in any one year shall exceed the term of sixty days, except the first session, which may continue one hundred days.

SEC. 6. *And be it further enacted,* That the legislative assembly shall have power to divide that portion of the District not included in the corporate limits of Washington or Georgetown into townships, not exceeding three, and create township officers, and prescribe the duties thereof; but all township officers shall be elected by the people of the townships respectively.

SEC. 7. *And be it further enacted,* That all male citizens of the United States, above the age of twenty-one years, who shall have been actual residents of said District for three months prior to the passage of this act, except such are non compos mentis and persons convicted of infamous crimes, shall be entitled to vote at said election, in the election district or precinct in which he shall then reside, and shall have so resided for thirty days immediately preceding said election, and shall be eligible to any office within the said District, and for all subsequent election twelve months' prior residence shall be required to constitute a voter; but the legislative assembly shall have no right to abridge or limit the right of suffrage.

SEC. 8. *And be it further enacted,* That no person who has been or hereafter shall be convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys who shall not have accounted for and paid over, upon final judgment duly recovered according to law, all such moneys due from him, shall be eligible to the legislative assembly or to any office of profit or trust in said District.

SEC. 9. *And be it further enacted,* That members of the legislative assembly, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and will faithfully discharge the duties of the office upon which I am about to enter; and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept, or receive, directly or indirectly, any money or other valuable thing for any vote or influence that I may give or withhold on any bill, resolution, or appropriation, or for any other official act." Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every person who shall be convicted of having sworn falsely to or of violating his said oath shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in said District, and shall be deemed guilty of perjury, and upon conviction shall be punished accordingly.

SEC. 10. *And be it further enacted,* That a majority of the legislative assembly appointed or elected to each house shall constitute a quorum. The house of delegates shall be the judge of the election returns and qualifications of its members. Each house shall determine the rules of its proceedings, and shall choose its own officers. The governor shall call the council to order at the opening of each new assembly; and the secretary of the District shall call the house of delegates to order at the opening of each new legislative assembly, and shall preside over it until a temporary presiding officer shall have been chosen and shall have taken his seat. No member shall be expelled by either house except by a vote of two thirds of all the members appointed or elected to that house. Each house may punish by imprisonment any person not a member who shall be guilty of disre-

spect to the house by disorderly or contemptuous behavior in its presence; but no such imprisonment shall extend beyond twenty-four hours at one time. Neither house shall, without the consent of the other, adjourn for more than two days, or to any other place than that in which such house shall be sitting. At the request of any member the yeas and nays shall be taken upon any question and entered upon the journal.

SEC. 11. *And be it further enacted,* That bills may originate in either house, but may be altered, amended, or rejected by the other; and on the final passage of all bills the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal, and no bill shall become a law without the concurrence of a majority of the members elected to each house.

SEC. 12. *And be it further enacted,* That every bill shall be read at large on three different days in each house. No act shall embrace more than one subject, and that shall be expressed in its title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed in the title; and no act of the legislative assembly shall take effect until thirty days after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act,) the legislative assembly shall by a vote of two thirds of all the members appointed or elected to each house otherwise direct.

SEC. 13. *And be it further enacted,* That no money shall be drawn from the treasury of the District, except in pursuance of an appropriation made by law, and no bill making appropriations for the pay or salaries of the officers of the District government shall contain any provisions on any other subject.

SEC. 14. *And be it further enacted,* That each legislative assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government of the District until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two thirds of the members elected or appointed to each house as herein provided, nor exceed the amount of revenue authorized by law to be raised in such time, and all appropriations, general or special, requiring money to be paid out of the District treasury, from funds belonging to the District, shall end with such fiscal quarter; and no debt, by which the aggregate debt of the District shall exceed five per cent. of the assessed property of the District, shall be contracted, unless the law authorizing the same shall at a general election have been submitted to the people and have received a majority of the votes cast for members of the legislative assembly at such election. The legislative assembly shall provide for the publication of said law in at least two newspapers in the District for three months, at least, before the vote of the people shall be taken on the same, and provision shall be made in the act for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid: *Provided,* That the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

SEC. 15. *And be it further enacted,* That the legislative assembly shall never grant or authorize extra compensation, fee, or allowance to any public officer, agent, servant, or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the District under any contract or agreement made, without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 16. *And be it further enacted,* That the District shall never pay, assume, or become responsible for the debts or liabilities of, or in any manner give, loan, or extend its credit to or in aid of any public or other corporation, association, or individual.

SEC. 17. *And be it further enacted,* That the legislative assembly shall not pass special laws in any of the following cases, that is to say: For granting divorces; regulating the practice in courts of justice; regulating the jurisdiction or duties of justices of the peace, police magistrates, or constables; providing for changes of venue in civil or criminal cases, or swearing and impaneling jurors; remitting fines, penalties, or forfeitures; the sale or mortgage of real estate belonging to minors or others under disability; changing the law of descent; increasing or decreasing the fees of public officers during the term for which said officers are elected or appointed; granting to any corporation, association, or individual, any special or exclusive privilege, immunity, or franchise whatsoever. The legislative assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to the District or to any municipal corporation therein, nor shall the legislative assembly have power to establish any bank of circulation, nor to authorize any company or individual to issue notes for circulation as money or currency.

SEC. 18. *And be it further enacted,* That the legislative power of the District shall extend to all rightful subjects of legislation within said District, consistent with the Constitution of the United States and the provisions of this act, subject, nevertheless, to all the restrictions and limitations imposed upon States by the tenth section of the first article of the Constitution of the United States; but all acts of the legislative assembly shall at all times be subject to repeal or modification by the Congress of the United States, and nothing herein shall be construed to deprive Congress of the power of legislation over said District in as ample manner as if this law had not been enacted.

SEC. 19. *And be it further enacted,* That no member of the legislative assembly shall hold or be appointed to any office, which shall have been created or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was appointed or elected, and for one year after the expiration of such term; and no person holding any office of trust or profit under the government of the United States shall be a member of the legislative assembly.

SEC. 20. *And be it further enacted,* That the said legislative assembly shall not have power to pass any ex post facto law, nor law impairing the obligation of contracts, nor to tax the property of the United States, nor to tax the lands or other property of non-residents higher than the lands or other property of residents; nor shall lands or other property in said district be liable to a higher tax, in any one year, for all general objects, territorial and municipal, than two dollars on every hundred dollars of the cash value thereof; but special taxes may be levied in particular sections, wards, or districts for their particular local improvements; nor shall said territorial government have power to borrow money or issue stock or bonds for any object whatever, unless specially authorized by an act of the legislative assembly, passed by a vote of two thirds of the entire number of the members of each branch thereof, but said debt in no case to exceed five per centum of the assessed value of the property of said District, unless authorized by a vote of the people, as *hereinafter* [hereinbefore] provided.

SEC. 21. *And be it further enacted,* That the property of that portion of the District not included in the corporations of Washington or Georgetown shall not be taxed for the purposes either of improving the streets, alleys, public squares, or other public property of the said cities, or either of them, nor for any other expenditure of a local nature, for the exclusive benefit of said cities, or either of them, nor for the payment of any debt heretofore contracted, or that may hereafter be contracted by either of said cities while remaining under a municipal government not coextensive with the District.

SEC. 22. *And be it further enacted,* That the property within the corporate limits of Georgetown shall not be taxed for the payment of any debt heretofore or hereafter to be contracted by the corporation of Washington, nor shall the property within the corporate limits of Washington be taxed for the payment of any debt heretofore or hereafter to be contracted by the corporation of Georgetown; and so long as said cities shall remain under distinct municipal governments, the property within the corporate limits of either of said cities shall not be taxed for the local benefit of the other; nor shall said cities, or

either of them, be taxed for the exclusive benefit of the county outside of the limits thereof: *Provided,* That the legislative assembly may make appropriations for the repair of roads, or for the construction or repair of bridges outside the limits of said cities.

SEC. 23. *And be it further enacted,* That it shall be the duty of said legislative assembly to maintain a system of free schools for the education of the youth of said District, and all moneys raised by general taxation or arising from donations by Congress, or from other sources, except by request or devise, for school purposes, shall be appropriated for the equal benefit of all the youths of said District between certain ages, to be defined by law.

SEC. 24. *And be it further enacted,* That the said legislative assembly shall have power to provide for the appointment of as many justices of the peace and notaries public for said District as may be deemed necessary, to define their jurisdiction and prescribe their duties; but justices of the peace shall not have jurisdiction of any controversy in which the title of land may be in dispute, or in which the debt or sum claimed shall exceed one hundred dollars: *Provided, however,* That all justices of the peace and notaries public now in commission shall continue in office till their present commissions expire, unless sooner removed pursuant to existing laws.

SEC. 25. *And be it further enacted,* That the judicial courts of said District shall remain as now organized until abolished or changed by act of Congress; but such legislative assembly shall have power to pass laws modifying the practice thereof, and conferring such additional jurisdiction as may be necessary to the due execution and enforcement of the laws of said District.

SEC. 26. *And be it further enacted,* That there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a board of health for said District, to consist of five persons, whose duty it shall be to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof; to make and enforce regulations to prevent domestic animals from running at large in the cities of Washington and Georgetown; to prevent the sale of unwholesome food in said cities; and to perform such other duties as shall be imposed upon said board by the legislative assembly.

SEC. 27. *And be it further enacted,* That the offices and duties of register of wills, recorder of deeds, United States attorney, and United States marshal for said District shall remain as under existing laws till modified by act of Congress; but said legislative assembly shall have power to impose such additional duties upon said officers, respectively, as may be necessary to the due enforcement of the laws of said District.

SEC. 28. *And be it further enacted,* That the said legislative assembly shall have power to create by general law, modify, repeal, or amend, within said District, corporations aggregate for religious, charitable, educational, industrial, or commercial purposes, and to define their powers and liabilities: *Provided,* That the powers of corporations so created shall be limited to the District of Columbia.

SEC. 29. *And be it further enacted,* That the legislative assembly shall define by law who shall be entitled to relief as paupers in said District, and shall provide by law for the support and maintenance of such paupers, and for that purpose shall raise the money necessary by taxation.

SEC. 30. *And be it further enacted,* That the legislative assembly shall have power to provide by law for the election or appointment of such ministerial officers as may be deemed necessary to carry into effect the laws of said District to prescribe their duties, their terms of office, and the rate and manner of their compensation.

SEC. 31. *And be it further enacted,* That the governor, secretary, and other officers to be appointed pursuant to this act, shall, before they act as such, respectively, take and subscribe an oath or affirmation before a judge of the supreme court of the District of Columbia, or some justice of the peace in the limits of said District, duly authorized to administer oaths or affirmations by the laws now in force therein, or before the Chief Justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and all civil officers in said District, before they act as such, shall take and subscribe a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the District, who may be duly commissioned and qualified, or before the Chief Justice of the Supreme Court of the United States, which said oath or affirmation shall be certified and transmitted by the person administering the same to the secretary, to be by him recorded as aforesaid; and afterward the like oath or affirmation shall be taken and subscribed, certified and recorded in such manner and form as may be prescribed by law.

SEC. 32. *And be it further enacted,* That the governor, shall receive an annual salary of three thousand dollars; and the secretary shall receive an annual salary of two thousand dollars, and that the said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day during their actual attendance at the session thereof, and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, and a sergeant-at-arms may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly: *Provided,* That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislative assembly together. And the governor and secretary of the District shall, in the disbursement of all moneys appropriated by Congress and intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall semiannually account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by the said legislative assembly of funds appropriated by Congress, for objects not especially authorized by acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 33. *And be it further enacted,* That the legislative assembly of the District of Columbia shall hold its first session at such time and place in said District as the governor thereof shall appoint and direct.

SEC. 34. *And be it further enacted,* That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States and of the District of Columbia, and shall have the qualifications of a voter, may be elected by the voters qualified to elect members of the legislative assembly who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several Territories of the United States to the House of Representatives, and shall also be a member of the committee for the District of Columbia; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at the time and places and be conducted in such manner as the elections for members of the House of Representatives are conducted; and at all subsequent elections the time and places and the manner of holding the elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly; and the Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said District of Columbia as elsewhere within the United States.

SEC. 35. *And be it further enacted,* That all officers to be appointed by the President of the United States, by and with the advice and consent of the Senate, for the District of Columbia, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be intrusted

to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

SEC. 36. *And be it further enacted,* That there shall be a valuation taken in the District of Columbia of all real estate belonging to the United States in said District, except the public buildings, and the grounds which have been dedicated to the public use as parks and squares, at least once in five years, and return thereof shall be made by the governor to the President of the Senate and Speaker of the House of Representatives on the first day of the session of Congress held after such valuation shall be taken, and the aggregate of the valuation of private property in said District, whenever made by the authority of the legislative assembly, shall be reported to Congress by the governor: *Provided,* That all valuations of property belonging to the United States shall be made by such persons as the Secretary of the Interior shall appoint, and under such regulations as he shall prescribe.

SEC. 37. *And be it further enacted,* That there shall be in the District of Columbia a board of public works, to consist of the governor, who shall be president of said board; four persons, to be appointed by the President of the United States, by and with the advice and consent of the Senate, one of whom shall be a civil engineer, and the others citizens and residents of the District, having the qualifications of an elector therein; one of said board shall be a citizen and resident of Georgetown, and one of said board shall be a citizen and resident of the county outside of the cities of Washington and Georgetown. They shall hold office for the term of four years, unless sooner removed by the President of the United States. The board of public works shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the legislative assembly or Congress. They shall disburse upon their warrant all moneys appropriated by the United States, or the District of Columbia, or collected from property-holders, in pursuance of law, for the improvement of streets, avenues, alleys, and sewers, and roads and bridges, and shall assess in such manner as shall be prescribed by law, upon the property adjoining and to be specially benefited by the improvements authorized by law and made by them, a reasonable proportion of the cost of the improvement, not exceeding one third of such cost, which sum shall be collected as all other taxes are collected. They shall make all necessary regulations respecting the construction of private buildings in the District of Columbia, subject to the supervision of the legislative assembly. All contracts made by the said board of public works shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the secretary of the District; and said board of public works shall have no power to make contracts to bind said District to the payment of any sums of money except in pursuance of appropriations made by law, and not until such appropriations shall have been made. All contracts made by said board in which any member of said board shall be personally interested shall be void, and no payment shall be made thereon by said District or any officers thereof. On or before the first Monday in November of each year, they shall submit to each branch of the legislative assembly a report of their transactions during the preceding year, and also furnish duplicates of the same to the governor, to be by him laid before the President of the United States for transmission to the two houses of Congress; and shall be paid the sum of two thousand five hundred dollars each annually.

SEC. 38. *And be it further enacted,* That the officers herein provided for, who shall be appointed by the President, by and with the advice and consent of the Senate, shall be paid by the United States by appropriations to be made by law as hereinbefore provided; and all other officers of said District provided for by this act shall be paid by the District: *Provided,* That no salary shall be paid to the governor as a member of the board of public works in addition to his salary as governor, nor shall any officer of the army appointed upon the board of public works receive any increase of pay for such service.

SEC. 39. *And be it further enacted,* That if, at any election hereafter held in the District of Columbia, any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious, or vote more than once at the same election for any candidate for the same office, or vote at a place where he may not be entitled to vote, or vote without having a lawful right to vote, or do any unlawful act to secure a right or opportunity to vote for himself or any other person, or by force, threats, menace or intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of the District of Columbia from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right, or compel or induce, by any such means or otherwise, any officer of any election in said District to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any unlawful means induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.

SEC. 40. *And be it further enacted,* That the charters of the cities of Washington and Georgetown shall be repealed on and after the first day of June, A. D. eighteen hundred and seventy-one, and all offices of said corporations abolished at that date; the levy court of the District of Columbia and all offices connected therewith shall be abolished on and after said first day of June, A. D. eighteen hundred and seventy-one; but all laws and ordinances of said cities, respectively, and of said levy court, not inconsistent with this act, shall remain in full force until modified or repealed by Congress or the legislative assembly of said District; that portion of said District included within the present limits of the city of Washington shall continue to be known as the city of Washington; and that portion of said District included within the limits of the city of Georgetown shall continue to be known as the city of Georgetown; and the legislative assembly shall have power to levy a special tax upon property, except the property of the government of the United States, within the city of Washington for the payment of the debts of said city; and upon property, except the property of the government of the United States, within the limits of the city of Georgetown for the payment of the debts of said city; and upon property, except the property of the government of the United States, within said District not included within the limits of either of said cities to pay any debts owing by that portion of said District: *Provided,* That the charters of said cities severally, and the powers of said levy court, shall be continued for the following purposes, to wit: For the collection of all sums of money due to said cities, respectively, or to said levy court; for the enforcement of all contracts made by said cities, respectively, or by said levy court, and all taxes, heretofore assessed, remaining unpaid; for the collection of all just claims against said cities, respectively, or against said levy court; for the enforcement of all legal contracts against said cities, respectively, or against said levy court, until the affairs of said cities, respectively, and of said levy court, shall have been fully closed; and no suit in favor of or against said corporations, or either of them, shall abate by reason of the passage of this act, but the same shall be prosecuted to final judgment as if this act had not been passed.

SEC. 41. *And be it further enacted,* That there shall be no election holden for mayor or members of the common council of the city of Georgetown prior to the first day of June, eighteen hundred and seventy-one, but the present mayor and common council of said city shall hold their offices until said first day of June next. No taxes for general purposes shall hereafter be assessed by the municipal authorities of the cities of Washington or Georgetown, or by said levy court. And upon the repeal of the charters of the cities of Washington and Georgetown, the District of Columbia be, and is hereby, declared to be the successor of said corporations, and all the property of said corporations, and of the county of Washington, shall become vested in the said District of Columbia, and all fines, penalties, costs, and forfeitures, which are now by law made payable to said cities, respectively, or said levy court, shall be paid to said District of Columbia, and the salaries of the judge and clerk of the police court, the compensation of the deputy clerk and bailiffs of said police court, and of the marshal of the District of Columbia shall be paid by said District: *Provided,* That the moneys collected upon the judgments of said police court, or so much thereof as may be necessary, shall be applied to the payment of the salaries of the judge and other officers of said court, and to the payment of the necessary expenses thereof, and any surplus remaining after paying the salaries, compensation, and expenses aforesaid, shall be paid into the treasury of the District at the end of every quarter.

Approved, February 21, 1871 (16 Stat. 419, ch. 62).

TEMPORARY ORGANIC ACT OF 1874

AN ACT For the government of the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all provisions of law providing for an executive, for a secretary for the District, for a legislative assembly, for a board of public works, and for a Delegate in Congress in the District of Columbia are hereby repealed: *Provided,* That this repeal shall not affect the term of office of the present Delegate in Congress.

SEC. 2. That the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint a commission, consisting of three persons, who shall, until otherwise provided by law, exercise all the power and authority now lawfully vested in the governor or board of public works of said District, except as hereinafter limited; and shall be subject to all the restrictions and limitations now imposed by law on said governor or board; and shall have power to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and to the payment of the debts of said District secured by a pledge of the securities of said District or board of public works as collateral, and also to the payment of debts due to laborers and employees of the District and board of public works; and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia and the board of public works, and exercise the power and authority aforesaid; but said commission, in the exercise of such power or authority, shall make no contract, nor incur any obligation other than such contracts and obligations as may be necessary to the faithful administration of the valid laws enacted for the government of said District, to the execution of existing legal obligations and contracts, and to the protection or preservation of improvements existing, or commenced and not completed, at the time of the passage of this act. All taxes heretofore lawfully assessed and due or to become due shall be collected pursuant to law, except as herein otherwise provided; but said commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes, or evidence thereof: *Provided,* That nothing in this clause contained shall affect any provisions of law authorizing or requiring a deposit of certificates of assessment with the sinking-fund commissioners of said District; and said commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office authorized by law; and the compensation of all officers and employees, except teachers in the public schools, and officers and employees in the fire department, shall be reduced twenty per centum per annum. Said commissioners shall each, before entering upon the discharge of his duties, take an oath to support the Constitution of the United States and to faithfully discharge the duties imposed upon him by law; and shall each give bond in the penal sum of fifty thousand dollars, to be approved by the Secretary of the Treasury, for the faithful discharge of the duties of his office; and shall each receive for his services a compensation at the rate of five thousand dollars per annum: *Provided,* That nothing in this act shall be construed to abate or in any wise interfere with any suit pending in favor of or against the District of Columbia: *And provided further,* That in suits hereafter commenced against the District of Columbia, process may be served on any one of said commissioners, until otherwise provided by law.

SEC. 3. That the President of the United States shall detail an officer of the Engineer Corps of the Army of the United States, who shall, subject to the general supervision and direction of the said board of commissioners, have the control and charge of the work of repair and improvement of all streets, avenues, alleys, sewers, roads, and bridges of the District of Columbia; and he is hereby vested with all the power and authority of, and shall perform the duties heretofore devolved upon, the chief engineer of the board of public works. He shall take possession of, and preserve and keep, all the instruments pertaining to said office, and all the maps, charts, surveys, books, records, and papers relating to said District, or to any of the avenues, streets, alleys, public spaces, squares, lots and buildings thereon, sewers, or any of them. as are now in or belonging to the office of said engineer of the board of public works, and shall, in books provided for that purpose, keep and preserve the records now required to be kept, and such as may be required by regulations of said board. He may, with the advice and consent of said board of commissioners, appoint not more than two assistant engineers from civil life, who shall each receive a salary of one thousand eight hundred dollars per annum, and shall be subject to his direction and control. He shall receive no additional compensation for such services. And he shall not be deemed by reason of anything in this act contained to hold a civil office under the laws of the United States. And no salary or compensation shall be paid to the surveyor of the District, or any of his subordinates, except such fees for special services as are allowed by law. And the offices of assistant surveyor and additional assistant surveyor of the District of Columbia are hereby abolished.

SEC. 4. That for the support of the government of the District of Columbia, and maintaining the credit thereof, for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, there shall be levied upon all real estate in said District, except that belonging to the United States and to the District of Columbia, and that used for educational and charitable purposes, the following taxes, namely: Upon all such real estate in the city of Washington, three dollars on each one hundred dollars of the present assessed value thereof; upon all such real estate in the city of Georgetown, two dollars and fifty cents on each one hundred dollars of the present assessed value thereof; and upon all such real estate in the District of Columbia outside of the cities of Washington and Georgetown, two dollars on each one hundred dollars of the present assessed value thereof: which said taxes shall become due and payable on the first day of November, eighteen hundred and seventy-four, and, if not paid, shall be in arrears and delinquent from that date; and shall, except as herein modified, be assessed and collected

as now provided by law for the assessment and collection of general taxes for the District of Columbia; and of the sums so collected, one fourth thereof shall be applied, first, to re-imburse the United States for its advances on account of interest, which shall have been paid by the United States on the funded debt of the District of Columbia and Washington and Georgetown, due and payable July first, eighteen hundred and seventy-four; and the remainder shall be used to pay deficiencies in the various funds for the fiscal year ending June thirtieth, eighteen hundred and seventy-four. And all the remainder of said taxes not required for the aforesaid purposes shall be distributed for the purposes and in the proportions provided by the act of the legislative assembly of the District of Columbia, approved June twenty-sixth, eighteen hundred and seventy-three, entitled "An act imposing taxes for the fiscal year ending June thirtieth, eighteen hundred and seventy-four," so far as said apportionment is not inconsistent with this act: *Provided,* That no evidence of debt issued by the District of Columbia, or any branch thereof, or by the board of public works, shall in any manner be received in payment for said taxes: *And provided further,* That no payment shall be made on account of the militia of said District, or for the purpose of erecting a District jail. Upon all payments of said taxes hereby imposed which shall be made in advance of the said first day of November, eighteen hundred and seventy-four, there shall be an abatement allowed of one per centum per month for each and every month so paid in advance; and that upon all said taxes which shall be delinquent and unpaid on said first day of November, there shall be added a penalty of one per centum to the amount thereof, to be collected with such taxes; and a like penalty of one per centum upon the amount thereof shall be added on the first day of each succeeding month to all of said taxes as are then delinquent and unpaid, to be collected as aforesaid. It shall be the duty of the collector of taxes to prepare a complete list of all taxes and property upon which the same are assessed in arrears on the first day of March next, and shall, within ten days thereafter, publish the same, with the notice of sale, in a newspaper published in said District, to be designated by said board of commissioners, for the time and in the manner required by the provisions of the act of the legislative assembly entitled "An act prescribing the duties of certain officers for the District of Columbia, and fixing their compensation," approved August twenty-third, eighteen hundred and seventy-one. And all the provisions of said act as to the sale of property and the collection of taxes in arrears are hereby made applicable to the taxes hereby imposed and in arrears as aforesaid, except that the deed conveying the property so sold shall be executed by the said board of commissioners instead of the governor and the secretary.

SEC. 5. That a joint select committee shall be appointed, consisting of two Senators, to be appointed by the presiding officer of the Senate, and two members of the House, to be appointed by the Speaker of the House of Representatives, whose duty it shall be to prepare a suitable frame of government for the District of Columbia and appropriate draughts of statutes to be enacted by Congress for carrying the same into effect, and report the same to the two Houses, respectively, on the first day of the next session thereof; and they shall also prepare and submit to Congress a statement of the proper proportion of the expenses of said government, or any branch thereof, including interest on the funded debt, which should be borne by said District and the United States, respectively, together with the reasons upon which their conclusions may be based; and in the discharge of the duty hereby imposed, said committee is authorized to employ such assistance as it may deem advisable, at an expense not to exceed the sum of five thousand dollars; and said sum, or so much thereof as may be necessary, be, and the same is hereby, appropriated for that purpose.

SEC. 6. That it shall be the duty of the First Comptroller of the Treasury and the Second Comptroller of the Treasury of the United States, who are hereby constituted a board of audit, to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and of the board of public works, hereinafter specified, namely: first, the debt evidenced by sewer certificates; secondly, the debt purporting to be evidenced and ascertained by certificates of the auditor of the board of public works; thirdly, the debt evidenced by the certificates of the auditor and the comptroller of the District of Columbia; fourthly, claims existing or hereafter created for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by the board of public works; fifthly, claims, for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by or on behalf of the District of Columbia; sixthly, all claims for private property taken by the board of public works from the avenues, streets, and alleys of the cities of Washington and Georgetown; and, seventhly, all unadjusted claims for damages that may have been presented to the board of public works, pursuant to an act of the legislative assembly of the District of Columbia, entitled "An act providing for the payment of damages sustained by reason of public improvements or repairs," approved June twentieth, eighteen hundred and seventy-two, which last-named claims shall severally be examined and audited without regard to any examination heretofore made; and shall make a detailed and tabular statement of all claims presented, the persons or corporations owning the same, and the amount found to be due on account of each; together with a tabular statement of the funded debt of the District of Columbia and of the cities of Washington and Georgetown of every kind and character whatsoever, giving the date of issue, time of maturity, and the rate of interest. And it shall further be the duty of said board to ascertain the amount of sewer-tax or assessment paid by any person, persons, or corporation, under the act of the legislative assembly of said District, entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown, in the District of Columbia, and providing for the payment of the construction of sewers and drains therein by assessments, and issuing certificates therefor," approved the twenty-sixth day of June, eighteen hundred and seventy-three, and to prepare a tabulated statement thereof. Said board of audit shall also issue to each claimant a certificate, signed by each of said board and countersigned by the comptroller of said District, stating the amount found to be due to each and on what account; and a register thereof shall be kept by said board, to be transmitted to Congress, and also by the comptroller of said District; and said board of audit shall also ascertain and report to Congress, at the next session thereof, the amount equitably chargeable to the street-railroad companies on account of paving along and within the tracks of said companies, pursuant to the charters of said companies or the acts of Congress relating thereto, together with their reasons therefor. It shall further be the duty of said board of audit to examine into and audit all of the accounts of the auditor and of the treasurer of the board of public works, and of the auditor, the treasurer, the collector, and the comptroller of the District of Columbia, from the date of the organization of said board and of the present government of said District; and for the purposes hereinbefore specified shall have the power to subpœna witnesses, administer oaths, and examine witnesses under oath, and shall have full access to all of the records, books, papers, and vouchers of every kind whatsoever of the board of public works and of the District of Columbia; and to the end that said books and accounts may be thoroughly examined, and the indebtedness of said District, and of the board of public works, and the state of the books and accounts of each of the officers aforesaid, may be accurately ascertained, shall employ one or more skillful and impartial accountants non-resident of the District of Columbia, and such other assistants as they may deem necessary, to make examination of said books, vouchers, and papers, and discharge their other duties under this act, and shall procure inspection of such bank books and papers as may be necessary; and they are hereby authorized to allow for the services of such accountant or accountants and assistants such sums as they may deem proper which shall be paid by the Board of Commissioners out of the revenues of said District. And said accountant or accountants shall take an oath to faithfully discharge the duties imposed by this act. Said board of audit shall

give notice for the presentation of the claims hereinbefore specified in such manner as may be deemed necessary; and no claim shall be audited or allowed unless presented within ninety days after the first publication of such notice, and said board shall make full report of all their acts and proceedings to the President, to be by him transmitted to Congress on the first day of the next session thereof. Each of the said officers constituting said board shall be paid the sum of two thousand dollars for his services under this act, out of the funds of said District, in addition to his present compensation.

SEC. 7. That the sinking-fund commissioners of said District are hereby continued; and it shall be the duty of said sinking fund commissioners to cause bonds of the District of Columbia to be prepared, in sums of fifty and five hundred dollars, bearing date August first, eighteen hundred and seventy-four, payable fifty years after date, bearing interest at the rate of three and sixty-five hundredths per centum per annum, payable semiannually, to be signed by the secretary and the treasurer of said sinking-fund commissioners and countersigned by the comptroller of said District, and sealed as the board may direct; which bonds shall be exempt from taxation by Federal, State, or municipal authority, engraved and printed at the expense of the District of Columbia, and in form not inconsistent herewith. And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations as contemplated in this act, and by causing to be levied upon the property within said District such taxes as will provide the revenues necessary to pay the interest on said bonds as the same may become due and payable, and create a sinking-fund for the payment of the principal thereof at maturity. Said bonds shall be numbered consecutively, and registered in the office of the comptroller of said District, and shall also be registered in the office of the Register of the Treasury of the United States, for which last named registration the Secretary of the Treasury shall make such provision as may be necessary. And said commissioners shall use all necessary means for the prevention of any unauthorized or fraudulent issue of any such bonds. And the said sinking-fund commissioners are hereby authorized to exchange said bonds at par for like sums of any class of indebtedness in the preceding section of this act named, including sewer taxes or assessments paid, evidenced by certificates of the auditing board provided for in this act.

SEC. 8. That the authority conferred on the board of public works to issue additional certificates of indebtedness by section four of the act of the legislative assembly approved on the twenty-ninth day of May, eighteen hundred and seventy-three, is hereby annulled. No property shall be advertised for sale or sold for the collection of any assessment authorized by the legislative assembly by the act entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown, in the District of Columbia, and providing for the payment of the construction of sewers and drains therein by assessments and issuing certificates therefor" approved on the twenty-sixth day of June, eighteen hundred and seventy-three, until otherwise ordered by Congress; and it shall be unlawful to issue any further certificates of indebtedness authorized by said act.

SEC. 9. That no board or commission of which the governor is ex officio a member (the board of public works excepted) shall be abolished by this act, but the members of the same, other than the governor, shall constitute such board or commission.

SEC. 10. That the act of the legislative assembly of the District of Columbia entitled "An act to fund unsettled liabilities of the city of Washington, and providing for the issuing of the bonds, and levying and collecting taxes to pay the same" approved June twentieth, eighteen hundred and seventy-two, is hereby ratified and approved; but none of the bonds authorized by said act remaining unsold shall be negotiated or sold at less than par.

Approved, June 20, 1874 (18 Stat. 116, ch. 337).

PRESENT ORGANIC ACT OF THE DISTRICT OF COLUMBIA

AN ACT Providing a permanent form of government for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the territory which was ceded by the State of Maryland to the Congress of the United States for the permanent seat of the government of the United States shall continue to be designated as the District of Columbia. Said District and the property and persons that may be therein shall be subject to the following provisions for the government of the same, and also to any existing laws applicable thereto not hereby repealed or inconsistent with the provisions of this act. The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes relating to said District, and the Commissioners herein provided for shall be deemed and taken as officers of such corporation; and all laws now in force relating to the District of Columbia not inconsistent with the provisions of this act shall remain in full force and effect.

SEC. 2. That within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life, shall each receive for his services a compensation at the rate of five thousand dollars per annum, and shall, before entering upon the duties of the office, each give bond in the sum of fifty thousand dollars, with surety as is required by existing law. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

SEC. 3. That as soon as the Commissioners appointed and detailed as aforesaid shall have taken and subscribed the oath or affirmation hereinbefore required, all the powers, rights, duties, and privileges lawfully exercised by, and all property, estate, and effects now vested by law in the Commissioners appointed under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, shall be transferred to and vested in and imposed upon said Commissioners; and the functions of the Commissioners so appointed under the act

of June twentieth, eighteen hundred and seventy-four, shall cease and determine. And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid; but said Commissioners, in the exercise of such duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. Any person violating any orders lawfully made in pursuance of this power shall be subject to a fine of not less than ten nor more than one hundred dollars, to be recovered before any justice of the peace in an action in the name of the Commissioners. All taxes heretofore lawfully assessed and due, or to become due, shall be collected pursuant to law, except as herein otherwise provided; but said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof, but they may borrow, for the first fiscal year after this act takes effect, in anticipation of collection of revenues, not to exceed two hundred thousand dollars, at a rate of interest not exceeding five per centum per annum, which shall be repaid out of the revenues of that year. And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law; said Commissioners shall have power to erect light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary: *Provided,* That nothing in this act contained shall be construed to abate in any wise or interfere with any suit pending in favor of or against the District of Columbia or the Commissioners thereof, or affect any right, penalty, forfeiture, or cause of action existing in favor of said District or Commissioners, or any citizen of the District of Columbia, or any other person, but the same may be commenced, proceeded for, or prosecuted to final judgment, and the corporation shall be bound thereby as if the suit had been originally commenced for or against said corporation. The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided,* That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. The Secretary of the Treasury shall carefully consider all estimates submitted to him as above provided, and shall approve, disapprove, or suggest such changes in the same, or any item thereof, as he may think the public interest demands; and after he shall have considered and passed upon such estimates submitted to him, he shall cause to be made a statement of the amount approved by him and the fund or purpose to which each item belongs, which statement shall be certified by him, and delivered, together with the estimates as originally submitted, to the Commissioners of the District of Columbia, who shall transmit the same to Congress. To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia; and all proceedings in the assessing, equalizing, and levying of said taxes, the collection thereof, the listing return and penalty for taxes in arrears, the advertising for sale and the sale of property for delinquent taxes, the redemption thereof, the proceedings to enforce the lien upon unredeemed property, and every other act and thing now required to be done in the premises, shall be done and performed at the times and in the manner now provided by law, except in so far as is otherwise provided by this act: *Provided,* That the rate of taxation in any one year shall not exceed one dollar and fifty cents on every one hundred dollars of real estate not exempted by law; and on personal property not taxable elsewhere, one dollar and fifty cents on every one hundred dollars, according to the cash valuation thereof: *And provided further,* Upon real property held and used exclusively for agricultural purposes, without the limits of the cities of Washington and Georgetown, and to be so designated by the assessors in their annual returns, the rate for any one year shall not exceed one dollar on every one hundred dollars. The collector of taxes, upon the receipt of the duplicate of assessment, shall give notice for one week, in one newspaper published in the city of Washington, that he is ready to receive taxes; and any person who shall, within thirty days after such notice given, pay the taxes assessed against him, shall be allowed by the collector a deduction of five per centum on the amount of his tax; all penalties imposed by the act approved March third, eighteen hundred and seventy-seven, chapter one hundred and seventeen, upon delinquents for default in the payment of taxes levied under said act, at the times specified therein, shall, upon payment of the said taxes assessed against such delinquents within three months from the passage of this act, with interest at the rate of six per centum thereon, be remitted.

SEC. 4. That the said Commissioners may, by general regulations consistent with the act of Congress of March third, eighteen hundred and seventy-seven, entitled "An act for the support of the government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes," or with other existing laws, prescribe the time or times for the payment of all taxes and the duties of assessors and collectors in relation thereto. All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations to be made by Congress as aforesaid shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the auditor of the District of Columbia, certified by said Commissioners, or a majority of them; and the accounts of said Commissioners, and the tax-collectors, and all other officers required to account, shall be settled and adjusted by the accounting officers of the Treasury Department of the United States. Hereafter the Secretary of the Treasury shall pay the interest on the three-sixty-five bonds of the District of Columbia issued in pursuance of the act of Congress approved June twentieth, eighteen hundred and seventy-four, when the same shall become due and payable; and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expenses of the District of Columbia, as hereinbefore provided.

SEC. 5. That hereafter when any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of one thousand dollars, notice shall be given in one newspaper in Washington and if the total cost shall exceed five thousand dollars, then in one newspaper in each of the cities of New York, Phila-

delphia, and Baltimore also for one week, for proposals, with full specifications as to materials for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the Commissioners shall determine upon shall in all cases be accepted: *Provided, however,* That the Commissioners shall have the right, in their discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. All contracts for the construction, improvement, alteration, or repairs of the streets, avenues, highways, alleys, gutters, sewers, and all work of like nature shall be made and entered into only by and with the official unanimous consent of the Commissioners of the District, and all contracts shall be copied in a book kept for that purpose and be signed by the said Commissioners, and no contract involving an expenditure of more than one hundred dollars shall be valid until recorded and signed as aforesaid. No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the United States, in a penal sum not less than the amount of the contract, with sureties to be approved by the Commissioners of the District of Columbia, shall be required from all contractors, guaranteeing that the terms of their contracts shall be strictly and faithfully performed to the satisfaction of and acceptance by said Commissioners; and that the contractors shall keep new pavements or other new works in repair for a term of five years from the date of the completion of their contracts; and ten per centum of the cost of all new works shall be retained as an additional security and a guarantee fund to keep the same in repair for said term, which said per centum shall be invested in registered bonds of the United States or of the District of Columbia and the interest thereon paid to said contractors. The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: When any street or avenue through which a street-railway runs shall be paved, such railway company shall bear all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads, and for a distance of two feet from and exterior to such track or tracks on each side thereof, and of keeping the same in repair; but the said railway companies, having conformed to the grades established by the Commissioners, may use such cobblestone or Belgian blocks for paving their tracks, or the space between their tracks, as the Commissioners may direct; the United States shall pay one half of the cost of all work done under the provisions of this section, except that done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times as they may deem safe and proper in view of the progress of the work: That if any street railway company shall neglect or refuse to perform the work required by this act, said pavement shall be laid between the tracks and exterior thereto of such railway by the District of Columbia; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District in such case of the neglect or refusal of such railway company to perform the work required as aforesaid, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. It shall be the duty of the Commissioners of the District of Columbia to see that all water and gas mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down; and the Washington Gas Light Company, under the direction of said Commissioners, shall at its own expense take up, lay, and replace all gas mains on any street or avenue to be paved, at such time and place as said Commissioners shall direct. The President of the United States may detail from the Engineer Corps of the Army not more than two officers, of rank subordinate to that of the engineer officer belonging to the Board of Commissioners of said District to act as assistants to said Engineer Commissioner, in the discharge of the special duties imposed upon him by the provisions of this act.

SEC. 6. That from and after the first day of July, eighteen hundred and seventy-eight, the board of metropolitan police and the board of school trustees shall be abolished; and all the powers and duties now exercised by them shall be transferred to the said Commissioners of the District of Columbia, who shall have authority to employ such officers and agents and to adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act. And the Commissioners of the District of Columbia shall from time to time appoint nineteen persons, actual residents of said District of Columbia, to constitute the trustees of public schools of said District, who shall serve without compensation and for such terms as said Commissioners shall fix. Said trustees shall have the powers and perform the duties in relation to the care and management of the public schools which are now authorized by law.

SEC. 7. That the offices of sinking-fund commissioners are hereby abolished; and all duties and powers possessed by said commissioners are transferred to, and shall be exercised by, the Treasurer of the United States, who shall perform the same in accordance with the provisions of existing laws.

SEC. 8. That in lieu of the board of health now authorized by law, the Commissioners of the District of Columbia shall appoint a physician as health-officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health officer, be abolished.

SEC. 9. That there may be appointed by the Commissioners of the District of Columbia, on the recommendation of the health-officer, a reasonable number of sanitary inspectors for said District, not exceeding six, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said Commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each; and said inspectors shall be respectively required to make, at least once in two weeks, a report to said health-officer, in writing, of their inspections, which shall be preserved on file; and said health-officer shall report in writing annually to said Commissioners of the District of Columbia, and so much oftener as they shall require.

SEC. 10. That the Commissioners may appoint, on the like recommendation of the health-officer, a reasonable number of clerks, but no greater number shall be appointed, and no more persons shall be employed under said health-officer, than the public interests demand and the appropriation shall justify.

SEC. 11. That the salary of the health-officer shall be three thousand dollars per annum; and the salary of the sanitary inspectors shall not exceed the sum of one

thousand two hundred dollars per annum each; and the salary of the clerks and other assistants of the health-officer shall not exceed in the aggregate the amount of seven thousand dollars, to be apportioned as the Commissioners of the District of Columbia may deem best.

SEC. 12. That it shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amendments to existing laws as in their opinion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia; and said Commissioners shall annually report their official doings in detail to Congress on or before the first Monday of December.

SEC. 13. That there shall be no increase of the present amount of the total indebtedness of the District of Columbia; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, except to the amount of the two hundred thousand dollars, as authorized by this act, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding ten years, and by fine not exceeding ten thousand dollars.

SEC. 14. [Repealed. Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (d).]

SEC. 15. That all laws inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, June 11, 1878 (20 Stat. 102, ch. 180).

RETROCESSION OF BATTERY COVE

AN ACT Providing for the cession to the State of Virginia of sovereignty over a tract of land located at Battery Cove, near Alexandria, Virginia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the District of Columbia situated on the Virginia side of the Potomac River at Alexandria, Virginia, lying and being between a line drawn from Jones Point, at low-water mark, to Point Lumley, now Pioneer Mills, at low-water mark, and high-water mark on the Virginia shore of the Potomac River at Alexandria, containing an area of forty-six and fifty-seven one-hundredths acres of made land, more or less, be, and the same is hereby, ceded to and declared to be within the territorial boundaries, jurisdiction, and sovereignty of the state of Virginia: *Provided, however,* That this Act shall not be construed to waive or relinquish the title of the United States to the fee of the forty-six and fifty-seven one-hundredths acres of made land in Battery Cove nor as relinquishing or in any manner affecting the power of Congress to exercise exclusive legislation over the said area so long as the same remains in the ownership and possession of the United States: *And provided further,* That this Act shall not be construed to affect, impair, surrender, waive, or defeat any claim, right, or remedy, either at law or in equity, of the United States against the Virginia Shipbuilding Corporation for or on account of any debt or obligation of said company to the United States or that hereafter may be ascertained to be due by said company to the United States, by any court of competent jurisdiction of the parties and of the subject matter in any suit now pending or that may hereafter be instituted by the United States against the Virginia Shipbuilding Corporation.

Approved, February 23, 1927 (44 Stat. 1176, ch. 171).

ACTS RELATING TO THE CORPORATION OF GEORGETOWN

ORIGINAL MARYLAND ACT AUTHORIZING ERECTION OF GEORGETOWN

AN ACT For laying out and erecting a town on Potomac River, above the mouth of Rock Creek, in Frederick County

[Passed June 8, 1751]

Whereas several inhabitants of Frederick County, by their humble petition to this General Assembly, have set forth, that there is a convenient place for a town on Potomac River, above the mouth of Rock Creek, adjacent to the inspection-house in the County aforesaid, and prayed, that sixty acres of land may be there laid out and erected into a town:

2. *Be it therefore enacted, by the right honorable the lord proprietary, by and with the advice and consent of his lordship's governor, and the Upper and Lower Houses of Assembly, and the authority of the same,* That Captain Henry Wright Crabb, Master John Needham, Master John Clagett, Master James Perrie, Master Samuel Magruder the Third, Master Josias Bealle, and Master David Lynn, shall be, and are hereby, appointed commissioners for Frederick County aforesaid, and are hereby authorized and empowered, as well to buy and purchase sixty acres, part of the tracts of land belonging to Messrs. George Gordon and George Bell, at the place aforesaid, where it shall appear to them, or the major part of them, to be most convenient as to survey and lay out, or cause the same to be surveyed and laid out, in the best and most convenient manner, into eighty lots, to be erected into a town.

3. *And be it further enacted, by the authority, advice, and consent aforesaid,* That the commissioners aforesaid before nominated and appointed, or the major part of them, are hereby empowered and required, at some time by them, or the major part of them, to be appointed, before the first day of October next, to meet together on the land aforesaid, or at some other place near and convenient thereto, and then and there treat and agree (if the same can be done on reasonable terms,) with the owner or owners, and person or persons interested in the same sixty acres of land, for the purchase thereof; and if it shall happen that the said owner or owners, person or persons, will not agree with the said commissioners for such rate or price as they the said commissioners, or the major part of them, shall think reasonable, or shall refuse to make sale of the same, or that through non-age, coverture, or any other disability or impediment, shall be disabled to make such sale, that then and in any such case the commissioners aforesaid, or the major part of them, shall and are hereby empowered and required, to issue a warrant, under their hands and seals, directed to the sheriff or coroner of Frederick County aforesaid for the time being, commanding him to summon and impanel a jury of seventeen good and lawful men, freeholders of his bailiwick, to be and appear at the day and place in such warrant to be mentioned, which sheriff is hereby required and obliged to execute the same; and that jury, being by the said commissioners charged and sworn, shall, upon their oath, inquire, assess, and return, what damages or recompence they shall think fit to be paid and given to such owner or owners, person or persons, for the sixty acres of land aforesaid, and that whatever sum or sums of money such jury shall so assess and award, shall and is hereby declared to be the value and price to be paid to such owner or owners, person or persons, interested in the sixty acres of land aforesaid; but if the said jury shall assess and value the said land at a less price than fifty shillings current money for each acre, then in such case the purchaser or purchasers of such land shall pay such further sum, over and above what shall be the valuation of the said jury, as shall make up the full sum of fifty shillings like money as aforesaid for every acre, to be paid to such proprietor or proprietors as aforesaid.

4. *And be it further enacted, by the authority, advice, and consent aforesaid,* That after the agreement and purchase of the commissioners aforesaid, or after the assessment and return of the jury aforesaid, as the case shall happen, the aforesaid commissioners, or the major part of them, shall and are hereby required to cause the same sixty acres of land to be carefully surveyed, divided and laid out, by the surveyor of the county aforesaid, or such other person as they, or the major part of them, shall make choice of and appoint for that purpose, as near as conveniently may be, into eighty equal lots, allowing such sufficient space or quantity thereof for streets, lanes, and alleys, as to them seem meet, and the same lots, so laid out, shall number with numbers, one, two, and three, and so to eighty, for distinguishing each lot from the other; and shall cause the streets, lanes, and alleys, to be named and distinguished by certain names, and by good sufficient cedar or locust posts, to be set up as a boundary to each of them.

5. *And be it further enacted, by the authority, advice, and consent aforesaid,* That the commissioners, or the major part of them, shall and are hereby required to assess, set, and ascertain the price to be paid for each of the lots aforesaid, according to the value, conveniency, and situation thereof, so always that the prices of all the said lots, added together, may amount to the sum by them agreed for, or awarded by the jury, for the aforesaid sixty acres of land, and no more; and the aforesaid sixty acres of land being so surveyed, laid out and divided, shall be and is hereby, erected into a town and shall be called by the name of Georgetown.

6. *And be it further enacted,* That the owner or owners of the aforesaid land shall and may have his, her, or their choice of any of the two lots aforesaid, to be by him, her, or them, retained for his, her, or their proper use, provided such choice shall be made and declared to the commissioners aforesaid, or the major part of them, within ten days after the survey aforesaid shall be made and completed, and not otherwise; and that after such choice is made, or in case no such choice shall be made within the ten days aforesaid, then after the expiration of the same ten days, all persons whatsoever shall be at liberty to take up and purchase the same lots, paying the owner or owners aforesaid, or others therein interested, the price or value thereof, so as aforesaid set and assessed by the commissioners aforesaid; and that every person who shall pay as aforesaid the price of the lot by him or her so taken up or chosen, or shall prove to the satisfaction of the said commissioners, or the major part of them, that he or she had tendered or offered to pay the said price to the owner or owners aforesaid, and that such owner had refused to accept or receive the same, and an entry of such payment or tender and refusal being made according to the directions hereafter mentioned, such person shall and is hereby declared to be, by virtue of such payment or tender and refusal, and entry thereof made as aforesaid, and this act, fully and absolutely invested and seized of and in an estate of inheritance in fee simple of and in such lot, to him or her, and his and her heirs and assigns forever, without any deed, conveyance, or other transfer, from such owner or owners for the same, any statute, law, usage, or custom, to the contrary notwithstanding.

7. *Provided always,* That it shall not be lawful for any person to take up, enjoy, have, or possess, more than one of the same lots, within twelve months after the same are divided and laid out as aforesaid; *provided, also,* that all and every person and persons aforesaid so taking up the lots aforesaid, or any of them, shall and are hereby obliged and required, within two years after they shall take up their respective lots as aforesaid and entry thereof made as aforesaid, to erect, build, and finish thereon, one good and substantial house that shall cover four hundred

square feet of ground at the least, and that it be made in every respect tenantable, with one good brick or stone chimney thereto; and that all and every of such taker or takers up, who shall neglect to build as aforesaid on their respective lots aforesaid, within the time herein for that purpose limited and appointed, shall lose such, and the estate of such taker up so neglecting as aforesaid, shall from henceforth cease and determine, and such lot or lots so neglected to be built upon shall be subject to be again taken up by any other person whatsoever, which second taker up, paying to the commissioners aforesaid the price thereof so as aforesaid assessed, and entry thereof made as aforesaid, and building thereon as before directed within the time before limited after such second taking up, shall have the like estate in such lot or lots as the first takers up who shall comply with the requisites before mentioned are herein before declared to have, and so, TOTIES QUOTIES, until the same lots shall be built on and improved as aforesaid.

8. *And be it further enacted,* That the money aforesaid directed to be paid to the commissioners aforesaid, for the lots not built on and improved by the first takers up within the time herein limited, shall and is hereby directed to be applied to such purposes, for the use and benefit of the said town, as to the said commissioners, or the major part of them, shall seem meet.

9. *And be it further enacted, by the authority aforesaid,* That the surveyor of the county aforesaid, or any other person whom the commissioners aforesaid, or the major part of them, shall appoint to survey and lay out the lands aforesaid, as before herein directed, shall make out a fair and exact plot of the town aforesaid, and survey thereof, whereby each lot, street, lane, and alley, may appear to be well distinguished by their respective numbers and names, and the same plot, with a full and plain certificate thereof, shall deliver to the commissioners as aforesaid, or the major part of them, to be entered and reposited as hereafter directed; and that the said surveyor, or other person appointed as aforesaid, shall have and receive for surveying and laying out the town aforesaid, and making the plot aforesaid, the sum of one thousand pounds of tobacco, to be paid and allowed in the county levy, and no more.

10. *And be it further enacted, by the authority aforesaid,* That the commissioners aforesaid, or the major part of them, shall and are hereby required to employ some sufficient person for their clerk, and shall administer an oath to such clerk for the due performance of his office, which clerk shall and is hereby obliged to find and provide a good well bound book, for registering and entering the proceeds of the said commissioners in the premises, and shall duly and faithfully register and enter in such book the certificate of the survey aforesaid, the prices of each respective lot, the name of the owner, and the time of its being taken up and paid for, or of the tender or refusal as aforesaid, and all other the transactions and proceedings of the aforesaid commissioners whatsoever, in and about the town aforesaid; which said register, together with the plot or survey of the same town, shall be carefully examined and inspected by the aforesaid commissioners, or the major part of them, and after the same is completed, shall be lodged with, and delivered to, the clerk of the same county, to be by him kept amongst the records of the same county.

11. *And be it further enacted,* That the said commissioners, or the major part of them, shall limit and ascertain what fees their clerk aforesaid shall have and receive for the several services by him to be done by virtue of this act, to be paid by the several persons taking up the lots aforesaid.

12. And whereas it may be advantageous to the said town to have fairs kept therein, and may prove an encouragement to the back inhabitants, and others, to bring commodities there to sell and vend, *Be it enacted,* That it shall and may be lawful for the commissioners of the said town to appoint two fairs to be held therein annually, the one fair to begin on the second Thursday in April, and the other on the first Thursday in October, annually; which said fairs shall be held each for the space of three days, and that during the continuance of such fair or fairs, all persons within the bounds of the said town shall be privileged and free from arrests, except for felony or breach of the peace, and all persons coming to such fair or fairs, or returning therefrom, shall have the like privilege of one day before the fair, and one day on their return therefrom; and the commissioners for the said town are hereby empowered to make such rules and orders for the holding the said fairs, as may tend to prevent all disorders and inconveniences that may happen in the said town, and such as may tend to the improvement and regulating of the said town in general, so as such rules, except in fair-time, affect none but livers in the said town, or such person or persons as shall have a lot or free-hold therein, any law, statute, usage, or custom, to the contrary notwithstanding; provided, always, that such rules and orders be not inconsistent with the laws of this province, nor the statutes or customs of Great Britain.

13. *And be it further enacted,* That the commissioners for the said town, or the major part of them, from time to time, and at all times, shall have power to remove all nuisances that they shall find in any of the streets or alleys of said town; provided nevertheless, that this act nor any thing herein contained, shall extend, or be construed to extend, to enable or capacitate the said commissioners or inhabitants of the said town to elect or choose delegates or burgesses to sit in the general assembly of this province as representatives of the said town; *But it is hereby enacted,* That the commissioners or the inhabitants of the said town shall not elect or choose any delegate or delegates, burgess or burgesses, to represent the said town in any general assembly of this province.

14. *And be it further enacted,* That when and as often as any of the commissioners aforesaid shall die, or remove from the county aforesaid, or refuse or neglect to join in the execution of this act, then, and in any such case, the major part of the other commissioners aforesaid shall choose others in the place of such who shall die, refuse, remove, or neglect as aforesaid, and such person or persons so chosen, shall have equal power to act as the other commissioners herein mentioned.

15. *And be it further enacted, by the authority aforesaid,* That all and every person and persons taking up and possessing the lots aforesaid, or any of them, shall be, and are hereby, obliged to pay unto the right honorable the lord proprietary, his heirs or successors, the yearly rent of one penny sterling money for each respective lot by them so taken up and possessed, to be paid in the same manner as his land rents in this province now are, or hereafter shall be paid.

16. Saving unto his most sacred majesty, his heirs and successors, the right honorable the lord proprietary, his heirs and successors, and to all bodies politic and corporate, and all persons not mentioned in this act, their several and respective rights, any thing in this act to the contrary notwithstanding. (Md. act, 1751, ch. 25.)

ACT OF 1783 AUTHORIZING ADDITION TO GEORGETOWN

AN ACT For an addition to Georgetown, in Montgomery County

[Passed December 26, 1783]

Whereas Thomas Beall, son of George, of Montgomery county, by his humble petition to this general assembly hath set forth, that he is seized and possessed of part of a tract of land, called and known by the name of the Rock of Dumbarton, adjoining Georgetown, containing sixty-one acres, which he is desirous of annexing to said town, and therefore prayed that a law might pass for that purpose; and it appearing to this general assembly, that to extend and enlarge the limits of said town will greatly contribute to promote the trade and commerce thereof:

2. *Be it enacted by the General Assembly of Maryland,* That Messieurs John Murdock, Richard Thompson, William Deakins, Thomas Richardson, and Charles Beatty, the commissioners of Georgetown, or the major part of them, be authorized and required, at any time before the first day

of August next, to cause the aforesaid parcel of land, or such part thereof as they may think necessary, to be surveyed and laid out into lots, streets, lanes, and alleys, at the proper cost and expense of the said Thomas Beall, in such manner as to the said commissioners, or a major part of them, shall appear convenient.

3. *And be it enacted,* That the commissioners aforesaid, or a major part of them, shall, on or before the said first day of August next, cause a correct and accurate survey and plot to be made of the said land, and of all the lots, streets, lanes and alleys, which shall be laid out in virtue of this act; and the said plot shall be recorded amongst the records of the said county, as soon as conveniently may be thereafter, there to remain as evidence of the boundaries, situation, and location of the said lots, and of the streets, lanes, and alleys; which said streets, lanes, and alleys, hereafter to be laid out in pursuance of this act, shall be highways, and be so deemed and taken to all intents and purposes whatsoever; and when the same shall be done, the said land, so surveyed and laid out, shall be, and is hereby declared to be, part of Georgetown, as fully and amply, as if originally included therein, and shall have the same immunities and privileges as the rest of the said town hath, or by former laws ought to have; saving to the state of Maryland, and all bodies politic and corporate, and all persons not mentioned in this act, their several and respective rights. (Md. act, 1783, ch. 27.)

(NOTE.—Montgomery County was created by resolution of the Maryland convention on September 6, 1776.)

ACT OF 1785 AUTHORIZING ADDITION TO GEORGETOWN

AN ACT For an addition to Georgetown, in Montgomery County

[Passed January 22, 1785]

Whereas Robert Peters, William Deakins, junior, Charles Beatty, and John Threlkeld, of Georgetown, by their humble petition to this general assembly have set forth, that they have agreed to lay out, as an addition to Georgetown, twenty acres and eighteen thirty seconds of an acre of ground, being part of the following tracts of land, to wit: one acre and twenty-six thirty seconds of an acre, part of a tract of land called Frogland, the property of the aforesaid Charles Beatty, two acres and one thirty second of an acre, part of a tract of land called Discovery, the property of the aforesaid Robert Peters, thirteen acres and twenty-nine thirty seconds of an acre, part of a tract of land called Conjurors' Disappointment, the property of the aforesaid William Deakins, junior, and three acres twenty-six thirty seconds of an acre, part of a tract of lands called the Resurvey on Salop, the property of the aforesaid John Threlkeld, into sixty-five lots, and a sufficient number of streets, as appears by the plot of the actual survey thereof, made by the said Francis Deakins on the first day of September, in the year of our Lord one thousand seven hundred and eighty-four; and the said Robert Peters, John Threlkeld, William Deakins, jr. and Charles Beatty, have prayed that an act may pass confirming the same as an addition to Georgetown, and establishing the boundaries thereof as now laid down by the survey and plot aforesaid, and granting to those who shall be proprietors of the lots fronting on the north side of Water-street, the exclusive right to the ground and water on the south side thereof, for the sole purpose of making wharves, without being allowed to erect any buildings thereon, and vesting a power in the commissioners of Georgetown to improve, by wharves for public good, the land and water fronting Frederick, Fayette, and Gay streets; and it appearing to this general assembly, that extending the limits of the said town will greatly contribute to the promotion of the trade and commerce thereof, and be of general utility; therefore,

2. *Be it enacted by the General Assembly of Maryland,* That the said parts of tracts of land herein before mentioned and described, and laid out into sixty-five lots and a sufficient number of streets, as delineated on the plot of the survey thereof, made by Francis Deakins on the first day of September, in the year of our Lord one thousand seven hundred and eighty-four, be, and they are hereby declared to be, part of Georgetown aforesaid, and shall have, possess, be entitled to, and enjoy, to all and every intent and purpose, all the immunities, privileges, and advantages, which do or shall appertain to the said town, as fully and amply, in every respect, as if the same had been originally part thereof and included therein; and the said lots and streets, surveyed and laid out in manner herein before set forth, shall be, and they are hereby, established and confined, according to the delineation and description of the same on the plot of the survey thereof by Francis Deakins, herein before referred to, and in all disputes and controversies which may or shall hereafter happen or arise respecting the location of the said lots and streets, the said plot, the bounds and lines therein referred to being proved, shall be conclusive evidence between the parties at whose instance this act is passed, and all claiming under them.

3. *And be it further enacted,* That the proprietors of the lots fronting on the north side of Water-street, shall have and enjoy the exclusive right to the ground and water on the south side of their respective lots, for the sole purpose of making wharves, but they shall not be allowed to erect any buildings on the wharves so to be made by them.

4. *And be it further enacted,* That it shall and may be lawful for the commissioners of Georgetown, or the major part of them, and they are hereby empowered, to make and erect wharves on the ground and water fronting on Frederick, Fayette, and Gay-streets, for the public good, which said wharves shall be for the use and convenience of all vessels trading to the said town, without paying wharfage or any duty or imposition whatever, for using the same.

5. *And be it further enacted,* That for the safe keeping and preservation of the said plot of the said addition to Georgetown, the same shall be deposited with the commissioners of the said town, who are hereby directed to receive the said plot, and take care thereof. (Md. act, 1784, ch. 45.)

ACT INCORPORATING GEORGETOWN

AN ACT To incorporate George-town, in Montgomery County

Be it enacted, by the General Assembly of Maryland, That George-town, in Montgomery county, shall be and hereby is erected, constituted and made, an incorporate town, consisting of a mayor, recorder, six aldermen, and ten other persons to be common council-men, of the said town, which said mayor, recorder, aldermen and common council-men, shall be a body incorporate and one community for ever, in right and by the name of The Mayor, Recorder, Aldermen and Common Council, of the said town, and shall be able and capable to sue and be sued at law, and to act and execute, do and perform, as a body incorporate, which shall have succession for ever, and to that end to have a common seal, and the same to change and alter at their pleasure; and Robert Peter, Esquire, one of the inhabitants of the said town, shall for the present be and hereby is appointed mayor of the said town for the next year, to commence on the fifth day of January next; and John Mackall Gantt, Esquire, shall be and hereby is appointed recorder of the said town; and Brooke Beall, Bernard Oneale, Thomas Beall, of George, James Maccubbin Lingan, John Threlkeld and John Peter, Esquires, inhabitants of the said town, shall be and hereby are appointed aldermen of the said town so long as they shall well behave themselves therein.

II. *And be it enacted,* That all free men above twenty-one years of age, and having visible property within the state above the value of thirty pounds current money, and having resided in the said town one whole year next before the first day of January next, shall have a right to assemble at such place in the said town as the said mayor, recorder and aldermen, or any three or more of them, shall appoint, and when assembled they shall proceed to elect, *viva voce,* ten persons, residents of the said town one whole year next before the said first day of

January next, above twenty-one years of age, and having visible property within the state above the value of one hundred pounds current money, to be common council of the said town for so long time as they shall well behave themselves, and the said mayor, recorder and aldermen, or any three or more of them, shall be judges of the said election, and the ten persons who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected.

III. And, to perpetuate the succession of the said mayor, recorder, aldermen and common council, in all time to come, *Be it enacted,* That the said mayor, recorder, aldermen and common council, shall assemble at some convenient place in the said town upon the first Monday of January, seventeen hundred and ninety-one, and on the same day for ever thereafter, and shall elect, by the majority of votes of such of them as shall be then present, one other of the aldermen of the said town for the time being, to be mayor of the said town for the ensuing year; and upon the death or removal of the said mayor, or of the recorder or any alderman, of the said town, and within one year after any such event, such of the said persons as shall be alive, or the major part of them, shall assemble at some convenient place in the said town, and elect, by a majority of votes, some other person or persons to be mayor, recorder, alderman or aldermen, of the said town, in the place of such person or persons so deceased or removed respectively, as the case shall require, so as the said mayor, so to be elected, be at the time of such election actually one of the aldermen of the said town, and so as the said recorder, so to be elected, be a person learned in the law, and so as the said alderman and aldermen, so to be elected, be actually, at the time of such election, of the common council of the said town; and in case of the election of any of the common council to be an alderman, the vacancy shall be filled up by an election, at such time, (not less than five days thereafter,) as the said mayor, recorder and aldermen, or any three or more of them, shall appoint, by the residents of the said town qualified as herein before directed and required in the first election of the common council then for the said town.

IV. *And be it enacted,* That the mayor, recorder and aldermen, hereby appointed, or hereafter to be elected, shall be justices of the peace within the said town and the precincts thereof, having first taken the oath appointed by law to be taken by justices of the peace.

V. *And be it enacted,* That the said mayor, recorder and aldermen, hereby appointed, or hereafter to be elected, or any three or more of them, shall have within the said town or the precincts thereof, full power to elect a sheriff, and to appoint constables and other necessary officers, for the said town.

VI. *And be it enacted,* That the said mayor, recorder, aldermen and common council, of the said town, for the time being, shall have full power and authority to make such by-laws for the regulation and good government of the said town and precincts, and the inhabitants thereof, and to restrain all disorders and disturbances, and to prevent all nuisances, inconveniences and annoyances, within the said town and its precincts, and other matters, exigencies and things, within the said town and precincts, as to them, or a major part of them, shall seem meet and consonant to reason, and not contrary to the constitution and laws of this state; and the said by-laws shall be observed, kept and performed, by all the inhabitants of the said town and its precincts, and all persons trading therein, under such reasonable penalties, fines and forfeitures, as shall be imposed by the said by-laws, not exceeding seven pounds ten shillings current money, or twenty dollars; the said penalties, fines or forfeitures, to be levied by distress and sale of the goods, or execution of the person so offending, and applied to the use of the said town.

VII. And, to defray the expences of the said corporation, *Be it enacted,* That it shall be lawful for the said mayor, recorder, aldermen and common council, of the said town, by by-laws made for the purpose, to impose any sum, not exceeding two shillings and six-pence current money in any one year, on every hundred pound of property within the said town.

VIII. *And be it enacted,* That the mayor, recorder and aldermen, of the said town, or any five or more of them, be authorised from time to time, as often as they think it necessary, to cause a correct survey of the said town, and the additions thereto, to be made, and to establish and fix permanent boundaries and stones at such places as they think necessary, with proper marks and devices thereon, to ascertain and perpetuate the true lines of the said town and the additions thereto; and the said mayor, recorder and aldermen, or any five or more of them, be authorized from time to time to survey and ascertain the streets, lanes and alleys, of the said town and the additions thereto, and to declare the same, and to adjudge as nuisances any encroachment thereon; and the said mayor, recorder and aldermen, or any five or more of them, are also authorised and required, on the application and at the expence of the proprietors, or the guardians of infant proprietors, of any lot in the said town or the additions thereto, to survey, alter, amend or lay out anew, any of the streets, lanes and alleys, running through the ground of such proprietors, so as to make the streets, lanes and alleys, throughout every part of the said town and the additions thereto, to correspond and communicate with each other as near as may be; provided that any street, lane or alley, when altered, amended or made anew, shall not run through the ground of any person without his consent.

IX. *And be it enacted,* That the mayor, recorder and aldermen, or any three or more of them, shall hold a court in the said town, to be called The Mayor's Court, and in court they may make proper officers, and settle reasonable fees, not exceeding what are or shall be allowed by law in the county courts of this state.

X. *And be it enacted,* That the mayor, recorder, or any aldermen of the said town, shall have the same jurisdiction as to debts as any justice of the peace of any county of this state now hath, or shall hereafter have by law, and an appeal shall lie in the same manner from their judgment to the mayor's court, as from the decision of any county justice to the county court, and such appeal shall be regulated, prosecuted and determined, by the said mayor's court, in the same mode as is or shall be directed by law in the case of an appeal from the determination of a single justice to the county court.

XI. *And be it enacted,* That the said mayor's court shall have concurrent jurisdiction with the county court of Montgomery county in all criminal cases, except such as affect life or member, if such crimes or offences be committed within the said town, or the precincts thereof, by any inhabitant thereof, or by any person not a citizen of this state; and any fine, penalty or forfeiture, recovered in the said mayor's court, shall be paid and applied in the same manner as if recovered in the county court of the said county, and the mayor, recorder, and any alderman, shall have jurisdiction touching and concerning any such crime, to arrest and bind over to answer therefor in the said mayor's court.

XII. *And be it enacted,* That the said mayor, recorder, aldermen and common council, or the major part of them, shall have power to appoint an inspector or inspectors of flour for the said town, and to fix his or their allowance; provided that the same shall not exceed three-pence current money per barrel.

XIII. *And be it enacted,* That all that part of Montgomery county lying within one quarter of a mile of the limits of the said town, and the additions thereto, and all that space of water of Patowmack river adjoining the said town on all the shores thereof, and used as the harbour, as far unto the said river as the middle thereof, shall be considered as the precincts of the said town, and within the jurisdiction of the mayor, recorder, aldermen and common council of the said town, and subject to their by-laws and regulations, and within the jurisdiction of the mayor, recorder, or any alderman of the said town, as before mentioned and limitted by this act.

XIV. *And be it enacted,* That all property belonging to the commissioners or trustees of George-town shall be and the same is hereby transferred and vested in the mayor, recorder, aldermen, and common council of the said town, and their successors, for ever, for the use and benefit of the said town. (Act of Maryland, December 25, 1789, ch. 23.)

ACT OF 1798 AMENDING CHARTER

A SUPPLEMENT To the act entitled "An act to incorporate Georgetown, in Montgomery County"

[Passed January 20, 1798]

Whereas the citizens of Georgetown have, by their petition to this general assembly, set forth, that they sustain many inconveniences from the want of proper powers in said corporation to pass laws to restrain the mischiefs arising from vagrants, loose and disorderly persons, free negroes, and persons having no visible means of support, and for the want of other powers for the due government of the affairs of the said town; therefore

2. *Be it enacted by the General Assembly of Maryland,* That the mayor, recorder, aldermen, and common council, of Georgetown, be, and they are hereby, authorized and empowered to pass, make, and ordain, all laws necessary to take up, fine, imprison, or punish, any and all vagrants, loose and disorderly persons, and persons having no visible means of support, that may be found within the limits or jurisdiction of said town; provided, that they shall not in any case pass, make, or ordain, any law to fine for any one offence a sum exceeding twenty dollars, or imprisonment not exceeding thirty days.

3. *And be it enacted,* That if any person or persons be committed to jail in virtue of this act, and shall not, at the expiration of the time for which he is committed, pay to the sheriff the amount of his fine and prison fees, or give security for the same, it shall and may be lawful for the sheriff, with the consent of the mayor in writing, to sell such person or persons as a servant for any time not exceeding four months, such time to be expressed in writing by the mayor in giving his consent as aforesaid.

4. *And be it enacted,* That so much of the second section of the act to which this is a supplement, as continues the authorities and powers of the common council during good behaviour, be repealed, and that the said common council shall, forever hereafter, be elected to serve for two years only; and an election for a new common council shall be held, in the manner prescribed by the original act, on the first Monday in February, in the year seventeen hundred and ninety-eight, and on the first Monday of February in every year thereafter.

5. *And be it enacted,* That the recorder, aldermen, and common council, may hereafter elect the mayor of said town from their citizens at large, and shall be under no other restriction, except that they shall be confined to a citizen of Georgetown, and the same person may be re-elected as often as the said aldermen and common council may judge it expedient.

6. *And be it enacted,* That the said mayor, recorder, aldermen, and common council, shall have full power and authority to make such by-laws and ordinances for the graduation and leveling of the streets, lanes, and alleys, within the jurisdiction of the same town, as they may judge necessary for the benefit thereof.

7. *And be it enacted,* That the said mayor, recorder, aldermen, and common council, shall have full power and authority to erect wharves on all streets, lanes, and alleys, in said town, for the use of the said town; provided, however, that no building shall be permitted to be erected on front of the said wharves or any of them.

8. And whereas the said corporation claim a right to certain grounds within the limits of said town, and doubts have arisen with respect to the powers of the said corporation to bring ejectments for the same; therefore, *Be it enacted,* That the said mayor, recorder, aldermen, and common council, in their corporate capacity, shall be, and are hereby, authorized and empowered to bring an ejectment or ejectments for all such real estate as they can make a legal title to, and to recover the same for the use of the said town.

9. *And be it enacted,* That to defray the expenses of said corporation, the said mayor, recorder, aldermen, and common council, shall have full power and authority, by ordinance or by law made for that purpose, to impose any sum of money, not exceeding one dollar in any one year, on every hundred pounds of property within the said town, and out of the revenues arising from such taxation to allow the said mayor such annual salary as shall appear to them just and proper. (Md. act, 1797, ch. 56.)

ACT OF 1800 AMENDING CHARTER

AN ACT To vest certain powers in the corporation of Georgetown, in Montgomery County

[Passed January 3, 1800]

Be it enacted by the General Assembly of Maryland, That the mayor, recorder, aldermen, and common councilmen of the corporation of Georgetown, be, and they are hereby, fully authorized and empowered, by a by-law or by-laws for that purpose ordained, to oblige all persons licensed as ordinary keepers and retailers of spirituous liquors within the jurisdiction of the corporation, to pay, for the use of the corporation, a sum not exceeding five dollars.

2. *And be it enacted,* That the mayor's court of the corporation of Georgetown shall have the sole and exclusive power of granting ordinary and retailers licenses within the jurisdiction of the corporation, and the person or persons obtaining such license shall, at the time of receiving the same, pay to the mayor of the corporation the same sum as is now directed by law to be paid for such license for the use of the state, and such further sum, for the use of the corporation, as the corporation may direct by their by-laws as herein before empowered.

3. *And be it enacted,* That the mayor of the corporation of Georgetown, for the time being, shall enter into bond, with security, to the state of Maryland, conditioned, that he shall well and truly pay over to the treasurer of the western shore all sums of money by him received for the use of the state for ordinary and retailer's licenses, in the same manner, and at the same time, as the clerks of the several county courts are by law directed, which bond shall be lodged with the clerk of the general court of the western shore.

4. *And be it enacted,* That the clerk of Montgomery county court be, and he is hereby directed, to deliver to the order of the mayor of the corporation of Georgetown, the book now deposited in his office containing the plan of Georgetown, and that the same be deposited with the clerk of the mayor's court of the corporation of Georgetown. (Md. act, 1799, ch. 85.)

ACT OF 1805 AMENDING CHARTER

AN ACT To amend the charter of Georgetown

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the second Monday in March current, the corporation of Georgetown, in the district of Columbia, shall be divided into two branches; the first branch to be composed of five members, and a recorder, and to be called "the board of aldermen;" and the second branch to be composed of eleven members, and to be called "the board of common councilmen;" which said two branches shall be elected as hereafter particularly provided.

SEC. 2. *And be it further enacted,* That after the passage of this act, and before the said day above mentioned, the present members of the said corporation shall meet at their usual place of meeting, and then and there choose, by ballot, from their body, five persons to compose the said board of aldermen, which said persons, when chosen as aforesaid, shall compose the said board of aldermen, and be, and continue such, until the fourth Monday in February, one thousand eight hundred and six; and that

the present recorder of the said corporation shall be the president of the said board of aldermen until the time last aforesaid: that the other members of the said corporation, (except the mayor,) shall compose the said second branch, called the board of common councilmen, and be and continue such, until the time aforesaid, and shall choose out of their own body a president, to be and continue such until the time aforesaid; and when thus organized, said corporation shall have, exercise, and possess, all the powers and rights now vested in the said corporation, and to be herein and hereby vested in them.

SEC. 3. *And be it further enacted,* That the present mayor of the corporation of Georgetown, shall be, and continue such, until the first Monday of January next.

SEC. 4. *And be it further enacted,* That on the fourth Monday of February next, the free white male citizens of Georgetown, of full age, and having resided within the town aforesaid, twelve months previously, and having paid tax to the corporation, shall assemble at a place to be appointed, as hereafter directed, and then and there shall proceed to elect, by ballot, five fit and proper persons, citizens of the United States, and residents of the said town, one whole year next before the said day of election, above twenty-one years of age, and having paid a tax to said corporation, to compose the said board of aldermen; and shall also, at the same time, proceed as aforesaid, to elect eleven fit and proper persons, having the qualifications last aforesaid, to compose the said board of common council; the said board of aldermen to continue two years, and the said board of common council to continue one year: and the said mayor, together with such other fit persons as shall be named and appointed by the said corporation, shall be judges of the election, and the five persons voted for as aldermen, who shall have the greatest number of legal votes, on the final casting up of the polls, shall be declared duly elected for the board of aldermen: and the eleven persons voted for as common council, who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected for the board of common council; and that the like election for aldermen be held on the fourth Monday in February, every two years thereafter; and for the said common council, on the said fourth Monday in February, annually, for ever thereafter.

SEC. 5. *And be it further enacted,* That on the first Monday of January next, and on the same day, annually, for ever thereafter, the said corporation shall, by a joint ballot of the said two branches present, choose some fit and proper person to be mayor of the said corporation, and some fit and proper person, learned in the law, to be the recorder of the said corporation, to continue in office one year.

SEC. 6. *And be it further enacted,* That the said mayor, before he acts as such, and the said recorder, before he acts as such, shall, respectively, make oath, before some justice of the peace, for the county of Washington aforesaid, in the presence of both branches of the said corporation, that he will well and faithfully discharge the several and respective duties of his office; and that each member of the said two branches shall, before he acts as such, in the presence of the corporation, take an oath to discharge the duties and trust reposed in him, with integrity and fidelity.

SEC. 7. *And be it further enacted,* That four members of the board of aldermen, and seven members of the board of common council, shall form a quorum to do business: the said corporation shall hold two sessions in each year; one to commence on the first Monday in March, and the other on the first Monday in December, with power to adjourn from day to day, to be held at such place as the mayor may designate, not otherwise provided for by ordinance: *Provided always,* that the mayor shall have power, on urgent occasions, to convene said corporation, on application of at least five members, in writing, giving reasonable notice of such intended meeting.

SEC. 8. *And be it further enacted,* That each of the said branches shall judge of the elections, qualifications and returns of its own members, and may compel the attendance of the members of each branch by reasonable penalties: and either branch shall have power to appoint their president, pro tempore, in case of the absence of the one duly chosen, as aforesaid. Any ordinance may originate in either branch, and no ordinance shall be passed, but by a majority of both branches, nor unless it shall pass both branches during the same session, and be approved of by the mayor, who shall sign the same, unless he objects thereto, within forty-eight hours from the time the same is presented to him for signature; if he does so object, he shall immediately return the same to the said corporation, with his objections, in writing, and if on reconsideration, two thirds of each branch of the corporation shall be of opinion that the said law ought to be passed, it shall, notwithstanding the objections of the mayor, become a law; and he shall sign the same; if the said mayor shall not return his objections to the same, to the said corporation, within the time aforesaid, it shall become a law, and shall be signed by him; the clerk of the corporation shall record in a book to be kept by him for that purpose, all the laws and resolutions which shall be passed as aforesaid, and deliver a copy of them to the public printer, to be printed by him for the use of the people.

SEC. 9 *And be it further enacted,* That in case the aldermen composing the first branch shall, at any time, on any question before them, be equally divided, the recorder shall have the casting vote, and determine such question to the same effect as if the same had been determined by a majority of the aldermen present; and similar power is hereby given to the president of the second branch in case of an equal division in that body.

SEC. 10. *And be it further enacted,* That it shall be the duty of the mayor to see that the laws of the corporation be duly executed, and to report the negligence or misconduct of any officer to the said corporation, who on satisfactory proof thereof, may remove from office the said delinquent, or take such other measures thereupon as shall be just and lawful; he shall lay before the said corporation, from time to time, in writing, such alterations in the laws of the said corporation as he shall deem necessary and proper; he shall have and exercise the powers of a justice of the peace in the said town, and shall receive for his services, annually, a just and reasonable compensation, to be allowed and fixed by the said corporation; no person shall be eligible to the said office of mayor unless a citizen of the United States, of the age of thirty years, a resident of the said town for five years then last past, and unless he shall have paid a tax to said corporation.

SEC. 11. *And be it further enacted,* That in case of a vacancy in either branch of the said corporation, by death, removal, or otherwise, of either of the members, a fit person or persons qualified, as aforesaid, shall be elected by the people, in the manner aforesaid, to fill such vacancy immediately thereafter; the mayor giving however at least five days' notice of such election: and in case of the vacancy of the mayor or recorder, the said corporation shall, within five days thereafter, as herein before directed, proceed to the choice of a fit person or persons, qualified, as aforesaid, to fill his or their place.

SEC. 12. *And be it further enacted,* That the said corporation shall have power to impose a tax, not exceeding in any one year, fifty cents in the hundred dollars, on all property within the said town; and the sessions of the said corporation shall be held as heretofore, until the said second Monday in March current; and the said corporation shall have, possess and enjoy, all the rights, immunities, privileges and powers heretofore enjoyed by them; and shall be called by the same name as heretofore, and shall have perpetual succession; and in addition thereto, they shall have power to regulate the inspection of flour and tobacco in said town; to prevent the introduction of contagious diseases within said town and precincts; to establish night watches and patroles, and erect lamps; to regulate the stationing, anchorage and mooring of vessels; to provide for regulating and licensing ordinaries, auctions and retailers of liquors, hackney carriages, wagons, carts and drays within said town and precincts; to restrain or prohibit gambling; to provide for licensing, regulating or restraining theatrical or other public amusements; to regulate and establish markets; to pass all laws for the regulation of weights and measures; to provide for the licensing and regulating the sweeping of chimneys and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the

size of bricks to be made and used within said town; the inspection of salted provisions, and the assize of bread; to sink wells and erect and repair pumps in the streets; to impose and appropriate fines, penalties and forfeitures for breach of their ordinances; to erect workhouses; to open, extend, and regulate streets within the limits of the said town; provided they make to the person or persons who may be injured by such opening, extension or regulation just and adequate compensation, to be ascertained by the verdict of an impartial jury, to be summoned and sworn by a justice of the peace of the county of Washington, and to be formed of twenty-three men, who shall proceed in like manner as has been usual in other cases where private property has been condemned for public use; and they shall have the power of restraining, regulating and directing the manner of building wharves and docks; also to direct the manner in which the improvements thereon to be erected, shall be made, so that they may not become injurious to the health of the town; in addition to the power heretofore granted to the said corporation by the act of Congress, intituled "An act additional to, and amendatory of an act, intituled An act concerning the district of Columbia," of laying a tax of two dollars per foot front for paving the streets, lanes and alleys of the said town; they shall have the power upon petition, in writing, of a majority of the holders of the real property fronting on any street or alley, if, in their judgment it shall be deemed necessary, to lay such further and additional sum on each front foot, on said street, or part of a street, as will be sufficient to pave said street or part of a street, lane or alley, so petitioned for; and the like remedy shall be used for the recovery thereof, as is now used for the recovery of the public county taxes in the said county of Washington; and they shall have power by ordinance to direct or order the paved streets to be cleansed and kept clean, and appoint an officer for that purpose; to make and keep in repair all necessary sewers and drains, and to pass regulations necessary for the preservation of the same.

SEC. 13. *And be it further enacted,* That the duties on all licenses to be granted as aforesaid, shall be to and for the proper use and benefit of the said corporation; and the said corporation shall have power to pass all laws not inconsistent with the laws of the United States, which may be necessary to give effect and operation to all the powers vested in the said corporation; and to appoint constables and collectors of the taxes, and all other officers who may be deemed necessary for the execution of their laws, whose duties and powers shall be prescribed in such manner as the said corporation shall deem fit for the purpose aforesaid.

SEC. 14. *And be it further enacted,* That the jurisdiction of the said corporation shall extend to the limits of the original plan of said town, and to such additions as are recognized by law; and that a survey as soon as conveniently may be after the passage of this law, shall be made, under the direction of the said corporation, ascertaining said limits, and a plat thereof made and returned to said corporation, which, when approved of by them, shall be preserved, and become a record.

Approved, March 3, 1805 (2 Stat. 332, ch. 32).

ACT OF 1809 AMENDING CHARTER

AN ACT Supplementary to the act entituled "An act to amend the charter of Georgetown"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following shall, and are hereby declared to be the limits of Georgetown, in the district of Columbia, any law or regulation to the contrary notwithstanding, that is to say: beginning in the middle of College street, as laid down and designated in Fenwick's map of the said town, at or near to the bank of the river Potomac; thence by a straight line drawn northernly through the middle of said street to the middle of First street; thence by a line drawn through the middle of First street to a point directly opposite to the termination of the eastern line of the lots now enclosed as the property of the college; thence northernly by the eastern line of said enclosure as far as the same extends; thence in the same northernly direction to the middle of Fourth street; thence eastwardly by a line drawn along the middle of Fourth street to a point at the distance of one hundred and twenty feet westward from the west side of Fayette street; thence northernly by a line drawn parallel to Fayette street at the said distance of one hundred and twenty feet westward from the west side thereof, until it intersects a boundary line of Beatty and Hawkins' addition to Georgetown; thence westwardly by said boundary line as far as it extends; thence by the courses and distances of the several other boundary lines of Beatty and Hawkins' addition aforesaid, that is to say; westwardly, northwardly, eastwardly and southwardly, to a point opposite to the middle of Road street, and opposite or nearly opposite to the middle of Eighth street; thence eastwardly by a line drawn through the middle of Road street, as it now runs, and as far as it extends; thence eastwardly by a line drawn parallel to Back street, and continued in the same direction to the middle of Rock creek; thence by the middle of the same creek and the middle of the Potomac river to a point directly opposite to the middle of College street aforesaid; thence to the place of beginning.

SEC. 2. *And be it further enacted,* That the corporation of Georgetown be, and they are hereby authorized and directed to cause a complete and accurate survey to be made of the said town agreeably to the courses and limits prescribed in the preceding section of this act, and to establish and fix, from time to time, permanent boundaries at such places as they may deem necessary and proper for perpetuating the boundaries of the said town, and after the said survey shall have been so made, and approved by the corporation, the same shall be admitted to record in the clerk's office for the county of Washington in the district of Columbia.

SEC. 3. *And be it further enacted,* That all the rights, powers and privileges heretofore granted to the said corporation by the general assembly of Maryland, and by the act to which this is a supplement, and which are at this time claimed and exercised by them, shall be and remain in full force and effect, and may and shall be exercised and enjoyed by them within the bounds and limits set forth and described in the first section of this act.

SEC. 4. *And be it further enacted,* That the said corporation shall have power to lay out, open, extend and regulate streets, lanes and alleys, within the limits of the town, as before described, under the following regulations, that is to say: the mayor of the town shall summon twelve freeholders, inhabitants of the town, not directly interested in the premises, who, being first sworn to assess and value what damages would be sustained by any person or persons by reason of the opening or extending any street, lane or alley, (taking all benefits and inconveniences into consideration) shall proceed to assess what damages would be sustained by any person or persons whomsoever, by reason of such opening or extension of the street, and shall also declare to what amount in money each individual benefited thereby shall contribute and pay towards compensating the person or persons injured by reason of such opening and extension: and the names of the person or persons so benefited, and the sums which they shall respectively be obliged to pay, shall be returned under their hands and seals to the clerk of the corporation, to be filed and kept in his office; and the person or persons benefited by opening or extending any street, and assessed as aforesaid, shall respectively pay the sums of money so charged and assessed to them, with interest thereon at the rate of six per cent. per annum, from the time limited for the payment thereof until paid; and the sums of money assessed and charged in manner aforesaid to each individual benefited in manner aforesaid, shall be a lien upon and bind all the property so benefited to the full amount thereof: *Provided always,* that no street, lane, or alley, shall be laid out, opened or extended, until the damages assessed to individuals in consequence

thereof shall have been paid, or secured to be paid: *And provided also,* that nothing in this act contained shall be so construed or understood as to authorize the corporation of Georgetown to locate, lay out, or open any street, lane, alley or other way, through any of the squares or lots situated in that part of Thomas Beall's second addition to Georgetown, which lies north of Back street, without the consent and permission of the owner or proprietor of such square or lot, first had and obtained in writing, which consent and permission shall be acknowledged in the presence of, and such acknowledgement certified by the mayor of the town aforesaid, or some justice of the peace for the county of Washington.

SEC. 5. *And be it further enacted,* That the recorder of the corporation shall be, and he is hereby declared to be a member of the board of aldermen, to all intents and purposes whatsoever.

Approved, March 3, 1809, (2 Stat. 537, ch. 30).

ACT OF 1826 EXTENDING THE LIMITS OF GEORGETOWN

AN ACT To extend the limits of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That, in addition to the limits prescribed by an act supplementary to an act, entitled "An act to amend the charter of Georgetown," approved third of March, eighteen hundred and nine, the said limits between Seventh and Eighth streets shall be further extended, so as to extend westwardly, from Fayette street, three hundred feet.

Approved, March 3, 1826 (4 Stat. 140, ch. 10).

ACT OF 1826 AMENDING CHARTER

AN ACT Further to amend the charter of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the levy court of Washington county, in the District of Columbia, shall not possess the power of assessing any tax on real or personal property within the limits of the corporation of Georgetown, nor shall the corporation of the said town be obliged to contribute in any manner towards the expenses or expenditures of said court, except for the one fourth part of the expenses incurred on account of the orphans' court, the office of coroner, the jail of said county, and one half of the expenses for the opening and repairing of roads in the county of Washington, west of Rock Creek, and leading to Georgetown: *Provided, always,* That nothing herein contained shall be construed to prevent the said court, or the collector by them appointed, from collecting all taxes which have been levied by the said court on real and personal property within the limits of Georgetown, before the passage of this act, and of appropriating the same according to present existing laws; but that it shall be the duty of the said court, and they are hereby authorized and directed to use all the powers with which they are now invested, for collecting the said tax: *And provided further,* That all laws now in force, which make it the duty of the said court to provide for the support of the poor residing within the limits of Georgetown, be, and the same are hereby, repealed, and that henceforth it shall be the duty of said court to provide for the support of such only of the poor of the county as reside out of the limits of Washington and Georgetown.

SEC. 2. *And be it further enacted,* That the said corporation may, for the general purposes mentioned in the charter of said town, and for the support of the poor annually, lay a tax on all real and personal property within the limits of Georgetown, not exceeding seventy cents in the hundred dollars, any law to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That this act shall commence and be in force from and after the passage thereof.

Approved, May 20, 1826 (4 Stat. 183, ch. 111).

ACT OF 1830 AMENDING CHARTER

AN ACT To amend the charter of Georgetown

(SECTION 1.) *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That public notice of the time and place of sale of any real property chargeable with taxes in Georgetown, in all cases hereafter, shall be given once in each week, for twelve successive weeks, in some one newspaper in the County of Washington, in which shall be stated the number of the lot or lots, or parts thereof, intended to be sold, and the value of the assessment, and the amount of the taxes due and owing thereon; and that so much of the seventh section of an act of Congress, approved May twenty-sixth, one thousand eight hundred and twenty-four, as requires said notice to be given in the National Intelligencer, and in a newspaper in Alexandria, be, and the same is hereby repealed: *Provided,* That nothing in this act shall change the manner of giving notice of the sales of property owned by the persons not residing in the District of Columbia.

SEC. 2. *And be it further enacted,* That on the fourth Monday of February next, and on the same day biennially thereafter, the citizens of Georgetown, qualified to vote for Members of the two Boards of the Corporation of said Town, shall, by ballot, elect some fit and proper person having the qualifications now required by law to be Mayor of the Corporation of Georgetown, to continue in Office two years, and until a successor is duly elected, and the person having at said election, which shall be conducted by Judges of election appointed by the Corporation, the greatest number of legal votes, shall be declared duly elected; and in the event of an equal number of votes being given to two or more candidates, the two Boards in joint meeting by ballot, shall elect the Mayor from the persons having such equal number of votes.

SEC. 3. *And be it further enacted,* That in the event of the death or resignation of the Mayor, or his inability to discharge the duties of his office, the two Boards of the Corporation, in Joint meeting, by ballot, shall elect some fit person to fill the Office until the next regular election.

SEC. 4. *And be it further enacted,* That the present Mayor of Georgetown shall continue to fill the office of Mayor until the fourth Monday of February next.

SEC. 5. *And be it further enacted,* That, so much of the present Charter of Georgetown, as is inconsistent with the provisions of this act, be, and the same is hereby repealed.

Approved, May 31, 1830 (4 Stat. 426, ch. 229).

ACT OF 1832 EXTENDING THE LIMITS OF GEORGETOWN

AN ACT To extend the limits of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the limits of Georgetown, in the District of Columbia, be, and they are hereby, extended, so as to include the part of a tract of land called "Pretty Prospect," recently purchased by the corporation of the said town, as

a site for their poor's-house; beginning, for the said piece of ground, at a stone marked number four, extending at the end of four hundred and seventy-six poles on the first line of a tract of land, called the "Rock of Dumbarton;" said stone also standing on the western boundary line of lot numbered two hundred and sixty, of Beatty and Hawkins' addition to said town; and running thence, north, seventy-eight degrees, east thirty-eight poles; south eighty degrees, east three poles; south eighteen poles, south twelve degrees, east nine poles; south eleven degrees, west twelve poles; south seventy-two degrees, west twenty-three poles, to the said first line of the "Rock of Dumbarton", thence, with said line, to the beginning.

SEC. 2. *And be it further enacted,* That all the rights powers, and privileges, heretofore granted by law to the said corporation, and which are at this time claimed and exercised by them, may and shall be exercised and enjoyed by them, within the bounds and limits set forth and described in the first section of this act.

Approved, May 25, 1832 (4 Stat. 517, ch. 105).

ACT OF 1842 EXTENDING THE LIMITS OF GEORGETOWN

AN ACT To extend the jurisdiction of the corporation of Georgetown

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction of the corporation of Georgetown is hereby extended so as to include the bridge lately constructed by the said corporation across the river Potomac, at the Little Falls, and the site of the said bridge and premises appertaining to said site; and that, as often and as long as said bridge shall hereafter, from any cause, be impassable, it shall and may be lawful for the proprietors of land on both sides of the said river, through which the ferry road to connect with the Falls Bridge turnpike must necessarily pass, and they are hereby authorized and empowered to establish and keep a ferry, at any rate of ferriage not exceeding the tolls which the Georgetown Bridge Company were heretofore authorized to charge on their bridge.

SEC. 2. *And be it further enacted,* That said Corporation of Georgetown, in addition to its present chartered powers, shall have full power and authority to provide for licensing, taxing, and regulating, within its corporate limits, all traders, retailers, pawnbrokers, and to tax venders of lottery tickets, money changers, hawkers and pedlers.

Approved, July 27, 1842 (5 Stat. 497, ch. 82).

ACT OF 1855 AMENDING CHARTER

AN ACT Authorizing the corporate authorities of Georgetown to impose additional taxes, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mayor, recorder, aldermen, and common council, of Georgetown, be, and they are hereby, authorized and empowered to lay and collect a special annual tax of seventy-five cents, or so much thereof as may be necessary, upon every hundred dollars of property by law now taxable within the corporate limits of said town, and all money vested or held in any banking, insurance, brokerage, or exchange company or institution, upon all State or corporation stocks, and money loaned at interest on bond, mortgage, or other evidence of indebtedness, in order to meet the engagements recently assumed by said town in subscribing to the stock of the Metropolitan Railroad Company; and to pledge the same to secure the said engagements, in such a manner that no part of the same shall in any event be applied to any other object; and the like remedy shall be used for the recovery thereof as is now used for the recovery of other public taxes in said town.

SEC. 2. *And be it further enacted,* That the said corporation of Georgetown shall have full power and authority to introduce into said town a supply of water for the use of the inhabitants thereof; and to cause the streets, lanes, and alleys, or any of them, or any portion of any of them, to be lighted by gas or otherwise; and to provide for the expense of any such works or improvements, either by a special tax or out of its corporate funds generally, or both, at its discretion.

Approved, March 2, 1855 (10 Stat. 633, ch. 45).

ACT OF 1856 AMENDING CHARTER

AN ACT To amend the charter of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Corporation of Georgetown, in the District of Columbia, shall have full power and authority to lay and impose the present year and annually thereafter, a school tax upon every free white male citizen, of the age of twenty-one years and upwards, of one dollar per annum; said tax to be levied and collected under such regulations as the said corporation may prescribe.

SEC. 2. *And be it further enacted,* That from and after the passage of this act, every free white male citizen of the United States, who shall have attained the age of twenty-one years, and shall have resided within the corporate limits of Georgetown, in the District aforesaid, one year immediately preceding the day of election, and shall have been returned on the books of the corporation during the year ending on the thirty-first day of December next preceding the day of election, as subject to a school tax for that year, (except persons *non compos mentis,* vagrants, paupers, and persons who shall have been convicted of any infamous crime,) and who shall have paid the school taxes due from him, shall be entitled to vote for mayor, members of the board of aldermen and board of common council and for every officer authorized to be elected at any election under the acts of said corporation: *Provided,* That if, during the year ending on the thirty-first day of December next preceding the day of the first election after the passage of this act, no person shall have been returned on the books of the said corporation as subject to a school tax, then all persons who shall have been returned on the books of the said corporation as subject to a school tax before the day of the said first election, and who shall in all other respects be qualified under this act to vote, and who shall have paid the said school tax, shall be entitled to vote at the said first election after the passage of this act; and if any person shall buy or sell a vote, or shall vote more than once at any corporation election, held in pursuance of law, or shall give or receive any consideration therefor in money, goods, or any other thing of value, or shall promise any valuable consideration, or vote in consideration of such promise, he shall be disqualified forever thereafter from voting or holding any office under said corporation; and on complaint thereof to the attorney of the United States for the District of Columbia, it shall be the duty of said attorney to proceed against said offender or offenders by indictment and trial, as in other criminal cases; and if found guilty it shall be the duty of the court to sentence him to pay a fine of not less than ten dollars, and to imprisonment not more than two months, nor less than ten days.

SEC. 3. *And be it further enacted,* That it shall be the duty of the clerk of said corporation, on the presentation of the corporation tax collector's receipt showing that the

applicant has paid his school tax for that year, to enter the name of such school tax payer on the books of said corporation, and to furnish the judges of elections to be held under the laws of said corporation at each precinct, before or on the morning of any election, before the hour for opening the polls, with a list of the names of all persons who shall have paid their school taxes for that year.

SEC. 4. *And be it further enacted,* That the school tax which shall be levied and collected under this act shall constitute a fund, or be added to any other fund now or hereafter to be constituted by any act of said corporation for the establishment and support of common schools, and for no other purpose, under such regulations as the corporation may prescribe.

SEC. 5. *And be it further enacted,* That it shall be the duty of said corporation to provide or establish at least two election precincts within the limits of the corporation of Georgetown, and to appoint not less than three judges of election for each precinct, and to adopt such other regulations as may be necessary to give full force and effect to this section.

SEC. 6. *And be it further enacted,* That all acts or parts of acts in conflict with this act be and the same are hereby repealed.

Approved, August 11, 1856 (11 Stat. 32, ch. 84).

ACT OF 1862 AMENDING CHARTER

AN ACT To authorize the corporation of Georgetown, in the District of Columbia, to lay and collect a water tax, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Mayor, Recorder, Aldermen, and Common Council of Georgetown, in the District of Columbia, shall have full power and authority to levy and collect a tax not exceeding sixty cents per front foot on all lots and parts of lots within said corporate limits in front of or parallel to which water mains have been or may hereafter be laid; or, in their discretion, to appropriate from the corporate funds generally so much money as may be necessary to supply the inhabitants of said town with Potomac water from the aqueduct mains or pipes now laid or to be laid in the streets of said town by the United States; and to make all laws and regulations for the proper distribution of the same, subject to the restrictions prescribed by this act, and the act approved March the third, eighteen hundred and fifty-nine, and entitled "An act to provide for the care and preservation of the works constructed by the United States for bringing the Potomac water into the cities of Washington and Georgetown, for the supply of said water for all Government purposes, and for the uses and benefits of the inhabitants of said cities."

SEC. 2. *And be it further enacted,* That said Corporation shall have full power and authority to collect such taxes, when so fixed, in advance or otherwise, through such agents, collectors, or commissioners, as they may designate and appoint; and upon the failure of any owner of said lot or lots, or part thereof, to pay said taxes, to sell the same; or to stop the supply of water to the same, or to distrain and sell the personal effects of such owner, and in the case of any sale the same proceedings shall be observed as are adopted in enforcing the collection of the general tax of said town; and generally to enact such laws as may be necessary to furnish the inhabitants of said town with pure and wholesome water, and to carry into complete effect the powers herein granted: *Provided,* That the taxes levied by virtue of this act shall never be a source of revenue other than as a means of supplying said town with water.

SEC. 3. *And be it further enacted,* That in levying said front foot tax, said Corporation shall, in all cases where a lot or lots, or part thereof, may be situated at the intersection of two streets and fronting on the same, so reduce and graduate the tax thereon as not to exceed in all a tax upon one hundred feet front; and shall, in all cases where said property may have a front on any one or more streets, of more than one hundred feet, so reduce and graduate the tax thereon as not to exceed a tax upon one hundred feet front.

SEC. 4. *And be it further enacted,* That all ordinances and resolutions or parts thereof relating to the distribution of Potomac water through said town, and the collection of a water tax, and the ordinances and resolutions heretofore passed by said Corporation particularly mentioned in this section, be and the same are hereby ratified and confirmed, said ordinances and resolutions being described and identified as follows, to wit: A resolution approved April the twenty-third, eighteen hundred and fifty-nine, entitled "A resolution authorizing the tapping of water mains;" a resolution approved May the seventh, eighteen hundred and fifty-nine, entitled "A resolution authorizing the laying of a water main up High street," an ordinance approved May the ninth, eighteen hundred and fifty-nine, entitled "An ordinance authorizing the distribution of the Potomac water through the city of Georgetown;" a resolution approved May the fourteenth, eighteen hundred and fifty-nine, entitled "A supplement repealing a part of a resolution for laying a water main up High street;" an ordinance approved July the second, eighteen hundred and fifty-nine, entitled "A supplement to an ordinance authorizing the distribution of the Potomac water through the city of Georgetown, approved May the ninth, eighteen hundred and fifty-nine;" a resolution approved July the second, eighteeen hundred and fifty-nine, entitled "A resolution approving of certain contracts for distributing water through the town;" a resolution approved August the twentieth, eighteen hundred and fifty-nine, entitled "A resolution in relation to the water distribution;" a resolution approved September the seventeenth, eighteen hundred and fifty-nine, entitled "A resolution authorizing the water board to purchase water pipes;" a resolution approved September the seventeenth, eighteen hundred and fifty-nine, entitled "A resolution in relation to water distribution;" a resolution approved September the twenty-fourth, eighteen hundred and fifty-nine, entitled "A resolution supplementary to a resolution, entitled 'A resolution in relation to the water distribution, approved August the twentieth, eighteen hundred and fifty-nine;' " a resolution approved September the twenty-fourth, eighteen hundred and fifty-nine, entitled "A resolution in relation to the redemption of water stock;" a resolution approved October twenty-ninth, eighteen hundred and fifty-nine, entitled "A resolution in relation to water mains;" a resolution approved November the fifth, eighteen hundred and fifty-nine, entitled "A resolution approving the contract for patent water-pipes for Road street;" a resolution approved November the nineteenth, eighteen hundred and fifty-nine, entitled "A resolution repealing a portion of the resolution approved April the twenty-third, eighteen hundred and fifty-nine, in relation to tapping water-mains."

SEC. 5. *And be it further enacted,* That in case of a failure to pay any taxes whatever laid by said corporation by virtue of its vested powers, it shall be lawful to sell, in the discretion of the collector or other proper officer, either the real or personal estate, or both, of the delinquent taxpayer; and so much of the eighth section of the act approved May the twenty-sixth eighteen hundred and twenty-four, entitled "An act supplementary to the act 'to incorporate the inhabitants of the city of Washington,' passed the fifteenth of May, one thousand eight hundred and twenty, and for other purposes," as is in the following words, viz: *"Provided,* That no sale of real estate shall be made but where the owner or tenant of the property has not sufficient personal estate out of which to enforce a collection of the debt due," be and the same is hereby repealed.

SEC. 6. *And be it further enacted,* That the person or persons appointed to collect any taxes imposed by said corporation in pursuance of its vested powers shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith, but no such sale shall be made unless ten days' previous notice thereof be given in some newspaper printed in the District of Columbia, aforesaid; and the provisions of the acts of Maryland now in force within said District re-

lating to the right of replevying personal property taken in execution for public taxes shall apply to all cases of personal property taken by distress to satisfy taxes imposed by virtue of the corporation powers aforesaid.

SEC. 7. *And be it further enacted,* That said corporation shall have power and authority to repair any of the footways of the streets in said town, and to impose and collect such tax or taxes on the lot or lots, or parts thereof, adjoining the same, as may be necessary to pay the expense of such repairs.

SEC. 8. *And be it further enacted,* That so much of the first section of the act approved May thirty-one, eighteen hundred and thirty, entitled "An act to amend the charter of Georgetown," as is in the following words, viz: "*Provided,* That nothing in this act shall change the manner of giving notice of the sales of property owned by persons not residing in the District of Columbia," be and the same is hereby repealed.

Approved, May 21, 1862 (12 Stat. 405, ch. 82).

ACT OF 1895 CHANGING NAME OF GEORGETOWN

AN ACT Changing the name of Georgetown, in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act all that part of the District of Columbia embraced within the bounds and now constituting the city of Georgetown, as referred to in said acts of February twenty-first, eighteen hundred and seventy-one and June twentieth, eighteen hundred and seventy-four, shall no longer be known by the name and title in law of the city of Georgetown, but the same shall be known as and shall constitute a part of the city of Washington, the Federal Capital; and all general laws, ordinances, and regulations of the city of Washington be, and the same are hereby, extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown; and all general laws, regulations, and ordinances of the city of Georgetown be, and the same are hereby, repealed; that the title and existence of said Georgetown as a separate and independent city by law is hereby abolished, and that the Commissioners of the District of Columbia be, and they are hereby, directed to cause the nomenclature of the streets and avenues of Georgetown to conform to those of Washington so far as practicable. And the said Commissioners are also directed to have the squares in Georgetown renumbered, so that no square shall hereafter bear a like number to any square in the city of Washington: *Provided,* That nothing in this Act shall operate to affect or repeal existing law making Georgetown a port of entry, except as to its name.

Approved, February 11, 1895 (28 Stat. 650, ch. 79; see act of February 21, 1871, 16 Stat. 419, ch. 62, ante. p. 469).

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DISTRICT OF COLUMBIA CODE

1951 Edition

THE CODE OF THE DISTRICT OF COLUMBIA

PART I

GOVERNMENT OF DISTRICT

[Judiciary Excepted]

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§ 1–101 [20: 1]. Territorial area of District of Columbia.

The District of Columbia is that portion of the territory of the United States ceded by the state of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein. (R. S., D. C., § 1.)

PRESENT ORGANIC ACT, § 1

"All the territory which was ceded by the State of Maryland to the Congress of the United States for the permanent seat of the government of the United States shall continue to be designated as the District of Columbia. Said District and the property and persons that may be therein shall be subject to the following provisions for the government of the same, and also to any existing laws applicable thereto not hereby repealed or inconsistent with the provisions of this act. The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes (§ 1–102) relating to said District, and the Commissioners herein provided for shall be deemed and taken as officers of such corporation; and all laws now in force relating to the District of Columbia not inconsistent with the provisions of this act shall remain in full force and effect." (June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

RETROCESSION TO THE STATE OF VIRGINIA OF SOVEREIGNTY OVER A TRACT OF LAND LOCATED AT BATTERY COVE, NEAR ALEXANDRIA, VIRGINIA

All that part of the territory of the District of Columbia situated on the Virginia side of the Potomac River at Alexandria, Virginia, lying and being between a line drawn from Jones Point, at low-water mark, to Point Lumley, now Pioneer Mills, at low-water mark, and high-water mark on the Virginia shore of the Potomac River at Alexandria, containing an area of forty-six and fifty-seven one-hundredths acres of made land, more or less, be, and the same is hereby, ceded to and declared to be within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: *Provided, however,* That this Act shall not be construed to waive or relinquish the title of the United States to the fee of the forty-six and fifty-seven one-hundredths acres of made land in Battery Cove nor as relinquishing or in any manner affecting the power of Congress to exercise exclusive legislation over the said area so long as the same remains in the ownership and possession of the United States: *And provided further,* That this Act shall not be construed to affect, impair, surrender, waive, or defeat any claim, right, or remedy, either at law or in equity, of the United States against the Virginia Shipbuilding Corporation for or on account of any debt or obligation of said company to the United States or that hereafter may be ascertained to be due by said company to the United States, by any court of competent jurisdiction of the parties and of the subject matter in any suit now pending or that may hereafter be instituted by the United States against the Virginia Shipbuilding Corporation. (Feb. 23, 1927, 44 Stat. 1176, ch. 171.)

BOUNDARY LINE BETWEEN THE DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF VIRGINIA

The act of Oct. 31, 1945, ch. 443, titles I and II, §§ 101–108, 201, 59 Stat. 552, 554, provided:

"SEC. 101. The boundary line between the District of Columbia and the Commonwealth of Virginia is hereby established as follows:

"Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts [1] the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of the Potomac River to Little River, along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark

[1] So in original. Probably should read "intersects."

on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.

"SEC. 102. All that part of the territory situated on the Virginia side of the Potomac River lying between the boundary line as described in section 101 and the mean high-water mark as it existed January 24, 1791, is hereby ceded to and declared to be henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: *Provided, however,* That concurrent jurisdiction over the said area is hereby reserved to the United States.

"SEC. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line as described in section 101; or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912 (37 Stat. 93); or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791; or to limit the authority to make equitable adjustments of conflicting claims as provided for in the Act approved June 4, 1934 (48 Stat. 836).

"SEC. 104. The 'present' mean high-water mark shall be construed as the mean high-water mark existing on the effective date of this Act.

"SEC. 105. The United States Coast and Geodetic Survey is hereby authorized, empowered, and instructed to survey and properly mark by suitable monuments the said boundary line as described in section 101, and from time to time to monument such sections of said boundary line as may be changed as provided for in section 101; and the necessary appropriations for this work are hereby authorized.

"SEC. 106. The provisions of sections 272 to 289, inclusive, of the Criminal Code (U. S. C., title 18, secs. 451–468) shall be applicable to such portions of the George Washington Memorial Parkway and of the Washington National Airport as are situated within the Commonwealth of Virginia. Any United States commissioner specially designated for that purpose by the District Court of the United States for the Eastern District of Virginia shall have jurisdiction to try and, if found guilty, to sentence persons charged with petty offenses against the laws of the United States committed on the above-described portions of the said parkway or airport. The probation laws shall be applicable to persons so tried. For the purposes of this section, the term 'petty offense' shall be defined as in section 335 of the Criminal Code (U. S. C., title 18, sec. 541). If any person charged with any petty offense as aforesaid shall so elect, however, he shall be tried in the said district court.

"SEC. 107. The State [2] of Virginia hereby consents that exclusive jurisdiction in the Washington National Airport (as described in sec. 1 (b) of the Act of June 29, 1940 (54 Stat. 686)), title to which is now in the United States, shall be in the United States. The conditions upon which this consent is given are the following and none others: (1) There is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to levy a tax on the sale of oil, gasoline, and all other motor fuels and lubricants sold on the Washington National Airport for use in over-the-road vehicles such as trucks, busses, and automobiles, except sales to the United States: *Provided,* That the Commonwealth of Virginia shall have no jurisdiction or power to levy a tax on the sale or use of oil, gasoline, or other motor fuels and lubricants for other purposes; (2) there is hereby expressly reserved in the Commonwealth of Virginia the jurisdiction and power to serve criminal and civil process on the Washington National Airport; and (3) there is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to regulate the manufacture, sale, and use of alcoholic beverages on the Washington National Airport (as described in sec. 1 (b) of the Act of June 29, 1940 (54 Stat. 686)).

"Subject to the limitation on the consent of the State [2] of Virginia as expressed herein exclusive jurisdiction in the Washington National Airport shall be in the United States and the same is hereby accepted by the United States.

"This Act shall have no retroactive effect except that taxes and contributions in connection with operations, sales and property on and income derived at the Washington National Airport heretofore paid either to the Commonwealth of Virginia or the District of Columbia are hereby declared to have been paid to the proper jurisdictions and the Commonwealth of Virginia and the District of Columbia each hereby waives any claim for any such taxes or contributions heretofore assessed or assessable to the extent of any such payments to either jurisdiction.

"Any provision of law of the United States or the Commonwealth of Virginia which is to any extent in conflict with this Act is to the extent of such conflict hereby expressly repealed.

"SEC. 108. This title shall not become effective unless and until the State [2] of Virginia shall accept the provisions thereof.

"TITLE II—MISCELLANEOUS

"SEC. 201. Nothing in this Act shall be construed (a) to prevent the acceptance by the United States pursuant to the provisions of section 355 of the Revised Statutes, as amended (40 U. S. C., sec. 255), of such jurisdiction as may be granted by the State of Virginia over any lands to which the United States now has, or may hereafter have, title within the boundaries of the State as established by this Act; or (b) to affect any jurisdiction heretofore obtained by the United States from the State of Virginia over lands adjoining or adjacent to those herein ceded; and all jurisdiction whether partial, concurrent, or exclusive, which Virginia has ceded and which the United States has accepted over any part or parts of the ceded total is hereby expressly retained."

Section 202 of said act Oct. 31, 1945, amended section 111 of the Judicial Code [28 U. S. C. § 192] which provided for the division of the State of Virginia into two judicial districts, to be known as the eastern and western district of Virginia.

CROSS REFERENCES

Constituted the metropolitan police district, subject to jurisdiction of metropolitan police, §§ 4–101, 4–102.

Fire department embraces whole District, § 4–401.

NOTES TO DECISIONS

BOUNDARIES

The boundary between the District and Virginia is, at least, the low-water mark of the Potomac River on the Virginia shore. *Marine R. & Coal Co.* v. *United States* (257 U. S. 47, 66 L. ed. 124, 42 Sup. Ct. 32, affg. 49 App. D. C. 285, 265 Fed. 437).

"The entire part of the Potomac River between the District and Virginia shores is a part of the District of Columbia, and as such is subject to all local legislation and police regulations, unless the intent appears to exclude it therefrom." *Jefferson* v. *District of Columbia* (40 App. D. C. 381). To same effect, *District of Columbia* v. *Tyrrell* (41 App. D. C. 463); *Herald* v. *United States* (52 App. D. C. 147, 284 Fed. 927); *Croson* v. *District of Columbia* (55 App. D. C. 122, 2 Fed. (2d) 924).

HISTORICAL

By the Act of Congress of 1801, assuming the government of the District of Columbia, in virtue of the cession from Maryland and Virginia, the laws of these States, and, of course, the proceedings in their courts as parts of these laws were expressly recognized within such portions of the District, respectively, as originally were within the limits of the ceding States. *United States* v. *Eliason* (16 Pet. (41 U. S.) 291, 10 L. ed. 968).

The District of Columbia was considered as exercising the same general jurisdiction in both counties of Wash-

[2] So in original. Probably should read "Commonwealth."

ington and Alexandria; but the rights of its citizens were not governed by the same laws. *Rhodes* v. *Bell* (2 How. (43 U. S.) 397, 11 L. ed. 314).

When the Government of the United States took possession of the District in 1800, it was divided by Congress into two counties, that of Alexandria on the west side of the Potomac, and that of Washington on the east side; and the laws of Virginia governed the former and the laws of Maryland the latter. A circuit court was established with general jurisdiction, civil and criminal, to hold sessions alternately in each county; but the corporate rights of Alexandria and Georgetown were expressly left unimpaired, except as related to judicial powers. *Metropolitan R. Co.* v. *District of Columbia* (132 U. S. 1, 33 L. ed. 231, 10 Sup. Ct. 19).

The county of Washington embraced all that portion of the original District of Columbia acquired from the State of Maryland and lying north of the Potomac River, a fact of which a court will take judicial knowledge. *Green* v. *McIntire* (42 App. D. C. 250).

§ 1–102 [20: 2]. District created body corporate for municipal purposes.

The District is created a government by the name of the "District of Columbia," by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this code. (R. S., D. C., § 2; June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

Present Organic Act, § 2

"Within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life, shall each receive for his services a compensation at the rate of five thousand dollars per annum. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

"The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia shall hereafter be required to give, or renew, bond for the faithful discharge of their duties and to fix the penalty of any such bond: *Provided,* That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of the Act of Congress entitled 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and nine, and for other purposes, approved August 5, 1909 (36 Stat. 118, 125 (U. S. C., title 6, § 14)), relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia." (June 11, 1878, 20 Stat. 102, ch. 180, § 2; June 28, 1935, 49 Stat. 430, ch. 332, § 1.)

Amendment

The act of June 28, 1935, amended § 2 of the Organic Act by striking out a provision requiring each Commissioner to give bond before entering on the duties of his office, and added the last two sentences.

NOTES TO DECISIONS

Effect of "Commerce Clause"

While the case does not hold that the District of Columbia is a "State" within the meaning of the commerce clause, the dissenting opinion is on the ground that commerce between a citizen of Maryland and citizens of the District is not commerce "among the several States," the majority opinion having held the commerce clause applicable. *Stoutenburgh* v. *Hennick* (129 U. S. 141, 32 L. Ed 637, 9 Sup. Ct. 256).

The commerce clause operates as a limitation solely upon the States; it constitutes no bar to the action of Congress in any event so far as the District of Columbia is concerned. *Neild* v. *District of Columbia* (110 Fed. (2d) 246) stating that "if the dictum to the contrary in *Potomac Electric Power Co.* v. *Hazen* (67 App. D. C. 161, 90 Fed. (2d) 406), certiorari denied (302 U. S. 692, 82 L. Ed. 535, 58 Sup. Ct. 11, 82 L. Ed. 535), was intended to apply to the District of Columbia, we decline to follow it."

Legislative Jurisdiction

The District possesses no sovereign or legislative power. *United States ex rel. Daly* v. *Macfarland* (28 App. D. C. 552); *Croson* v. *District of Columbia* (55 App. D. C. 122, 2 Fed. (2d) 924).

Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end. *Neild* v. *District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

Within the District of Columbia there is no division of legislative powers such as exists between the State and Federal Governments. *Neild* v. *District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

Congress by keeping in force for 70 years this section creating the District of Columbia as a body corporate for municipal purposes and authorizing it to contract and to be contracted with and to sue and "be sued" and by re-enacting it after District of Columbia courts repeatedly decided that the act does not subject the District of Columbia to garnishment, has in effect ratified the decisions, as against contention that authority to "be sued" as used therein includes garnishment for the collection of a private judgment. *Chewning* v. *District of Columbia,* 1941 (119 F. 2d 459, 73 App. D. C. 392, certiorari denied 62 S. Ct. 74, 314 U. S. 639, 86 L. Ed. 513, rehearing denied 62 S. Ct. 175, 314 U. S. 710, 86 L. Ed. 566).

Parties

Where one who had been wrongfully compelled to pay water bill of another brought action to recover back the

sum paid against commissioners, water registrar and collector of taxes, individually and officially, without naming District of Columbia as a party defendant, no judgment could be entered against the District. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

Although there is express authority under this section for suing District of Columbia in its own name, a money judgment against District is not authorized in an action to which it is not a party. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

Power To Sue and Be Sued

District of Columbia is a municipal corporation, having a right to sue and be sued, and subject to the ordinary rules that govern the law of procedure between private persons. *Metropolitan R. Co.* v. *District of Columbia* (132 U. S. 1, 33 L. Ed. 231, 10 Sup. Ct. 19).

Public Works

District of Columbia is a municipal corporation and is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks, as resulted in personal injuries to individuals. *District of Columbia* v. *Woodbury* (136 U. S. 450, 34 L. Ed. 472, 10 Sup. Ct. 990).

Under this section, the powers of the Board of Public Works has been vested in the Commissioners of the District of Columbia. *Bauman* v. *Ross* (167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. 966).

The District of Columbia was not liable for damage to abutting realty resulting from widening and changing the natural grade of a street, in absence of negligence in manner in which such work was done. *Bealle* v. *District of Columbia* (D. C., D. C. 1948, 80 F. Supp. 75).

Qualifications

The civil persons appointed should be citizens of the United States and actual residents of the District of Columbia for 3 years next before their appointment. *Newman* v. *United States ex rel. Frizzell* (238 U. S. 537, 59 L. Ed. 1446, 35 Sup. Ct. 881).

§ 1–103 [20: 3]. Commissioners made officers of corporation.

The Commissioners herein provided for shall be deemed and taken as officers of such corporation. (June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

Present Organic Act, § 3

"As soon as the Commissioners appointed and detailed as aforesaid shall have taken and subscribed the oath or affirmation hereinbefore required, all the powers, rights, duties, and privileges lawfully exercised by, and all property, estate, and effects now vested by law in the Commissioners appointed under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, shall be transferred to and vested in and imposed upon said Commissioners; and the functions of the Commissioners so appointed under the act of June twentieth, eighteen hundred and seventy-four, shall cease and determine. And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid; but said Commissioners, in the exercise of such duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. Any person violating any orders lawfully made in pursuance of this power shall be subject to a fine of not less than ten nor more than one hundred dollars, to be recovered before any justice of the peace in an action in the name of the Commissioners. All taxes heretofore lawfully assessed and due, or to become due, shall be collected pursuant to law, except as herein otherwise provided; but said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof, but they may borrow, for the first fiscal year after this act takes effect, in anticipation of collection of revenues, not to exceed two hundred thousand dollars, at a rate of interest not exceeding five per centum per annum, which shall be repaid out of the revenues of that year. And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law; said Commissioners shall have power to erect light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary: *Provided,* That nothing in this act contained shall be construed to abate in any wise or interfere with any suit pending in favor of or against the District of Columbia or the Commissioners thereof, or affect any right, penalty, forfeiture, or cause of action existing in favor of said District or Commissioners, or any citizen of the District of Columbia, or any other person, but the same may be commenced, proceeded for, or prosecuted to final judgment, and the corporation shall be bound thereby as if the suit had been originally commenced for or against said corporation. The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided,* That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. The Secretary of the Treasury shall carefully consider all estimates submitted to him as above provided, and shall approve, disapprove, or suggest such changes in the same, or any item thereof, as he may think the public interest demands; and after he shall have considered and passed upon such estimates submitted to him, he shall cause to be made a statement of the amount approved by him and the fund or purpose to which each item belongs, which statement shall be certified by him, and delivered, together with the estimates as originally submitted, to the Commissioners of the District of Columbia, who shall transmit the same to Congress. To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia; and all proceedings in the assessing, equalizing, and levying of said taxes, the collection thereof, the listing return and penalty for taxes in arrears, the advertising for sale and the sale of property for delinquent taxes, the redemption thereof, the proceedings to enforce the lien upon unredeemed property, and every other act and thing now required to be done in the premises, shall be done and performed at the times and in the manner now provided by law, except in so far as is otherwise provided by this act: *Provided,* That the rate of taxation in any one year

shall not exceed one dollar and fifty cents on every one hundred dollars of real estate not exempted by law; and on personal property not taxable elsewhere, one dollar and fifty cents on every one hundred dollars, according to the cash valuation thereof: *And provided further,* Upon real property held and used exclusively for agricultural purposes, without the limits of the cities of Washington and Georgetown, and to be so designated by the assessors in their annual returns, the rate for any one year shall not exceed one dollar on every one hundred dollars. The collector of taxes, upon the receipt of the duplicate of assessment, shall give notice for one week, in one newspaper published in the city of Washington, that he is ready to receive taxes; and any person who shall, within thirty days after such notice given, pay the taxes assessed against him, shall be allowed by the collector a deduction of five per centum on the amount of his tax; all penalties imposed by the act approved March third, eighteen hundred and seventy-seven, chapter one hundred and seventeen, upon delinquents for default in the payment of taxes levied under said act, at the times specified therein, shall, upon payment of the said taxes assessed against such delinquents within three months from the passage of this act, with interest at the rate of six per centum thereon, be remitted." (June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

Cross References

Appointment of Commissioners, § 1–201 et seq.

General limitation on power of Commissioners, § 1–801.

Section 1 of the present Organic Act, in its entirety, is set out as a note to § 1–101.

NOTES TO DECISIONS

Right to Office

If a private citizen and taxpayer could institute quo warranto proceedings to test the title to the office of civil commissioner of the District, he could, under the same claim of right, institute like proceedings against any of those statutory officers of the United States who, in the District, exercise many important functions which affect persons and things throughout the entire country. *Newman* v. *United States ex rel. Frizzell* (238 U. S. 537, 59 L. Ed. 1446, 35 Sup. Ct. 881).

§ 1–104 [20: 4]. District of Columbia successor of former corporations.

The District of Columbia is the successor of the corporations of Washington and Georgetown, and all the property of said corporations, and of the county of Washington, is vested in the District of Columbia. (R. S., D. C., § 96.)

§ 1–105 [20: 5]. Former corporation continued for certain purposes.

The corporation of the District of Columbia is continued for all the purposes of this section and other acts for the collection of taxes, for suing and being sued, for causes arising prior to June 20th, 1874, and for acquiring and holding real estate for school and municipal purposes. (Mar. 3, 1877, 19 Stat. 402, ch. 117, § 15.)

Compiler's Note

This section and § 8 are the only sections of the Tax Act of 1877 that would seem to be still in force. The first part of this section concerning causes of action prior to June 20, 1874, is clearly obsolete. Section 8, set forth as § 47–801 of this Code, relates to exempt property.

§ 1–106 [20: 6]. Records of former corporations and of levy court made property of District of Columbia.

All records, books, files, maps plats, surveys, drawings, writings and other papers, of the late corporations of Washington [and] Georgetown, or of the levy court of the District of Columbia, or made by persons in the employment or service of either of them, or of the District of Columbia, in the course of such employment or service, or which shall be so made after Feb. 4, 1878, are, and shall be the property of the District of Columbia. (Feb. 4, 1878, 20 Stat. 23, ch. 12, § 3.)

Compiler's Note

Bracketed word "and" was added by the compilers of the 1929 Code.

Cross Reference

Section 3 of the present Organic Act, in its entirety, is set out as a note to § 1–103.

§ 1–107 [20: 7]. "Limits of city of Washington" defined—Georgetown abolished—General laws of Washington extended to former Georgetown.

That portion of the District included within the limits of the city of Washington, as the same existed on the 21st day of February, 1871, and all that part of the District of Columbia embraced within the bounds and constituting on February 11, 1895 the city of Georgetown (as referred to in the Acts of Congress approved Feb. 21, 1871, 16 Stat. 419, ch. 62, and June 20, 1874, 18 Stat. 116, ch. 337) shall be known as and shall constitute the city of Washington, the federal capital; and all general laws, ordinances, and regulations of the city of Washington are extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown. The title and existence of said Georgetown as a separate and independent city by law is abolished. Nothing in this section shall operate to affect or repeal existing law making Georgetown a port of entry, except as to its name. (R. S., D. C., § 94; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

§ 1–108 [20: 8]. Name of "Uniontown" changed to "Anacostia."

That portion of the District of Columbia prior to April 22, 1886 known and designated as Uniontown, [shall] be known and designated as Anacostia. (Apr. 22, 1886, 24 Stat. 14, ch. 58.)

Compiler's Note

The bracketed word "shall" was added by the compilers of the 1929 Code.

Chapter 2.—COMMISSIONERS AND OTHER OFFICERS

Sec.

1–201. Appointment of Commissioners.
1–202. Engineer Commissioner may be designated from rank of captain or above.
1–203. Engineer Commissioner not required to perform any other duty.
1–204. Compensation of Engineer Commissioner.
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1–212. Assistants to Engineer Commissioner, appointment, duties
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1–221. Location of hack stands.
1–222. Establishment of hack stands adjoining railroad stations—Rates of charges.
1–223. Rates for public vehicles to be fixed by Commissioners.
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1–238. Annual report to Congress.
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1–242. Appropriations for printing schedules or lists of supplies and materials.
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1–244. Additional powers of Commissioners.
1–245. Appointment of contracting officers—Powers—Approval of contracts over $3,000—Void contracts—Liquidated damage contracts.
1–246. Powers and duties of Director of Inspection—Delegation of authority.
1–247. Purchase of materials, supplies, and equipment—Surplus articles—Authorization to sell to the District—Disposition of moneys.
1–248. Effectuate settlement for real estate acquired by purchase or condemnation.
1–249. Power conferred by sections 1–244 to 1–248 as additional.
1–250. Purchase of vehicles—Trade-in as part payment.

§ 1–201 [20: 12]. Appointment of Commissioners.

The President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, shall be Commissioners of the District of Columbia. (June 11, 1878, 20 Stat. 103, ch. 180, § 2; Dec. 24, 1890, 26 Stat. 1113, Res. No. 7.)

Compiler's Note

In the act of June 11, 1878, the words "whose lineal rank shall be above that of captain," followed the words "United States Army." The act of December 24, 1890, did not specifically amend the first-mentioned act but provided that the engineer commissioner might be detailed from among captains or higher ranking officers with at least 15 years' service in the Engineer Corps, see § 1–202.

Statutory Reference

Extension of Hatch Act, forbidding pernicious political activities, to officers and employees of the District of Columbia, and partial exemption of Commissioners, see U. S. C., title 18, § 61n.

§ 1–202 [20: 13]. Engineer Commissioner may be designated from rank of captain or above.

Such engineer commissioner may, in the discretion of the President of the United States, be detailed from among the captains or officers of higher grade having served at least fifteen years in the Corps of Engineers of the Army of the United States. (Dec. 24, 1890, 26 Stat. 1113, Res. No. 7.)

§ 1–203 [20: 14]. Engineer Commissioner not required to perform any other duty.

The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

Cross References

Member of National Capital Park and Planning Commission, § 8–101.

Power of Engineer Commissioner over municipal architect, § 1–306.

§ 1–204 [20: 15]. Compensation of Engineer Commissioner.

The engineer commissioner shall be entitled to receive such compensation, in addition to his Army pay and allowances, as will make his compensation equal to five thousand dollars per annum. (Mar. 3, 1881, 21 Stat. 460, ch. 134.)

Compiler's Note

From the fiscal year ending June 30, 1925, to the fiscal year ending June 30, 1929, the various appropriation acts for the District of Columbia fixed the salary of the Engineer Commissioner at $7,500. See acts of June 7, 1924, 43 Stat. 539, ch. 302, § 1, and May 21, 1928, 45 Stat. 645, ch. 659, § 1. Since that time the appropriation acts, after making a specific appropriation, add the words: "plus so much as may be necessary to compensate the Engineer Commissioner at such rate in Grade 8 of the professional and scientific service of the Classification Act of 1923 (U. S. C., title 5, sec. 673), as amended, as may be determined by the Board of Commissioners." See acts of February 25, 1929, 45 Stat. 1262, ch. 314, § 1, and June 12, 1940, 54 Stat. 307, ch. 333, § 1. The salary ranges provided for Grade 8 are $8,000, $8,500, and $9,000.

§ 1–205 [20: 16]. Engineer Commissioner not deemed to hold civil office.

The engineer commissioner shall not be deemed by reason of anything in this act contained to hold a civil office under the laws of the United States. (June 20, 1874, 18 Stat. 117, ch. 337, § 3.)

Compiler's Note

The words "this act" relate to the act of June 20, 1874, 18 Stat. 117, ch. 337. It is known as the Temporary Organic Act of 1874, and but little of it was retained in the 1929 Code and that in fragmentary form. In the first

place, the Organic Act of 1878 may have been intended to entirely supersede the temporary act of 1874, and second, even if this is not true it is not clear that the provision set out in this section should be regarded as applying to the Engineer Commissioner appointed under section 2 of the Organic Act of 1878 (§§ 1–201 to 1–203). If it does apply, it seems that the section should read: "The Engineer Commissioner shall not be deemed to hold a civil office under the laws of the United States."

§ 1–206 [20: 17]. Civilian Commissioners — Qualifications.

The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

NOTES TO DECISIONS

ARMY OFFICER

Retired Army officer, having qualifications of citizenship and residence, is eligible for appointment to office of Commissioner of District of Columbia. (36 O. A. G. 388.)

POWER OF APPOINTMENT

Congress has, from time to time, restricted the President's selection, in the power of appointments, by the requirement of citizenship. It has limited the power of nomination by providing that the office may be held only by a resident of the United States; of a State; of a particular State; of a particular district; of a particular Territory; of the District of Columbia; and of a particular foreign country. *Myers* v. *United States* (272 U. S. 52, 71 L. Ed. 160, 47 Sup. Ct. 21) (dissenting opinion).

§ 1–207 [20: 18]. Commissioners to choose president of Board.

One of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

President ex officio member of Commission on Licensure to Practice Healing Art, § 2–103.

§ 1–208 [20: 19]. Oath of Commissioners.

Said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

COMPILER'S NOTE

That part of section 2 of the Organic Act of 1878, which provided that Commissioners appointed from civil life should each give bond in the sum of $50,000, was repealed by the act of June 28, 1935, 49 Stat. 430, ch. 332, § 1.

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

§ 1–209 [20: 21]. Tenure of office.

The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; and at the expiration of their respective terms their successors shall be appointed for three years. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

Section 2 of the present Organic Act, in its entirety, as amended, is set out as a note to § 1–102.

§ 1–210 [20: 22]. Officers becoming surety for contractors prohibited—Contractors not to be surety on bonds of officers.

Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

§ 1–211 [20: 23]. Quorum—Assistants to Engineer Commissioner to act in his absence.

Any two of the Commissioners of the District of Columbia, sitting as a board, shall constitute a quorum for the transaction of business, and the senior officer of the Corps of Engineers of the Army who shall for the time being be detailed to act as assistant (and in case of his absence from the District or disability, the junior officer so detailed) shall, in the event of the absence from the District or disability of the Commissioner who shall for the time being be detailed from the Corps of Engineers, perform all the duties imposed by law upon said commissioner. (Dec. 24, 1890, 26 Stat. 1113, Res. No. 7.)

COMPILER'S NOTE

This section is apparently inconsistent with § 1–212, since there is no provision for the appointment of a senior officer of the Corps of Engineers of the Army to act as an assistant to the Board of Commissioners.

§ 1–212 [20: 24]. Assistants to Engineer Commissioner, appointment, duties.

The President of the United States may detail from the Engineer Corps of the Army not more than three officers, junior to the engineer officer belonging to the Board of Commissioners of said District, to act as assistants to said engineer commissioner in the discharge of the special duties imposed upon him by the provisions of the Organic Act. (June 11, 1878, 20 Stat. 107, ch. 180, § 5; Aug. 7, 1894, 28 Stat. 246, ch. 232.)

COMPILER'S NOTE

The act referred to in this section is the present Organic Act, 20 Stat. 102, ch. 180, see notes to § 1–801.

AMENDMENT

The original act required the President to detail not more than two officers.

CROSS REFERENCES

Assistant to Engineer Commissioner member of board for condemnation of insanitary buildings, § 5–601.

See note to § 1–211.

§ 1–213 [20: 20a]. Bonds of officers and employees.

The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia shall hereafter be required to give, or renew, bond for the faithful discharge of their duties and to fix the penalty of any such bond:

Provided, That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of U. S. Code, Title 6, section 14, relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia. (June 28, 1935, 49 Stat. 430, ch. 332, § 1.)

COMPILER'S NOTE

This section was amendatory to § 2 of the Organic Act of 1878.

§ 1–214 [20: 9a]. Secretary of Board of Commissioners authorized to execute certain documents.

It shall be lawful for the secretary of the Board of Commissioners of the District of Columbia, or in his absence or upon his inability to act, such person as said commissioners may designate, when so directed by said commissioners, to execute in the name of the District of Columbia or of said Board, by attaching thereto his signature as such secretary and affixing when requisite the seal of said District, any deed, contract, pleading, lease, release, regulation, notice, or other paper, which prior to February 11, 1932, said Commissioners were required to execute by subscribing thereto their respective signatures: *Provided,* That prior to such signing, and sealing if requisite, said deed, contract, pleading, lease, release, regulation, notice, or other paper shall first have been considered and approved by said Board of Commissioners, or a majority of them, sitting as a board, and evidence of such consideration and approval shall be reduced to writing and recorded in the minutes of said Board of Commissioners, which minutes shall thereafter be signed by the members of said Board of Commissioners or a majority thereof. (Feb. 11, 1932, 47 Stat. 48, ch. 40.)

CROSS REFERENCES

Deeds for sale of District lands, § 9–303.
Execution of instruments for transfer of Industrial Home School site, § 32–503.

§ 1–215 [20: 27]. Volunteer services not to be accepted for government of District of Columbia.

After July 7, 1898, the Commissioners of the District of Columbia shall not accept volunteer service for the government of the District of Columbia or employ personal services in excess of that authorized by law except in cases of sudden emergency involving the loss of human life or the destruction of property. (July 7, 1898, 30 Stat. 666, ch. 571.)

COMPILER'S NOTES

The act of June 12, 1940, 54 Stat. 307, ch. 333, § 1, making appropriations for the government of the District, provided as follows: "The Commissioners may without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the establishment and maintenance of the medical services herein provided for" (in the health department).

The act of July 15, 1939 (53 Stat. 1021, 1022, ch. 281, § 1), contained specific similar provisions for the maintenance of dispensaries, nursing service, and maternal and child health service.

CROSS REFERENCES

Voluntary aid to board of public welfare in the placement and supervision of children under its care, § 3–119.
Voluntary medical services for public charitable institutions, § 32–1006.
Voluntary services in public schools authorized, § 31–802.
Volunteer aid in conducting play grounds, § 8–132.

§ 1–216 [20: 28]. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.

Said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCES

Conviction of certain crimes, failure to account, ineligible to hold public office, § 1–316.
Designation of employee to witness signatures of employees of District to pay roll, § 1–315.
District employee excluded from compensation under Social Security Act, § 46–301.
Exemption from military service, § 39–102.
Forfeiture of position for violation of Money Lenders Law, § 26–605.
General limitations on power of Commissioners, § 1–801 and note.
Jury duty, §§ 11–1420 to 11–1423.
Power to grant leave of absences to employees, §§ 1–313, 1–314.

§ 1–217 [20: 28a]. Civil Service Retirement Act applicable to municipal employees.

The Civil Service Retirement Act (U. S. C., Title 5, §§ 691, 693, 698, 707, 709–725, 727–729, 731, 733, 736a, 736b, 736c) shall apply to the following employees and groups of employees: * * *

(e) All regular annual employees of the municipal government of the District of Columbia, appointed directly by the Commissioners or by other competent authority, including those employees receiving per diem compensation paid out of general appropriations and including public-school employees, excepting school officers and teachers. (May 29, 1930, 46 Stat. 470, ch. 349, § 3 (e).)

CROSS REFERENCE

Retirement of public school teachers, § 31–701 et seq.

§ 1–218 [20: 9]. Commissioners—Executive power vested in.

The executive power is vested in the Commissioners. (R. S., D. C., § 3; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

COMPILER'S NOTE

This section is a composite of the credits cited in the history line.

CROSS REFERENCES

Annual report to Congress, §§ 1–238, 1–239.
Authorized to insure District property, § 1–816.
Claims against District; service of process on Commissioners; settlement of claims; refunds of taxes or assessments, §§ 1–901 to 1–905.
Cleaning streets, §§ 1–224, 1–235, 1–236.
Commissioners have common-law powers of constables, except for the service of civil process or the collection of a private debt, § 4–136.
Duty to preserve original copies of governmental reports, § 1–240.
Execution of instruments, § 1–214.
General limitations on power of Commissioners, § 1–801.

No power to anticipate tax revenue, § 1–219.
One Commissioner member of board of trustees of National Training School for Boys, § 32–803.
Police regulations authorized in certain cases, § 1–224.
Power of Commissioners concerning contracts, §§ 1–801 to 1–819.
Power over corporation counsel, written opinions, §§ 1–301, 1–302.
Power over out-of-door advertising, §§ 1–231 to 1–233.
Powers and duties concerning public parks, playgrounds, and reservations, § 8–101 et seq.
Powers over animals running at large, § 1–230.
Powers over custodians of District property, § 1–309.
Power to abolish or consolidate offices and to appoint officers or reduce number of employees, § 1–216.
Power to grant pardons and respites, issuance of commissions of officers, execution of laws, § 1–220.
Power to locate hack stands, § 1–221.
Power to make and enforce building regulations, § 1–228 and notes.
Power to make police regulations concerning firearms, projectiles, explosives, or weapons, § 1–227.
Power to make police regulations to protect life, limb, health, comfort, quiet, and property, § 1–226 and notes.
Power to regulate construction and repair of elevators, § 1–229.
Power to regulate conveyance of passengers to and from railroad stations, § 1–222.
Power to require bond of public officers and employees, § 1–213.
Sale of lands that belong to District, § 9–301, et seq.

NOTES TO DECISIONS

NATURE OF POWERS

Provisions of the statutes are to cause the District Commissioners to be merely administrative officers with ministerial powers only. The sum of the municipal powers of the District is neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States, acting pro hac vice as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials. *District of Columbia* v. *Bailey* (171 U. S. 161, 43 L. Ed. 118, 18 Sup. Ct. 868).

§ 1–219 [20: 26]. Taxes not to be anticipated by sale or hypothecation.

Said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCES

General limitations on power of Commissioners, § 1–801.
Section 3 of the Organic Act, in its entirety, is set out as a note to § 1–103.

§ 1–220 [20: 11]. Pardons and respites—Power to grant—Commissioning of officers—Execution of laws.

The Commissioners of the District of Columbia may grant pardons and respites for offenses against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the legislative assembly, and the police and building regulations of the District. They shall commission all officers appointed under the laws of the District, and shall take care that the laws be faithfully executed. (R. S., D. C., § 6; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; Apr. 28, 1892, 27 Stat. 22, ch. 55.)

COMPILER'S NOTE

This section is a composite of the credits cited in the history line.

NOTES TO DECISIONS

NATURE OF POWER

Necessary operation of the provisions of the statutes is to cause the District Commissioners to be merely administrative officers with ministerial powers only. The sum of the municipal powers of the District is neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States, acting pro hac vice as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials. *District of Columbia* v. *Bailey* (171 U. S. 161, 18 Sup. Ct. 868, 43 L. Ed. 118).

§ 1–221 [20: 29]. Location of hack stands.

The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCES

Other provisions concerning regulation of traffic and parking, §§ 40–603, 40–604.
Powers of Public Utilities Commission, § 43–209.

§ 1–222 [20: 30]. Establishment of hack stands adjoining railroad stations—Rates of charges.

The Commissioners of the District of Columbia are authorized to locate on the streets or parts of streets adjoining the stations of any railroad company in the District of Columbia, a stand for cabs, carriages, and other vehicles for the conveyance of passengers to and from the said railroad stations, said service to be established by the said railroad companies. The rates of charges for the service to be rendered by the said railroad companies shall be fixed by the Commissioners of the District of Columbia. (June 7, 1898, 30 Stat. 747, Res. No. 46.)

CROSS REFERENCE

See notes to § 1–221.

§ 1–223 [20: 31]. Rates for public vehicles to be fixed by Commissioners.

The Commissioners of the District of Columbia are authorized and directed, after due investigation, to prepare and put in immediate operation, subject to change from time to time, a reasonable scale of charges by cabs, taxicabs, and public vehicles, for the transportation of passengers in the District of Columbia, and the tariffs so prepared shall be the maximum charges that may be collected in the District of Columbia. The said Commissioners are hereby empowered to prescribe the penalty or penalties for violation of any charge fixed by them. (Mar. 3, 1909, 35 Stat. 724, ch. 250.)

CROSS REFERENCES

Licensing and regulation of vehicles for hire, § 47–2331.
Power of Commissioners and Public Utilities Commission concerning public utilities, § 43–209.

NOTES TO DECISIONS

NATURE OF POWERS

Under this section, Congress gave every evidence of being familiar with the distinction between the delegation of the power to prohibit or exclude. *Smallwood* v. *District of Columbia* (57 App. D. C. 58, 17 Fed. (2d) 210).

Commissioners may make, modify, and enforce police regulations. *Thomas* v. *District of Columbia* (67 App. D. C. 179, 90 Fed. (2d) 424).

Congress delegated to the Commissioners the power to make and enforce regulations of a purely local nature.

La Forest v. *Board of Commissioners of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

§ 1–224 [20: 32]. Police regulations authorized in certain cases.

The Commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce usual and reasonable police regulations in and for said District as follows:

First. For causing full inspection to be made, at any reasonable times, of the places where the business of pawnbroking, junk-dealing, or second-hand clothing business may be carried on.

Second. To regulate the storage of highly inflammable substances in the thickly populated portions of the District.

Third. To locate the places where licensed venders on streets and public places shall stand, and change them as often as the public interests require, and to make all the necessary regulations governing their conduct upon the streets in relation to such business.

Fourth. [Repealed.]

Fifth. To establish and regulate the charges to be made by owners of hacks and hackney carriages of any kind whatsoever.

Sixth. To prohibit conducting droves of animals upon such streets and avenues as they may deem needful to public safety and good order.

Seventh. To regulate the keeping and running at large of dogs and fowls.

Eighth. To prohibit the deposit upon the street or sidewalks of fruit, or any part thereof, or other substance or articles that might litter the same, or cause injury to or impede pedestrians.

Ninth. To regulate or prohibit loud noises with horns, gongs, or other instruments, or loud cries, upon the streets or public places, and to prohibit the use of any fireworks or explosives within such portions of the District as they may think necessary to public safety.

Tenth. [Repealed.]

Eleventh. To prescribe reasonable penalties for the violation of any of the regulations in this act (§§ 1–224, 1–225) mentioned; and said penalties may be enforced in any court of the District of Columbia having jurisdiction of minor offenses, and in the same manner that such minor offenses are now by law prosecuted and punished. (Jan. 26, 1887, 24 Stat. 368, ch. 49, § 1; Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16.)

REPEAL

Subsections "fourth" and "tenth" were repealed by act of Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16, cited to text.

CROSS REFERENCES

Businesses of storing moving-picture films, gasoline, kerosene, oils, explosives, and pyroxylin are required to obtain licenses, §§ 47–2313 to 47–2315.

Cleaning streets, §§ 1–235, 1–236 and notes.

General provisions authorizing Commissioners to license business and to provide for the inspection, supervision, or regulation thereof, §§ 47–2344, 47–2345.

License required for second-hand dealers, § 47–2339.

Power of Commissioners over public vehicles, §§ 1–221 to 1–223 and notes.

Regulation of firearms, projectiles, explosives, or weapons, § 1–227 and notes.

Removal of ice and snow from sidewalks, §§ 7–802 to 7–806.

Supervision and inspection of pawnbrokers, venders, hackmen, and cartmen, dealers in second-hand merchandise, intelligence-officer keepers, auctioneers of watches and jewelry, suspected private banking houses, and other doubtful establishments, §§ 4–147 to 4–150.

NOTES TO DECISIONS

GRADE CROSSINGS

Regulations of Commissioners of District of Columbia, adopted in pursuance of the act of Congress of January 26, 1887, 24 Stat. 368, ch. 49 (this section), and a joint resolution of February 26, 1892, 27 Stat. 394 (§ 1–226 of this code), required that "whenever the grade of a steam railroad track is approximately even with the adjacent surface" of the street in which it is laid, the road should be securely closed on both sides with a substantial fence. A railroad track was, at the time and place of an accident, not over two feet two inches higher than the level of the street, and was not fenced. The question whether, within the meaning of the regulations, the grade of the track was "approximately even with the adjacent surface" was properly submitted to jury. *Baltimore & P. R. Co.* v. *Cumberland* (176 U. S. 232, 44 L. Ed. 447, 20 Sup. Ct. 380).

STREET VENDORS

This section did not authorize the Commissioners to prohibit vending on the streets or public places, but merely regulated such use. *Crane* v. *District of Columbia* (53 App. D. C. 159, 289 Fed. 557).

A police regulation designating stands for street vendors is valid. *Carranzo* v. *District of Columbia* (56 App. D. C. 118, 10 Fed. (2d) 983).

TRAFFIC REGULATIONS

Traffic regulations apply to United States employees driving government automobiles. *Croson* v. *District of Columbia* (55 App. D. C. 122, 2 Fed. (2d) 924).

"Vehicles" and "movement of vehicles" embrace automobiles. *White* v. *District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

Commissioners may make traffic regulations inconsistent with postal regulations. *White* v. *District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

Police regulations are admissible in evidence in trial for murder of policeman while enforcing vehicle regulations. *Holmes* v. *United States* (56 App. D. C. 183, 11 Fed. (2d) 569).

Director of Traffic was authorized to exclude horse-drawn vehicles from arterial highways or boulevards. *District of Columbia* v. *Wheeler* (57 App. D. C. 106, 17 Fed. (2d) 953).

Traffic Act delegates to the Commissioners of the District power and authority to make rules and regulations in relation to traffic on the public thoroughfares, and to the Director of Parks authority to make rules and regulations in relation to traffic on the roads in the public parks, and to provide for the prosecution for violations, whether on the public streets or in the parks, by proceedings in the police court at the instance of the corporation counsel and to exclude United States attorney from any part in the commencement of such prosecutions except smoke screen violation. *Persham* v. *United States* (70 App. D. C. 116, 104 Fed. (2d) 249).

Even at an intersection, a streetcar has preferential, though no exclusive, right of way, and a motorist on or near track must use reasonable care, as streetcar approaches, to get off or keep off the track until it passes.—*Capital Transit Co.* v. *Smallwood* (App. D. C. 1947, 162 F. 2d 14).

Even if, as a general proposition, a streetcar's preferential right of way at intersection must yield to right of way conferred by traffic regulation on an automobile which precedes streetcar into intersection, where motorist has precedence under traffic regulations by less than two seconds, motorist is negligent if he proceeds into path of streetcar so close at hand when he is able to stop within 3 or 4 feet and save himself from injury.—*Capital Transit Co.* v. *Smallwood* (App. D. C. 1947, 162 F. 2d 14).

Traffic Regulation requiring a vehicle approaching an intersection to slow down and be kept under such control

as to avoid colliding with pedestrians or vehicles is not so unreasonable, indefinite or uncertain as to render it void.—*Lohman* v. *District of Columbia* (D. C. Mun. App. 1947, 51 A. 2d 382).

§ 1–224a. Additional penalties for violation of regulations.

The Commissioners of the District of Columbia are hereby authorized to prescribe reasonable penalties of fine not to exceed $300 or imprisonments not to exceed ten days, in lieu of or in addition to any fine, for the violation of any building regulation promulgated under authority of section 1–228, and any regulation promulgated under authority of section 1–224, and any regulation promulgated under authority of section 1–226. (Dec. 17, 1942, 56 Stat. 1056, ch. 762, § 7.)

§ 1–225 [20: 33]. Publication of regulations—Effective date.

The regulations herein provided for shall, when adopted, be printed in one or more of the daily newspapers published in the District of Columbia; and no penalty prescribed for the violation of said regulations shall be enforced until thirty days after such publication. (Jan. 26, 1887, 24 Stat. 369, ch. 49, § 2.)

CROSS REFERENCE

Other provisions for publication of rules and regulations, effect, §§ 4–177, 4–178.

§ 1–226 [20: 34]. Regulations for protection of life, health, and property.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under sections 1–224, 1–225, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia. (Feb. 26, 1892, 27 Stat. 394, Res. No. 4, § 2.)

CROSS REFERENCES

Business licenses may not be issued until safety regulations have been complied with, § 47–2302.

General provision giving Commissioners authority to make rules and regulations for the licensing, inspection, or regulation of any business, §§ 47–2344, 47–2345.

Rules and regulations, publication, effect, §§ 4–177, 4–178.

Sewer agreement with Maryland authorized, § 1–817.

SPECIFIC AUTHORITY FOR RULES AND REGULATIONS BY THE COMMISSIONERS

GENERAL WELFARE

Authorized to fix standards of loads of split wood, § 10–118.

Establishment of tolerances in weights, measures, and specifications, §§ 10–117, 10–127.

Regulations for produce and other markets, § 10–130.

Rules and regulations by Commissioners and Public Utilities Commission governing public utilities, § 43–209 and notes.

Rules and regulations concerning motor vehicles: Equipment and inspection thereof; registration, titling, ownership, transfer of ownership, and revocation of certificate of title; financial responsibility of owners; movement of traffic, speed, length, weight, height, width, routing, and parking, common carriers jointly with Public Utilities Commission, § 40–603 and notes.

Rules and regulations concerning municipal fish wharf and market, § 10–135.

Rules and regulations concerning wharves, §§ 9–101, 9–102.

Rules and regulations concerning wholesale farmers' produce market, § 10–137.

Rules and regulations for administration and enforcement of Alcoholic Beverage Control Act, § 25–106 et seq.

Rules and regulations for administration of Real Estate and Business Brokers License Act, § 45–1403.

Rules and regulations for public beach and dressing houses, § 8–168 et seq.

Rules and regulations for public scales and fees of public weigh-masters, § 10–128.

Rules and regulations for registration of motor vehicles, § 40–102.

Rules and regulations governing additional compensation to police and firemen for demonstrated efficiency, § 4–702.

Rules and regulations governing conduct of municipal playgrounds and other parks, §§ 8–131 to 8–144.

Rules and regulations governing money lenders, § 26–611.

Rules and regulations to administer law providing for retirement of public school teachers, § 31–717.

HEALTH

Regulations concerning plumbing and drainage, § 1–725.

Regulations for administration of laws governing manufacture, renovation, and sale of mattresses, §§ 6–603, 6–606.

Rules and regulations by health department, §§ 6–101, 6–102, 6–112, 6–114, 6–118.

Regulations governing Federal government restaurants, § 6–1101.

Rules and regulations concerning collection of garbage and other refuse, §§ 6–501, 6–507.

Rules and regulations for admission of paying patients into Children's Tuberculosis Sanatorium, § 32–312.

Rules and regulations for admission of paying patients into Gallinger Municipal Hospital, §§ 32–308, 32–309.

Rules and regulations for admission of paying patients into the Tuberculosis Hospital, § 32–310.

Rules and regulations for care of needy individuals and the blind under the Social Security Act, §§ 46–101, 46–112, 46–203, 46–212.

Rules and regulations for disposal of human excreta and waste, §§ 6–703, 6–704.

Rules and regulations for granting permits to operate medical and dental colleges, § 31–902.

Rules and regulations for labeling potatoes, § 22–3409.

Rules and regulations governing private hospitals and asylums, § 32–304.

Rules and regulations governing smallpox hospitals, § 32–306.

Rules, regulations, and fees for public convenience stations, § 8–140.

PROPERTY

Building regulations, §§ 1–228, 5–413 to 5–428.

Regulations concerns out-of-door advertising signs, §§ 1–231 to 1–233.

Rules and regulations concerning firemen, §§ 4–402, 4–406, 4–411.

Rules and regulations concerning taxation, § 47–2505 and notes.

Rules and regulations for smoke prevention, § 6–802.

SAFETY

Lighting streets, bridges, and other public places, § 1–234 and notes.

Regulations concerning construction, operation, and repair of elevators, §§ 1–229, 5–305.

Regulations concerning firearms, projectiles, explosives, or other weapons, § 1–227 and notes.

Regulations concerning steam and pressure boilers, §§ 1–715, 1–718.

Regulations for repairing streets, avenues, alleys, and sewers, § 7–101.

Rules and regulations concerning animals running at large, § 1–230.

Rules and regulations concerning fire escapes and safety provisions for buildings, § 5–304.

Rules and regulations for production, use, and control of electricity, § 1–719.

Rules and regulations governing Metropolitan Police, §§ 4–106, 4–115, 4–117, 4–121, 4–122, 4–124, 4–130, 4–131, 4–142, 4–144.

Rules and regulations governing parkings, § 5–205.

Rules and regulations governing steam and other operating engineers, § 2–1502.

Rules, regulations, jurisdiction, control, and duties as to establishing, closing, repairing streets, bridges, sidewalks, and sewers, § 7–102 and notes.

Rules and regulations by boards or commissions other than Commissioners of the District:

Harbor regulations, § 22–1701.

Regulations concerning accountants, § 2–903.

Regulations concerning practice of healing arts, § 2–103.

Regulations for licenses to erect boathouses on Potomac River, § 8–157.

Rules and regulations by the Board of Public Welfare, § 3–104.

Rules and regulations concerning nursing, § 2–403.

Rules and regulations concerning optometry, § 2–505.

Rules and regulations for administration of law to provide allowance for dependent children, § 32–707.

Rules and regulations for administration of Uniform Narcotic Drug Act, § 33–405.

Rules and regulations for cemeteries, § 27–110.

Rules and regulations for eradication of plant diseases and insects, §§ 6–904, 6–905.

Rules and regulations for labor of prisoners, § 24–412.

Rules and regulations for management of District Training School, § 32–604.

Rules and regulations for parks, playgrounds, and public reservations, §§ 8–128, 8–129, 8–143, 8–144, 8–148.

Rules and regulations for the administration of the Washington National Airport, § 2–1602.

Rules and regulations governing National Training School for Boys, § 32–806.

Rules and regulations governing pharmacist and sale of drugs and medicines, §§ 2–103, 2–608.

Rules and regulations governing practice of podiatry, §§ 2–702, 2–719.

Rules and regulations regulating dentists, §§ 2–302, 2–331.

Rules and regulations to carry out Minimum Wage Law, § 36–405.

Zoning regulations, §5–413 et seq.

Rules and regulations by boards or commissions other than Commissioners of the District, subject, however, to the approval of the Commissioners of the District:

Regulations concerning practice of veterinaries, § 2–810.

Rules and regulations for parole of convicts, § 24–201.

Rules and regulations governing architects, §§ 2–1001, 2–1006.

Rules and regulations governing barbers, §§ 2–1103, 2–1117.

Rules and regulations governing boxing, § 2–1202.

Rules and regulations governing insurance and insurance companies, § 35–102 and notes.

Rules and regulations governing practice of cosmetology, §§ 2–1303, 2–1321.

Rules and regulations governing production and sale of milk, cream, or ice cream, § 33–307.

Rules and regulations to prevent adulteration of food and drugs, § 33–104.

NOTES TO DECISIONS

CONSTITUTIONALITY

This section does not invade the property rights of the plaintiffs, for they do not possess any peculiar right, interest, or franchise in the streets of the District. Their rights are held by license only, and are such as belong to the public in general. They cannot be called franchises or vested property interests. *Cave* v. *Rudolph* (53 App. D. C. 12, 287 Fed. 989).

NATURE OF POWER

Commissioners were not vested with power to prohibit harmless street sales. *Crane* v. *District of Columbia* (53 App. D. C. 159, 289 Fed. 557).

Commissioners cannot prescribe a condition for licensing junk and second-hand dealers which Congress did not see fit to impose. *Coombe* v. *United States ex rel. Selis* (55 App. D. C. 190, 3 Fed. (2d) 714).

Careful operation of mail trucks is required quite as much as other similar vehicles, and it is reasonable to believe that the regulation of all such vehicles was intrusted to the Commissioners for protection of lives, limbs, health, comfort, and quiet of all persons. *White* v. *District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

POLICE POWER

It is within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse and filth, and in so doing they may provide for the inspection of premises as a health measure but must not unduly infringe upon individual rights in absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874).

SUMMARY ACTION

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their power in taking any summary action. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874).

§ 1–227 [20: 35]. Regulations relative to firearms, explosives, and weapons.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such usual and reasonable police regulations, in addition to those already made under sections 1–224 to 1–226 as they may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia. (June 30, 1906, 34 Stat. 809, ch. 3932, § 4.)

CROSS REFERENCES

Firearms, fireworks, or loud noises on Capitol grounds forbidden, § 9–110.

Licensing, regulation, and supervision of dealers in dangerous weapons, § 47–2340.

Other provisions concerning regulation of firearms and explosives, §§ 1–224, 22–3201 et seq.

Rules and regulations in general, § 1–226 and notes.

NOTES TO DECISIONS

SALE OF FIREARMS

A police regulation prohibiting the sale of firearms to children may not be construed beyond its plain meaning though other provisions of the regulation may reveal an intent to include in the prohibition weapons not covered by the words used. *Tendler* v. *District of Columbia* (D. C. Mun. App. 1946, 50 A. 2d 263).

An "air pistol" is not a "firearm", or a "missile", or a "projectile", within police regulation prohibiting the sale to children of such devices. *Tendler* v. *District of Columbia* (D. C. Mun. App. 1946, 50 A. 2d 263).

§ 1–228 [20: 36]. Building regulations.

The Commissioners of the District of Columbia, are authorized and directed to make and enforce such building regulations for the said District as they may deem advisable.

Such rules and regulations made as above provided shall have the same force and effect within the District of Columbia as if enacted by Congress. (June 14, 1878, 20 Stat. 131, ch. 194, § 1 in part, § 2.)

COMPILER'S NOTE

As originally enacted, this section contained the words "such rules and regulations relative to the sale of coal in

the District of Columbia as shall insure full weight to purchasers of coal"; also immediately preceding the words "such building regulations." The provision concerning coal has been superseded by act of March 3, 1921, 41 Stat. 1217, ch. 118, § 11, which is set out as § 10–111.

Cross References

Approval of replatting and condemnation of lands under District of Columbia Alley Dwelling Act, § 5–104.

Commissioners authorized to make municipal regulations not inconsistent with §§ 5–413 to 5–428, 5–413 and notes.

Duties as to unsafe structures or excavations, §§ 5–502 to 5–505.

Pardoning violations of building regulations, § 1–220.

Power of Commissioners to make rules and regulations respecting production, use, and control of electricity; inspection of wiring, machinery, and appliances; inspection fees, §§ 1–719, 1–723.

Rules and regulations governing plumbing, house drainage, ventilation, preservation, and maintenance of house and public sewers; connections and excavations, §§ 1–724 to 1–727.

NOTES TO DECISIONS

Enforcement

It is a matter of common knowledge that the failure of builders in erecting structures for public use to conform to recognized standards has often resulted in disaster and tragedy, and that to prescribe standards without means for enforcing compliance therewith would be as futile as to prohibit an act without affixing a penalty, and all this Congress is presumed to have contemplated when it passed the act of March 3, 1909 [§ 5–429], supplementing this section. *Simmons* v. *District of Columbia* (53 App. D. C. 372, 290 Fed. 347).

Force and Effect

By this section the Commissioners of the District of Columbia were authorized to make "such building regulations for the said District as they may deem advisable," and provided that these should have the same force within the District as if enacted by Congress. *Smoot* v. *Heyl* (227 U. S. 518, 57 L. Ed. 621, 33 Sup. Ct. 336); *D. J. Dunigan, Inc.*, v. *District of Columbia* (59 App. D. C. 384, 44 Fed. (2d) 892); *Hill* v. *Raymond* (65 App. D. C. 144, 81 Fed. (2d) 278).

In order to be valid, building regulations must be reasonable and not arbitrary, and must have a tendency to promote the public health, safety, or general welfare; and although a regulation may be lawful on its face and apparently fair on its terms, yet if it is enforced in such a manner as to work a discrimination against a part of the community for no lawful reason, such exercise of power will be invalidated by the courts. *D. J. Dunigan, Inc.* v. *District of Columbia* (59 App. D. C. 384, 44 Fed. (2d) 892).

Liability for Damages

Mere continued use of a tenant of common stairs and hallways of the tenement premises, when he is aware of the failure of the owner to provide lights, as required by the statute and municipal regulations, does not constitute contributory negligence as a matter of law. *Hill* v. *Raymond* (65 App. D. C. 144, 81 Fed. (2d) 278).

Party Wall

If a lot owner uses the party wall, he waives the right to object that this section deprives him of property without due process of law. *Walker* v. *Gish* (43 Sup. Ct. 174, 260 U. S. 447, 67 L. Ed. 344).

Zoning Commission

Repealing clause of the Zoning Act of March 1, 1920, was in praesenti and operated immediately to deprive the Commissioners of the District of jurisdiction to enact building regulations in conflict with the jurisdiction conferred upon the Zoning Commission. *Schwartz* v. *Brownlow* (50 App. D. C. 279, 270 Fed. 1019).

§ 1–229 [20: 37]. Regulations for construction and operation of elevators—Penalty.

The Commissioners of the District of Columbia are hereby authorized and directed to make and publish such orders as may be necessary to regulate the construction, repair, and operation of all elevators within the District of Columbia, and prescribe such means of security as may be found necessary to protect life and limb.

Any person or persons, or corporation, who shall neglect or refuse to comply with the orders made pursuant to this section, shall, upon conviction thereof in the police court of the District of Columbia, on information filed in the name of the District of Columbia, be fined not less than ten dollars nor more than one hundred dollars for each offense. (Mar. 3, 1887, 24 Stat. 580, ch. 390, §§ 1, 2.)

Cross References

Other provisions concerning power of Commissioners over elevators, § 5–305.

Rules and regulations in general, § 1–226 and notes.

§ 1–230 [20:38]. Regulations for control of rabies—Vaccination of dogs—Penalties.

Whenever it shall be made to appear to the Commissioners that any dog or other animal within the District is afflicted with rabies, or is suspected of being rabid, or whenever said Commissioners shall be notified by the Health Officer of the District of Columbia that rabies may spread within said District, said Commissioners are empowered to issue proclamations requiring such of the following measures as said Commissioners may deem necessary with respect to any or all dogs or other animals within said District: (1) Muzzling; (2) leashing; (3) confinement or quarantine; (4) vaccination against rabies. Such measure or measures shall be required for such periods or at such times as the Commissioners may designate in any such proclamation. The Commissioners are authorized to prescribe in any such proclamation such regulations as may be necessary to carry out the measure or measures required.

Whenever the Commissioners shall by proclamation require dogs or other animals in the District to be vaccinated against rabies, the owners or keepers of such dogs or other animals may have such vaccination done at their own expense by private veterinarians or at the expense of the District of Columbia by veterinarians designated for that purpose by the Commissioners. For the purposes of this section, the Commissioners are authorized and directed to provide the necessary personnel and facilities, including vaccine tags and vaccine.

Any person violating any provision of any such proclamation shall be punished by a fine of not more than $300 or imprisonment for not more than ninety days. (June 19, 1878, 20 Stat. 174, ch. 323, § 7; June 27, 1879, 21 Stat. 35, ch. 38; July 5, 1945, 59 Stat. 409, ch. 267, § 3.)

Compiler's Note

There is nothing amendatory of the original act in the act of June 27, 1879, 21 Stat. 35, ch. 38, cited to the text. It merely authorizes the Commissioners to extend the area for the impounding of animals in the District of Columbia.

AMENDMENTS

The act of July 5, 1945, cited to text, amended section generally to control rabies and provide for the vaccination of dogs.

The catchline has been reworded.

CROSS REFERENCES

Provisions concerning dog tax, § 47–2001.

Rules and regulations in general, § 1–226 and notes.

§ 1–231 [20: 38a]. Outdoor signs—Commissioners may make regulations.

The Commissioners of the District of Columbia are authorized and empowered after public hearings to make and to enforce such regulations as they may deem advisable to (in so far as necessary to promote the public health, safety, morals, and welfare) control, restrict, and govern the erection, hanging, placing, painting, display, and maintenance of all outdoor signs and other forms of exterior advertising on public ways and public space under their control and on private property within public view within the District of Columbia, and such regulations as may be promulgated hereunder shall have the force and effect of law. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 1.)

CROSS REFERENCES

Real estate sale or rent signs, § 7–1001.

Rules and regulations in general, § 1–226 and notes.

§ 1–232 [20: 38b]. License requirements—Outdoor signs—Fee.

No person, persons, firm, or corporation shall engage in the business of erecting, hanging, placing, painting, displaying, or maintaining any sign for outdoor display within the District of Columbia without first having obtained a license therefor from the superintendent of licenses of the District of Columbia, which license shall bear an identification number: *Provided,* That no license shall issue without the prepayment of $5 to the collector of taxes of the District of Columbia, and an annual fee of $5 thereafter for each succeeding year. For good cause shown the Commissioners of the District of Columbia shall have the power to reject any application for a license hereunder, or, where license has been issued, to revoke it. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 2.)

CROSS REFERENCES

General provisions concerning business licenses, § 47–2301.

See notes to § 1–231.

§ 1–233 [20: 38c]. Penalties—Publication of regulations.

Any person, persons, firm, or corporation, whether as principal, agent, or employee, violating sections 1–231 to 1–233 or any of the regulations promulgated pursuant to said sections shall, upon conviction thereof in the police court of the District of Columbia, be fined not less than $5 nor more than $200 for each and every offense, and a like fine shall be imposed for each and every day thereafter that such violation of law shall continue: *Provided,* That the regulations promulgated hereunder shall be printed in one of the daily newspapers published in the District of Columbia, and no penalty prescribed for the violation of said regulations shall be enforced until thirty days after the publication of such regulations. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 4.)

§ 1–234 [20: 39]. Lights — Maintenance outside city limits.

Said Commissioners shall have power to erect light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCES

Lighting streets, bridges, and other public places, §§ 7–501, 7–701 to 7–710.

§ 1–235 [20: 40]. Cleaning streets, alleys, and avenues, and repairs of sewers made municipal objects.

The sweeping, cleaning, and removing all refuse and filthy accumulations in the streets, alleys, and avenues of the city of Washington, and the repairs and cleaning of the sewers, are necessary municipal objects, which belong to the current expenses of the same, to be paid for in money as other ordinary municipal expenses. (Mar. 1, 1875, 18 Stat. 337, ch. 117; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

COMPILER'S NOTE

The act of Mar. 1, 1875, 18 Stat. 337, ch. 117, made reference to the cities of Washington and Georgetown. The act of Feb. 11, 1895, 28 Stat. 650, ch. 79, made Georgetown a part of the city of Washington. The compilers of the 1929 Code reworded the above section to correspond with the provisions of the last-mentioned act.

CROSS REFERENCES

Other provisions concerning collection and disposal of city refuse, §§ 6–501 to 6–511.

Removal of ice and snow from sidewalks, §§ 7–802 to 7–806.

Repair of highways and sewers, § 7–101.

§ 1–236 [20: 41]. Sale of street sweepings authorized.

The Commissioners of the District of Columbia are authorized to sell sweepings from the streets, the amounts realized from such sales to be deposited in the treasury, to the credit of the United States and of the District of Columbia in the same proportions as appropriations for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Apr. 27, 1904, 33 Stat. 373, ch. 1628; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

General limitations on powers of Commissioners, § 1–801 and note.

§ 1–237 [20: 59]. Investigations of municipal matters by Commissioners—Authority to administer oaths.

After July 1, 1902, the several provisions of sections 4–501 to 4–503 shall be applicable to and enforceable in any investigation or examination of any municipal matter by the Commissioners of the District of Columbia, as well as to the proceedings before the trial boards named in said sections; and said Commis-

sioners are, and each of them is hereby, authorized to administer oaths to witnesses summoned in any such investigation or examination aforesaid. (July 1, 1902, 32 Stat. 591, ch. 1352.)

§ 1–238 [20: 10]. Annual report to Congress.

The Commissioners of the District of Columbia shall annually report their official doings in detail to Congress on or before the first Monday of December. (June 11, 1878, 20 Stat. 108, ch. 180, § 12.)

ORGANIC ACT OF 1878

Act of June 11, 1878, 20 Stat. 102, ch. 180, § 12, read, in its entirety, as follows: "It shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amendments to existing laws as in their opinion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia; and said Commissioners shall annually report their official doings in detail to Congress on or before the first Monday of December."

§ 1–239 [20: 101]. Illustrations in reports prohibited.

No illustrations shall be used in the annual report of any department of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, in part.)

§ 1–240 [20: 102]. Originals of discontinued reports of government of District of Columbia to be preserved for public inspection.

In all cases where the printing of annual or special reports of the government of the District of Columbia is discontinued, the original copy thereof shall be kept on file in the offices of the Commissioners of the District of Columbia for public inspection. (May 21, 1928, 45 Stat. 649, ch. 659.)

COMPILER'S NOTE

This section is derived from an appropriation act.

§ 1–241. Purchase of material, supplies, and equipment—Surplus articles.

The Commissioners and other responsible officials, in expending appropriations for the District of Columbia, so far as possible, shall purchase material, supplies, including food supplies and equipment, when needed and funds are available, in accordance with the regulations and schedules of the Procurement Division of the Treasury Department or from various services of the Government of the United States possessing materials, supplies, passenger-carrying and other motor vehicles, and equipment no longer required. Surplus articles purchased from the Government, if the same have not been used, shall be paid for at a reasonable price, not to exceed actual cost, and if the same have been used, at a reasonable price based upon length of usage. (June 28, 1944, 58 Stat. 531, ch. 300, § 5.)

§ 1–242. Appropriations for printing schedules or lists of supplies and materials.

No part of any appropriation for the District of Columbia, except for public schools, shall be expended for printing or binding a schedule or list of supplies and materials for the furnishing of which contracts have been or may be awarded. (June 28, 1944, 58 Stat. 533, ch. 300, § 13.)

§ 1–243. Rent for quarters.

No part of the funds appropriated for the District of Columbia shall be available for the payment of rental of quarters for any activity at a rate in excess of 90 per centum of the per annum rate paid by the District of Columbia for such quarters on June 30, 1933: *Provided,* That the provisions of this paragraph shall not apply to leases made prior to June 28, 1944, except when renewals thereof are made thereafter: *Provided further,* That the appropriations or portions of appropriations unexpended by reason of the operation of this paragraph shall not be used for any purpose, but shall be impounded and deposited in the Treasury to the credit of the District of Columbia. (June 28, 1944, 58 Stat. 532, ch. 300, § 6.)

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 6, 57 Stat. 346.
1943—June 27, 1942, ch. 452, § 6, 56 Stat. 460.
1942—July 1, 1941, ch. 271, § 6, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 6, 54 Stat. 342.

§ 1–244. Additional powers of Commissioners.

The Commissioners of the District of Columbia are authorized and empowered within their discretion—

(*a*) *Waiver of business license renewal fees for personnel of armed forces.*—In accordance with such regulations as they may make, to provide for the waiver of payment by any person in the military service of the United States of any annual or other periodic fee required by law to be paid to the District of Columbia or to any District of Columbia board or commission as a condition to retaining or renewing any license or permit to engage in any business or calling or to practice any profession in the District of Columbia.

(*b*) *Bond requirements for certain businesses—Amount—Termination of surety's liability—Notification by surety of payment on bond—Insolvency of surety—Action on bond—Amount of recovery—Certified copy of bond—License examination.*—To make, adopt, and enforce regulations requiring persons, firms, and corporations, other than utility companies, engaged within the District of Columbia in the business of plumbing or gas fitting, or of installing, maintaining, or repairing heating, ventilating, air-conditioning, or mechanical refrigerating apparatus, equipment, appliances, systems, or parts thereof, or of installing, maintaining, or repairing apparatus, equipment, fixtures, appliances, or wiring, using or conducting electric current, to furnish and keep in force a bond running to the District of Columbia with corporate surety authorized by the Secretary of the Treasury to do business pursuant to section 3 of the Act of August 13, 1894 (28 Stat. 279), as amended (U. S. C., title 6, sec. 8), and by the Insurance Department of the District of Columbia to do business in the District of Columbia in an amount not exceeding $5,000, conditioned upon the performance in accordance with law and regulations in force in the District of Columbia of all such work undertaken by such person, firm, or corporation, and to keep the District of Columbia harmless from the consequences of any and all acts performed by said person, firm, or corporation in connection with

such business during the period covered by the said bond.

The surety on any such bond may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail, to the principal and to the Commissioners; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal to engage in such business shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Commissioners.

In the event the surety becomes insolvent or a bankrupt, or ceases to be authorized by the Secretary of the Treasury to do business pursuant to section 3 of the Act of August 13, 1894 (28 Stat. 279), as amended (U. S. C., title 6, sec. 8), or by the Insurance Department of the District of Columbia, to do business in the District of Columbia, the principal shall, within ten days after notice thereof, given by the Commissioners duly file a new bond in like amount and conditioned as the original and if the principal shall fail to do so the license of such principal shall terminate. If a recovery be had on any bond the principal shall restore the bond to its original amount.

Any person aggrieved by the violation of any law or regulation in force in the District of Columbia relating to such business shall have, in addition to his right of action against said person, firm, or corporation, a right to bring suit against the surety on said bond, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the principal which is in violation of law or regulation in force in the District of Columbia relating to such business: *Provided, however,* That nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

The Commissioners shall furnish to anyone applying therefor a certified copy of any such bond filed with them upon payment of a fee to be fixed by the Commissioners therefor, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, or corporation whose name appears therein.

The Commissioners are further authorized to provide, in accordance with such regulations as they may prescribe, for the examination of the qualifications and fitness of all applicants for licenses to engage in any of the businesses herein enumerated by a board, consisting of not less than two persons who have been actively engaged in the District of Columbia for at least five years next preceding their appointment in the business for which license is sought (one of whom shall have been an owner or manager and one of whom shall have been an employee competent to superintend the performance of work) and not less than one official of the District of Columbia, appointed by the said Commissioners: *Provided,* That nothing herein shall repeal existing law relating to the examination and licensing of master plumbers and gas fitters.

(*c*) *Leasing powers.*—To rent any building or land belonging to the District of Columbia or under the jurisdiction of the Commissioners, or any available space therein, whenever such building or land, or space therein, is not then required for the purpose for which it was acquired, and to rent any used personal property belonging to the District of Columbia which is not then needed for the purpose for which it was acquired: *Provided,* That nothing contained in this paragraph shall have the effect of changing in any manner Public Law Numbered 732, Seventy-fourth Congress, entitled "An Act to authorize the operation of stands in Federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes", approved June 20, 1936 (U. S. C., title 20, secs. 107–107f).

(*d*) *Issuance of revocable permits for construction of tunnels, and laying of conduits and pipes.*—To grant revocable permits upon such terms, conditions, bonds, and rentals as the Commissioners may impose for the construction of tunnels, and the laying of conduits and pipes in the alleys, streets, and avenues in the District of Columbia under the jurisdiction of the Commissioners.

(*e*) *Suspension of officers and employees.*—To suspend, with or without pay, any officer or employee appointed by them and, under such rules or regulations as they may prescribe, to delegate this power to any officers or employees of the District of Columbia.

(*f*) *Name and rename highways, buildings, public places and property, etc.*—To name highways and to name and change the name of any circle, bridge, building, or other public place or property in the District of Columbia under the jurisdiction of the Commissioners, and after public hearing to change the name of any highway under the jurisdiction of said Commissioners.

(*g*) *Assess and collect fees for copies and transcripts of regulations, permits, certificates and records—Disposition of moneys.*—To fix, assess, and collect fees for copies of orders, regulations, permits, certificates, and transcripts of records furnished by the District of Columbia, such fees to be paid to the Collector of Taxes and deposited in the Treasury of the United States to the credit of the District of Columbia.

(*h*) *Penalties for violation of rules and regulations.*—Where not otherwise specifically provided, to prescribe a penalty upon conviction of a violation of any rule or regulation authorized by sections 1–244 to 1–249 by a fine of not more than $300 or imprisonment of not more than ninety days. (Dec. 20, 1944, 58 Stat. 819, ch. 611, § 1.)

COMPILER'S NOTE

The act of Aug. 13, 1894, as amended, referred to in subsection (b) has been repealed and reenacted as section 8 of Title 6, United States Code, by the act of July 30, 1947, enacting Title 6 into positive law.

§ 1–245. Appointment of contracting officers—Powers—Approval of contracts over $3,000—Void contracts—Liquidated damage contracts.

The Commissioners of the District of Columbia are authorized to appoint such number of employees of the District of Columbia as they shall consider advisable as contracting officers, who, under the direction of the said Commissioners, may exercise any powers with respect to making and entering into contracts on behalf of said District of Columbia and administering said contracts that are now vested by law in the said Commissioners, except as herein otherwise provided; but no contract of $3,000 or more entered into on behalf of said District of Columbia by any contracting officer appointed pursuant to sections 1–244 to 1–249 shall be binding upon said District of Columbia, or give rise to any claim or demand against said District of Columbia, until approved by the Commissioners of the District of Columbia, or a majority of them, sitting as a Board.

All contracts entered into by any contracting officer in which such contracting officer or any of the Commissioners shall be personally interested shall be void, and no payment shall be made on any of such contracts by the District of Columbia or by any officer thereof.

With respect to all contracts of the District of Columbia which contain stipulations for liquidated damages for delay the Commissioners of the District of Columbia are authorized and empowered to remit the whole or any part of such damages as in their discretion may be just and equitable. (Dec. 20, 1944, 58 Stat. 821, ch. 611, § 2; Aug. 16, 1949, 63 Stat. 607, ch. 438.)

AMENDMENTS

The act of Aug. 16, 1949, cited to text, amended the first paragraph of the section by striking out therefrom "$1,000" and inserting in lieu thereof "$3,000".

§ 1–246. Powers and duties of Director of Inspection—Delegation of authority.

The Commissioners may transfer to, impose upon, and vest in the Director of Inspection of the District of Columbia all or any of the duties imposed upon, and all or any of the powers, rights, and authority vested in, the Inspector of Buildings of the District of Columbia, the Inspector of Plumbing of the District of Columbia, and the Electrical Engineer of the District of Columbia, by any law, and the Commissioners may authorize the said Director of Inspection to delegate any or all of such powers to the Chief Engineer of the Department of Inspection of the District of Columbia and to the Chief of Inspection of the Department of Inspection of the District of Columbia and to their respective deputies when acting for them. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 3.)

§ 1–247. Purchase of materials, supplies, and equipment—Surplus articles—Authorization to sell to the District—Disposition of moneys.

The Commissioners and other responsible officials, in expending appropriations provided for the expenses of the government of the District of Columbia, so far as possible, shall purchase material, supplies, including food supplies, and equipment, when needed and funds are available, in accordance with the regulations and schedules of the Procurement Division of the Treasury Department or from various services of the Government of the United States possessing materials, supplies, passenger-carrying and other motor vehicles, and equipment no longer required. Surplus articles purchased from the Government, if the same have not been used, shall be paid for at a reasonable price, not to exceed actual cost, and if the same have been used, at a reasonable price based upon length of usage. The various services of the Government of the United States are authorized to sell such surplus articles to the District under the conditions specified, and the proceeds of such sales shall be covered into the Treasury as miscellaneous receipts: *Provided,* That this section shall not be construed to amend, alter, or repeal the Executive order of December 3, 1918, concerning the transfer of office materials, supplies, and equipment in the District of Columbia falling into disuse because of the cessation of war activities. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 4.)

§ 1–248. Effectuate settlement for real estate acquired by purchase or condemnation.

The Commissioners may, in their discretion and when they deem such action to be in the public interest, effect settlement with owners of real estate authorized to be acquired by purchase or condemnation for District of Columbia purposes, through such title company or companies in the District of Columbia as may be designated by the Commissioners, and to pay from appropriations available for the acquisition of such real estate reasonable fees to cover the cost of the services rendered by such title company or companies. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6.)

§ 1–249. Power conferred by sections 1–244 to 1–248 as additional.

The power and authorities conferred by sections 1–244 to 1–248 are to be construed as in addition to and not by way of limitation of the powers now vested by law in the Commissioners. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6.)

§ 1–250. Purchase of vehicles—Trade-in as part payment.

In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, the Commissioners or their duly authorized representatives may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor. (June 30, 1945, 59 Stat. 293, ch. 209, § 7; July 9, 1946, 60 Stat. 523, ch. 544, § 7.)

Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

Sec.
1–301. Corporation counsel—Duties.
1–302. Assistant corporation counsels—Duties.
1–303. Corporation counsel and assistants may administer oaths.
1–304. Purchasing officer—Duties—Bond.
1–305. Deputy purchasing officers.
1–306. Municipal architect—Duties.
1–307. Inspector of asphalts and cements—Services and compensation.
1–308. Oath to be taken by officers.
1–309. Reports by custodians of property.
1–310. Employees—Compensation to be paid from specific appropriations—Unexpended appropriations.
1–310a. Salary increases by reason of reallocation of positions—Limitation.
1–311. Compensation of injured employees.
1–312. Leave of absence for District employees except of police and fire departments and public schools.
1–313. Per diem employees—Leave of absence.
1–314. Holidays—Leave of absence with pay.
1–315. Pay rolls—Signature by mark.
1–316. Persons convicted of certain crimes ineligible to hold office.
1–317. Detective agency employees not to be employed.
1–318. Overtime compensation—Method of computation.

CROSS REFERENCES

War Overtime Pay Act of 1943, as affecting employees of District of Columbia municipal government, see 50 U. S. C., App., §§ 1401 to 1415.

§ 1–301 [20: 82]. Corporation counsel—Duties.

The corporation counsel shall be under the direction of the Commissioners, and have charge and conduct of all law business of the said District, and all suits instituted by and against the government thereof. He shall furnish opinions in writing to the Commissioners, whenever requested to do so. All requests for opinions shall be transmitted through the Commissioners, and a record thereof kept, with the opinions, in the office of the secretary of the Board of Commissioners. He shall perform such other professional duties as may be required of him by the Commissioners. (Leg. Assem., Aug. 23, 1871, ch. 108, § 18; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

AMENDMENTS

This section is a composite of credits cited to the text.

CROSS REFERENCES

Charged with duty of prosecuting and enjoining violations of building and zoning regulations, §§ 5–408, 5–422.

Commission authorized to appoint three additional assistants to enforce Alcoholic Beverage Control Act, § 25–104.

Condemnation of insanitary buildings, duty to advise court of such condemnation when title thereto is in litigation, § 5–608.

Condemnation of insanitary buildings, duty to secure appointment of guardian for non compos mentis or infant owners, § 5–609.

Duty to prosecute violation of law regulating veterinaries, § 2–812.

Duties in insanity inquest, § 21–312.

Duty to conduct criminal prosecution; determination of duty by Court of Appeals, §§ 23–101, 23–102.

Duty to enforce Healing Arts Practice Act, § 2–137.

Duty to enforce laws concerning vital statistics, § 6–304.

Duty to enforce pharmacy laws and regulations, § 2–617.

Duty to enforce rules and regulations governing steam boilers, § 1–713.

Duty to institute proceedings to condemn land for minor streets and alleys, § 7–333.

Duty to represent public in hearings before Board of Accountancy, § 2–907.

Enforcement of health laws and regulations, § 6–118.

Enforcement of laws and regulations for smoke prevention, § 6–803.

Enforcement of laws concerning manufacture, renovation, and sale of mattresses, § 6–605.

Enforcement of laws concerning weights, measures, and markets, § 10–134.

Enforcement of laws governing architects, § 2–1030.

Enforcement of laws governing practice of podiatry, legal services to board, § 2–704.

Enforcement of laws governing private hospitals and asylums, § 32–305.

Enforcement of laws regulating dentists, legal services to Board of Dental Examiners, § 2–305.

Examination of articles of incorporation of domestic life insurance companies, §§ 35–503, 35–509.

General counsel for Public Utilities Commission, prosecutions, §§ 43–204, 43–907.

Membership on the Police and Firemen's Retiring and Relief Board, § 4–510.

Proceedings under Juvenile Court Act, §§ 11–908, 11–932.

Prosecution for failure to file income tax return, § 47–1542.

Prosecution for refusal to permit examination of books and papers for income tax purposes, § 47–1529.

Prosecution for refusal to produce books and papers in connection with personal property taxes, §§ 47–1401, 47–1405.

Prosecution of insurance companies for operating without a license, § 47–1803.

Prosecution of violations of act regulating practice of cosmetology, § 2–1327.

Prosecution of violations of Alcoholic Beverage Control Act, forfeiture for nonpayment of taxes, §§ 25–124, 25–132.

Prosecution of violations of money lenders law, § 26–607.

Prosecution of violations of Motor Fuel Tax Law and collection of taxes due thereunder, § 47–1913.

Prosecution of violations of Motor Vehicles Registration Law, § 40–104.

Prosecutions of violations of Real Estate and Business Brokers License Act, § 45–1416.

Prosecutions for carrying on business without license under Privilege Tax Law, § 47–1812.

Prosecutions for failure to file schedules of property for taxation, § 47–1410.

Prosecutions for failure to remove weeds, § 6–903.

Prosecutions for holding public auction without a permit, § 47–2207.

Prosecutions of violations of Motor Vehicle Lien Law, § 40–714.

Representation of Minimum Wage Board, prosecution of violations of Wage Law, §§ 36–416, 36–420.

Representation of superintendent of insurance, §§ 35–413, 35–419, 35–510, 35–515.

Suit to recover funds expended by Commissioners to remove ice and snow, § 7–806.

STATUTORY REFERENCE

Extension of Hatch Act, forbidding pernicious political activities, to officers and employees of the District of Columbia, see U. S. C., title 18, § 595.

§ 1–302 [20: 83]. Assistant corporation counsels—Duties.

The assistant corporation counsels shall, under the direction and control of the corporation counsel, perform such duties as may, with the consent of the Commissioners, be assigned to them by the said corporation counsel. (Leg. Assem. Aug. 23, 1871, ch. 108, § 19; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

AMENDMENT

This section is a composite of credits cited to the text.

§ 1–303 [20: 84]. Corporation counsel and assistants may administer oaths.

The corporation counsel and assistant corporation counsels are hereby authorized to administer oaths and affirmations in the discharge of their official duties within the District of Columbia. (Leg. Assem. Aug. 19, 1871, ch. 51; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

This section is a composite of credits cited to the text.

§ 1–304 [20: 79]. Purchasing officer—Duties—Bond.

The purchasing officer shall after June 26, 1912, under the direction of the Commissioners, supervise the purchase and distribution of all supplies, stores, and construction materials for the use of the government of the District of Columbia, and shall give bond in such sum as the Commissioners may determine. (July 1, 1882, 22 Stat. 139, ch. 263, § 1; Apr. 27, 1904, 33 Stat. 363, ch. 1628; Mar. 2, 1911, 36 Stat. 966, ch. 192; June 26, 1912, 37 Stat. 140, ch. 182.)

AMENDMENTS

The law as originally enacted provided for salary of $1,600.

The law as amended in 1904 provided a salary of $1,800.

The law as amended in 1911 provided a salary of $2,750.

The law as amended in 1912 provided a salary of $3,000.

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

§ 1–305 [20: 80]. Deputy purchasing officers.

The deputy purchasing officers shall, during the absence of the purchasing officer from any cause, perform his duties without additional compensation, and shall, during the presence of the purchasing officer, perform such duties as may be assigned to them by the purchasing officer; and the purchasing officer may require the said deputy purchasing officers to give bond for the faithful performance of their duties; but the purchasing officer shall in every respect be responsible to the United States and the District of Columbia as provided by law. (May 26, 1908, 35 Stat. 274, ch. 198.)

§ 1–306 [20: 81]. Municipal architect—Duties.

After June 26, 1912, it shall be the duty of the municipal architect to prepare or supervise the preparation of plans for, and superintend the construction of, all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia, and serve under the direction of the engineer commissioner of the District of Columbia. (Mar. 3, 1909, 35 Stat. 692, ch. 250; June 26, 1912, 37 Stat. 144, ch. 182.)

AMENDMENTS

The law as originally enacted provided for salary of $3,600.

The Act of June 26, 1912, slightly reworded the section.

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

CROSS REFERENCE

Preparation of plans for Zoological Park, § 8–134.

§ 1–307 [20: 91]. Inspector of asphalts and cements—Services and compensation.

The inspector of asphalts and cements shall not receive or accept compensation of any kind from or perform any work or render any services of a character required of him officially by the District of Columbia to any person, firm, corporation, or municipality other than the District of Columbia. (Sept. 1, 1916, 39 Stat. 679, ch. 433.)

§ 1–308 [20: 77]. Oath to be taken by officers.

All civil officers in the District shall, before they act as such, respectively take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; and the oath or affirmation provided for by this section shall be taken and subscribed, certified, and recorded, in such manner and form as may be prescribed by law. (R. S., D. C., § 85; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCES

Renewal of oaths, see 5 U. S. C. § 17b.

§ 1–309 [20: 78]. Reports by custodians of property.

All persons in the employment of the government of the District of Columbia having, as a result of such employment, custody of or chargeable with property, other than real estate, belonging to the District of Columbia, shall, at such times and in such form as the commissioners of the District of Columbia shall require, make returns to said commissioners of all such property remaining in their possession, and the condition thereof, and, with reference to all property that may have come into their custody that shall have been consumed in use, a statement showing the quantity thereof and the purpose for which used. (July 21, 1914, 38 Stat. 553, ch. 191, § 7; Mar. 3, 1915, 38 Stat. 925, ch. 80, § 7.)

COMPILER'S NOTE

The wording of the two acts cited in the history line is identical.

§ 1–310 [20: 76]. Employees — Compensation to be paid from specific appropriations—Unexpended appropriations.

No civil officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall, after June 30th, 1905, be employed in any office, department, or other branch of the government of the District of Columbia or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation or is authorized as hereinafter provided, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made and at the rate of compensation usual and proper for such services, and on and after July 1,

1905, all moneys accruing from lapsed salaries, or for unused appropriations for salaries, shall be covered into the treasury as are the balances of other unexpended appropriations for the support of the government of the District of Columbia. (Mar. 3, 1905, 33 Stat. 913, ch. 1406, § 2.)

COMPILER'S NOTE

Salaries of officers and employees of the District of Columbia are fixed by the Classification Act of 1923 (42 Stat. 1488). U. S. C., title 5, § 673.

Section 5 of the act June 30, 1949, as amended by the act Oct. 28, 1949 provided as follows: "No additional compensation shall be payable by reason of the enactment of this Act for any period prior to June 30, 1949, in the case of any person who was not an employee in or under the municipal government of the District of Columbia on June 30, 1949, except that (1) such additional compensation shall be paid to a retired employee for services rendered between the first day of the first pay period which began after June 30, 1948, and the date of his retirement, and (2) a retired officer or member of the Metropolitan Police, the United States Park Police, the White House Police, or the Fire Department of the District of Columbia who is entitled to retirement compensation from the policemen and firemen's relief fund shall be entitled, without application therefor, as of July 1, 1948, or the day on which he became entitled to such compensation, whichever is later, to the pension benefit resulting from the increase in pay made by the first section.

"No person whose salary or compensation is increased by this Act shall be entitled to additional compensation for overtime, night, or holiday work, as provided in sections 201, 203, 301, and 302 of the Federal Employees Pay Act of 1945, as amended, or as provided in section 23 of the Act approved March 28, 1934, as amended (sec. 673c, United States Code), based on the additional compensation provided by this Act for any pay period ending prior to the date of enactment of this Act."

See sections 4–108 and 4–105 for other provisions of the act June 30, 1949.

Section 4 of the act June 30, 1949 provided as follows: "Authority is hereby granted to the Commissioners and to other wage-fixing authorities of the municipal government of the District of Columbia, in their discretion, to grant, retroactive to the first day of the first pay period which began after June 30, 1948, additional compensation at rates not to exceed $330 per annum to each employee in or under the municipal government of the District of Columbia whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to the Classification Act of 1923, as amended, or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1949: *Provided,* That the authority granted by this section shall expire ninety days after the enactment of this Act."

CROSS REFERENCE

Compensation during service on jury, §§ **11–1420 to 11–1423.**

STATUTORY REFERENCE

This section is in U. S. C., title 5, § 794.

For computation of extra compensation based on daylight saving time or standard time, see U. S. C., title 5, § 914.

§ 1–310a. Salary increases by reason of reallocation of positions—Limitation.

Appropriations for the District of Columbia shall be used to pay increases in the salaries of officers and employees by reason of the reallocation of the position of any officer or employee by the Civil Service Commission, and administrative promotions within the several grades: *Provided,* That such reallocation increases and administrative promotions shall be subject to the approval of the Commissioners of the District of Columbia: *Provided further,* That officers and employees whose positions were reallocated by the Civil Service Commission during the period January 1, 1945, to July 1, 1945, who have not received such reallocation increases shall be entitled to receive them retroactively to the date they would otherwise have been effective except for the provisions of this section, but in no case prior to January 1, 1945. (June 28, 1944, 58 Stat. 532, ch. 300, § 7, as amended June 30, 1945, 59 Stat. 294, ch. 209, § 9.)

AMENDMENTS

The act of June 30, 1945, cited to text, amended section by omitting first proviso which read "That the total reallocation increases under such appropriations shall not exceed $35,000 in any one fiscal year", and by adding that proviso.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 7, 57 Stat. 346.
1943—June 27, 1942, ch. 452, § 7, 56 Stat. 460.
1942—July 1, 1941, ch. 271, § 7, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 7, 54 Stat. 342.

§ 1–311 [20: 95a]. Compensation of injured employees.

All of the provisions of the Act of Congress approved September 7, 1916 (U. S. C., title 5, § 751 et seq.) are hereby extended to employees of the government of the District of Columbia so far as they may be applicable, except to those members of the police and fire departments of the District of Columbia who are pensioned or pensionable under the provisions of sections **4–401** to **4–410**, **4–412** to **4–414**. Such compensation as the commission provided for in section **4–410** may award to employees of the government of the District of Columbia shall be paid in the manner provided by law for the payment of the general expenses of the government of the District of Columbia. The Commissioners of the District of Columbia shall submit annually to Congress, through the Secretary of the Treasury (Bureau of the Budget), estimates of appropriations necessary for the foregoing purpose. (July 11, 1919, 41 Stat. 104, ch. 7, § 11; June 10, 1921, 42 Stat. 20, ch. 18, § 2.)

COMPILER'S NOTE

The words "Bureau of the Budget" added by the compiler by authority of act of June 10, 1921 (42 Stat. 20, ch. 18, § 2).

§ 1–312 [20: 85]. Leave of absence for District employees except of police and fire departments and public schools.

The provisions of U. S. Code, Title 5, section 30, regulating leave of absence to employees of the federal government, are hereby made applicable to the regular annual employees of the government of the District of Columbia, except the police and fire departments, and public-school officers, teachers, and employees. (Mar. 2, 1911, 36 Stat. 967, ch. 192.)

COMPILER'S NOTE

The act herein referred to, with additional amendments, appears as U. S. C., title 5, § 30, and may be superseded in whole or in part by U. S. C., title 5, §§ 30a, 30b. However, it would seem that said act is still in full force and effect insofar as employees of the District of Columbia are concerned.

CROSS REFERENCES

Jury duty, §§ 11–1420 to 11–1423.
Leave of absence for police and firemen, §§ 4–179, 4–180, 4–408 to 4–410.
Leave of absence for school teachers, § 31–607.
Leave of absence while on active military duty, § 39–608.

§ 1–313 [20: 88]. Per diem employees—Leave of absence.

The Commissioners are authorized in their discretion, and under such regulations as they may prescribe, to grant not exceeding fifteen days leave of absence with pay each year to per diem employees of the District of Columbia who have been employed for ten (10) consecutive months or more. (Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 8.)

CROSS REFERENCE

See Compiler's Notes to § 1–312.

§ 1–314 [20: 89]. Holidays—Leave of absence with pay.

After June 5, 1920, all per diem employees and day laborers of the District of Columbia who have been regularly employed for fifteen working days next preceding such days as are legal holidays in the District of Columbia, and whose employment continues through and beyond said legal holidays, shall be granted such leave of absence with pay as is granted the regular annual employees of the District of Columbia for said legal holidays. (June 5, 1920, 41 Stat. 873, ch. 234, § 7.)

CROSS REFERENCE

See note to § 1–312.

§ 1–315 [20: 90]. Pay rolls—Signature by mark.

After May 10, 1926, in the payment of compensation of per diem employees of the government of the District of Columbia, a signature by mark duly witnessed by an employee of such District designated for that purpose by the Commissioners shall be deemed a full legal acquittance as to such signature. (May 10, 1926, 44 Stat. 453, ch. 276, § 7.)

§ 1–316 [20: 74]. Persons convicted of certain crimes ineligible to hold office.

No person convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, upon final judgment, duly recovered according to law, all such moneys due from him, shall be eligible to any office of profit or trust in the District. (R. S., D. C., § 86; June 20, 1874, 18 Stat. 116, ch. 337, § 1.)

§ 1–317 [20: 75]. Detective agency employees not to be employed.

After Mar. 3, 1893, no employee of the Pinkerton Detective Agency, or similar agency, shall be employed in any government service or by any officer of the District of Columbia. (Mar. 3, 1893, 27 Stat. 591, ch. 208, § 1.)

§ 1–318. Overtime compensation—Method of computation.

Whenever any officer or employee of the United States Government or of the municipal government of the District of Columbia is entitled to extra compensation on account of services performed between or after certain specified hours of the day or night, such extra compensation shall be computed on the basis of either standard or daylight saving time, depending upon whichever time is observed by law, custom, or practice where such services are performed. (Sept. 7, 1949, 63 Stat. 690, ch. 538, § 1).

Chapter 4.—COMMISSIONERS OF DEEDS

Sec.
1–401. Commissioners of deeds.
1–402. Tenure of office.

§ 1–401 [4: 1]. Commissioners of deeds.

The President of the United States is authorized to appoint as many commissioners of deeds throughout the United States as he may deem necessary, with power to take the acknowledgment of deeds for the conveyance of property within the District, administer oaths, and take depositions in cases pending in the courts of said District in the manner prescribed by law; to whose acts, properly attested by their hands and seals of office, full faith and credit shall be given. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 557.)

NOTES TO DECISIONS

RECORDATION

Failure to record a delivered deed does not invalidate the deed between the parties. *Bralove* v. *Bralove* (D. C., D. C. 1944, 57 F. Supp. 1016).

§ 1–402 [4: 2]. Tenure of office.

Said commissioners of deeds shall hold their offices for the period of five years, removable at discretion. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.)

Chapter 5.—NOTARIES PUBLIC

Sec.
1–501. Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and Regulations.
1–502. Tenure of office.
1–503. Repealed.
1–504. Oath and bond.
1–505. Seal.
1–506. Signature and impression of seal deposited.
1–507. Exemption.
1–508. Foreign bills of exchange—Protest.
1–509. Inland bills and notes—Protest—Penalty.
1–510. Other acts for use and effect beyond District.
1–511. Empowered to certify certain instruments, to administer oaths and affirmations—Affidavits.
1–512. Record of official acts—Certified copies.
1–513. Copy of record as evidence.
1–514. Fees of notary.
1–515. Penalties for taking higher fees.
1–516. Vacation of office—Custody of records and papers.
1–517. Certificates issued by Commissioners.
1–518. Appropriation—Inclusion of expenses and salaries in Commissioners' annual estimates.

§ 1–501 [4:11], Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and regulations.

The Commissioners of the District of Columbia shall have power to appoint such number of notaries public, residents of said District, or whose sole place

of business or employment is located within said District, as, in their discretion, the business of the District may require: *Provided,* That the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the departments of the United States Government in the District of Columbia or elsewhere: *Provided further,* That such person so appointed as a notary public who appears to practice or represent clients before any such department is not otherwise engaged in Government employ, and shall be admitted by the heads of such departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: *And provided further,* That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before any of the departments aforesaid.

Each notary public before obtaining his commission, and for each renewal thereof, shall pay to the Collector of Taxes of the District of Columbia a license fee of $10: *Provided,* That no license fee shall be collected from any notary public in the service of the United States Government or the District of Columbia Government whose notarial duties are confined solely to Government official business: *And provided further,* That no notary fee shall be collected at any time by a notary public who is exempted from the payment of the license fee. The Commissioners are hereby authorized to refund, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of any fee erroneously paid or collected under this section.

The Commissioners are hereby authorized to prescribe such rules and regulations as they may deem necessary to carry out the purposes of this chapter. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 558; June 29, 1906, 34 Stat. 622, ch. 3616; Feb. 10, 1925, 43 Stat. 821, ch. 198; Dec. 16, 1944, 58 Stat. 810, ch. 597, § 1.)

AMENDMENTS

The act of Dec. 16, 1944, cited to text, amended section by omitting "The President" and inserting in lieu thereof "The Commissioners of the District of Columbia", by omitting "his" and inserting in lieu thereof "their" preceding "discretion" to the first par., and by adding the last two pars.

CONTINUATION IN OFFICE

Section 3 of the act of Dec. 16, 1944, cited to text, provided: "A notary public appointed before the passage of this Act [Dec. 16, 1944] may continue in such capacity until the expiration date of his commission."

APPLICABILITY TO DEPARTMENT OF THE INTERIOR

Sec. 3 of act June 3, 1948, 62 Stat. 301, ch. 392, provided as follows:

SEC. 3. That part of section 558 of the Act of March 3, 1901, entitled "An Act to establish a code of law for the District of Columbia" (31 Stat. 1279), as amended December 15, 1944 (58 Stat. 810, D. C. Code, 1940 edition, Supp. IV, sec. 1–501), which reads as follows: *"And provided further,* That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney or agent or in which he may be in any way interested before any of the Departments aforesaid" shall not apply to matters before the Department of the Interior.

The catchline has been reworded.

Act of 1906 added the provisos.

Act of 1925 inserted the words "or whose sole place of business or employment is located within said District."

NOTES TO DECISIONS

PERSONAL INTEREST

No notary, wherever appointed, can take acknowledgments in matters in which he appears as counsel or is in any way interested before any department. *Halls Safe Co.* v. *Herring-Hall-Marvin Safe Co.* (31 App. D. C. 498).

Protest of notes was not invalid because the notary was a stockholder and the president of the bank which held the notes. *Roberts* v. *International Bank* (58 App. D. C. 87, 25 Fed. (2d) 214).

§ 1–502 [4: 12]. Tenure of office.

Said notaries public shall hold their offices for the period of five years, removable at discretion. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.)

§ 1–503 [4: 13]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, Act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 560, relating to depositions, acknowledgments and affidavits is covered by rule 28 of the Federal Rules of Civil Procedure and sections 92 and 92a of title 5, U. S. C.

§ 1–504 [4: 14]. Oath and bond.

Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers in the District of Columbia, and shall give bond to the District of Columbia in the sum of $2,000, with security, to be approved by the District Court of the United States for the District of Columbia or a justice thereof, for the faithful discharge of the duties of his office. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 561; Dec. 16, 1944, 58 Stat. 811, ch. 597, § 2.)

AMENDMENTS

The act of Dec. 16, 1944, cited to text, amended section by deleting "United States" and inserting in lieu thereof "District of Columbia" following "bond to".

CROSS REFERENCE

Oath prescribed for civil officers, § 1–308.

§ 1–505 [4: 15]. Seal.

Each notary public shall provide a notarial seal with which he shall authenticate all his official acts. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 562.)

§ 1–506 [4: 16]. Signature and impression of seal deposited.

Each notary public shall file his signature and deposit an impression of his official seal in the office of the clerk of the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 563.)

§ 1–507 [4: 17]. Exemption.

A notary's official seal and his official documents shall be exempt from execution. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 564.)

§ 1–508 [4: 18]. Foreign bills of exchange—Protest.

Notaries public shall have authority to demand acceptance and payment of foreign bills of exchange and to protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages notaries public may do. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 565.)

CROSS REFERENCES

Acknowledgment of deeds and form thereof, § 45–402.

Criminal penalty for false personation before notary, impersonating notary or for acting after expiration of commission, §§ 22–1303, 22–1304.

Notaries employed by banks, limitation on powers, § 26–110.

See notes to § 1–509.

§ 1–509 [4: 19]. Inland bills and notes—Protest—Penalty.

Notaries public may also demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for nonacceptance or nonpayment, as the case may require. And on the original protest thereof he shall state the presentment by him of the same for acceptance or payment, as the case may be, and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to the same, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given; and such protest shall be prima facie evidence of the facts therein stated. And any notary public failing to comply herewith shall pay a fine of ten dollars to the District of Columbia, to be collected in the police court as are other fines and penalties. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 567.)

CROSS REFERENCES

General provisions concerning notice of dishonor, §§ 28–701 to 28–730.

General provisions concerning presentment for acceptance, §§ 28–918 to 28–927.

General provisions concerning presentment for payment, § 28–603.

General provisions concerning protest, §§ 28–928 to 28–936.

NOTES TO DECISIONS

NECESSITY OF PROTEST

Official protest of promissory note is not necessary in District of Columbia to hold endorsers. *Presbrey* v. *Thomas* (1 App. D. C. 171).

§ 1–510 [4: 20]. Other acts for use and effect beyond District.

Notaries public may also perform such other acts, for use and effect beyond the jurisdiction of the District, as according to the law of any state or territory of the United States or any foreign government in amity with the United States may be performed by notaries public. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 566.)

§ 1–511 [4: 21]. Empowered to certify certain instruments, to administer oaths and affirmations—Affidavits.

Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance or other instrument of writing executed by any married woman, to take depositions and to administer oaths and affirmations and also to take affidavits to be used before any court, judge, or officer within the District. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 568; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

Section 568 of the act of 1901, cited to text, was amended by striking out after the word "affirmations" the words "in all matters incident or belonging to the duties of his office," and by inserting after the word "and," the word "also."

CROSS REFERENCE

See notes to §§ 5–108, 5–109.

§ 1–512 [4: 22]. Record of official acts—Certified copies.

Each notary public shall keep a fair record of all his official acts, except such as are mentioned in the preceding section, and when required, shall give a certified copy of any record in his office to any person upon payment of the fees therefor. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 569.)

§ 1–513 [4: 23]. Copy of record as evidence.

The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts in like manner as the original protest. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 570.)

§ 1–514 [10: 12]. Fees of notary.

The fees of notaries public shall be—

For each certificate and seal, fifty cents.

Taking depositions or other writings, for each one hundred words, ten cents.

Administering an oath, fifteen cents.

Taking acknowledgment of a deed or power of attorney, with certificate thereof, fifty cents.

Every protest of a bill of exchange or promissory note, and recording the same, one dollar and seventy-five cents.

Each notice of protest, ten cents.

Each demand for acceptance or payment, if accepted or paid, one dollar, to be paid by the party accepting or paying the same.

Each noting of protest, one dollar. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 571; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

Section 571 of the act of 1901, cited to text was amended by striking out in the sixth line thereof the word "take" and inserting in lieu thereof the word "taking."

CROSS REFERENCE

Fees under money lenders law, § 26–605.

§ 1–515 [10: 13]. Penalties for taking higher fees.

Any notary public who shall take a higher fee than is prescribed by the preceding section shall pay a fine of one hundred dollars and be removed from office by the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 572.)

§ 1–516 [4: 24]. Vacation of office—Custody of records and papers.

Upon the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 573.)

§ 1–517. Certificates issued by Commissioners.

Certificates issued by the Commissioners may be signed by the secretary, Board of Commissioners, District of Columbia. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 4.)

§ 1–518. Appropriation—Inclusion of expenses and salaries in Commissioners' annual estimates.

Appropriation is hereby authorized to be made to carry out the provisions of this section and sections 1–504, 1–507, and 1–518, and the Commissioners of the District of Columbia are authorized to include in their annual estimates provision for all expenses incident to such purposes, including the purchase of equipment and supplies and the payment of salaries to personnel, subject to the limitations of the Classification Act of 1923, as amended [5 U. S. C. §§ 661–663, 664–673, and 674]. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 5.)

Chapter 6.—SURVEYOR

Sec.

1–601. Appointment and term of office—Salary.
1–602. Oath.
1–603. Assistant surveyor and other employees.
1–604. Assistant surveyor's duties.
1–605. Surveyor's office to be legal office of record of plats and subdivisions.
1–606. Records, papers, and instruments to be kept and preserved by surveyor.
1–607. Records of divisions.
1–608. Records to be the property of the District of Columbia—Transfer on vacation of office.
1–609. Typewritten records authorized.
1–610. Scale of plats.
1–611. Transcripts as evidence.
1–612. Subdivision of United States squares.
1–613. Plats—Regulation—Recording.
1–614. Streets—Avenues—Alleys.
1–615. Cemeteries—Rights-of-way through.
1–616. Surveys for District—Fees and documents.
1–617. Order of survey to be speedily executed.
1–618. Subdivisions—Alterations—Changes.
1–619. Boundaries of lots to be marked.
1–620. Subdivisions.
1–621. Lots and parcels may be resurveyed to determine accuracy—Recording only on order.
1–622. Reference to subdivisions.
1–623. Alleys—Police regulation.
1–624. Deficiency or excess in number of feet—Apportionment.
1–625. Party walls.
1–626. Wall extending over lot line.
1–627. Surveyor to certify and record location of party wall.
1–628. Adjusting lines of buildings—Certificate as evidence.
1–629. Commissioners of the District of Columbia to prescribe fees for surveyor—Schedule of fees to be displayed.

§ 1–601 [25: 431]. Appointment and term of office—Salary.

The surveyor of the District of Columbia shall receive a salary in lieu of fees, and shall be appointed by the Commissioners of the District of Columbia for a term of four years, unless sooner removed for cause, and shall be under the direction and control of the said commissioners. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1577.)

COMPILER'S NOTES

The law as originally enacted provided for salary of "$3,000 per annum, in lieu of fees."

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

§ 1–602 [25: 432]. Oath.

The surveyor shall take and subscribe an oath or affirmation before the Commissioners that he will faithfully and impartially discharge the duties of his office, which oath shall be deposited with the Commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1578; June 28, 1935, 49 Stat. 431, ch. 332, § 2.)

AMENDMENT

The 1935 amendment deleted a provision that "The surveyor shall give bond to the United States in the penalty of $20,000, with security to be approved by the Commissioners, conditioned for the faithful discharge of the duties of his office."

§ 1–603 [25: 437]. Assistant surveyor and other employees.

The Commissioners of the District of Columbia, on the recommendation of the surveyor, are hereby authorized to appoint one assistant surveyor, and such employees as may in the judgment of the Commissioners of the District of Columbia be required for the surveyor's office and operation. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1579.)

COMPILER'S NOTES

The law as originally enacted provided for salary of $1,800, and provided for additional employees "at an aggregate expense of not exceeding $10,000 in any one year."

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

§ 1–604 [25: 438]. Assistant surveyor's duties.

The assistant surveyor shall take the same oath his principal is required to take, and may, during the continuance of his office, discharge and perform any of the official duties of his principal. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1592; June 28, 1935, 49 Stat. 431, ch. 332, § 3.)

AMENDMENT

The 1935 amendment deleted the provision that default or misfeasance in office of the assistant surveyor should be deemed a breach of the official bond of his principal.

§ 1–605 [25: 433]. Surveyor's office to be legal office of record of plats and subdivisions.

The office of the surveyor of the District shall be the legal office of record of the plats and subdivisions of all private property in the District of Columbia and of all property belonging to the District of Columbia. And the copies of all records of the division of squares and lots made between the public and the original proprietors and all plats, papers, books, maps, and records now in the office of the surveyor shall remain therein. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1574; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

Act of March 3, 1901, read as follows: "The office of the surveyor of the District shall be the legal office of record

of the plats of all private property, in the District of Columbia, and authenticated copies of all records of the division of squares and lots made between the public and the original proprietors or otherwise authorized by law shall be kept in said office."

NOTES TO DECISIONS

No Dedication When Plat Not Recorded

Where plat was never recorded in the surveyor's office as provided by statute, there was no dedication to the District of Columbia of the property shown as streets. *Faulks* v. *Schrider* (69 App. D. C. 137, 99 Fed. (2d) 370).

§ 1–606 [25: 434]. Records, papers, and instruments to be kept and preserved by surveyor.

The surveyor shall keep his office in a room designated by the Commissioners for the purpose, and shall not be engaged in the transaction of any business appertaining to any other office or appointment which may be held by him, and shall in his said office preserve and keep all such maps, charts, surveys, books, records, and papers relating to the District of Columbia, or to any of the avenues, streets, alleys, public spaces, squares, lots, and buildings thereon, or any of them, as shall for the purpose of being deposited in his office come into his hands or possession; and shall, in books provided or to be provided for that purpose, keep a true record of every survey, certificate, or account which shall be made, issued, or prepared by him, and also shall preserve and keep in good order and repair the instruments in his said office belonging to the District. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1599.)

Cross References

Designation of land of District by square and lot number, §§ 47–401, 47–404, 47–405.

Duty to furnish assessor transcript of conveyances of real estate, § 47–407.

Highway plans, §§ 7–108 to 7–131.

Payment of taxes and assessments before recording plat of subdivision, §§ 47–713 to 47–715.

Plat books of lands outside city of Washington, § 47–406.

Plats and maps opening, extending, widening, straightening, closing, or abandoning alleys or minor streets, §§ 7–303 to 7–313.

Plats or maps of streets closed under street readjustment act, § 7–404.

Recording names of streets, § 7–107.

Surveying, platting, and recording thereof, for burial ground, §§ 27–103, 27–115.

§ 1–607 [25: 435]. Records of divisions.

All records, or copies thereof, of the divisions of squares and lots heretofore made between the public and the original proprietors, or which are authorized by this chapter, shall be kept in the office of the surveyor of the District of Columbia, and the surveyor shall put up, label, index, and preserve all the maps, charts, plats, plans, and other drawings and papers relating to the District of Columbia or which appertain to his office, and which may come to his office for deposit, record, or otherwise. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1596.)

§ 1–608 [25: 436]. Records to be the property of the District of Columbia—Transfer on vacation of office.

All papers, plats, books, maps, and records of his office shall be deemed the property of the District of Columbia, and shall constitute a part of the public records; and in all cases of vacancy in the office, by resignation or otherwise, they shall be transferred to his successor in office. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1600; June 30, 1902, 32 Stat. 545, ch. 1329.)

Amendment

Section 1600 of the act of 1901, cited to text, was amended by inserting after the word "plats" the words "books, maps."

§ 1–609 [25: 458]. Typewritten records authorized.

After May 18, 1910, the recording of all instruments filed for record in the office of the surveyor of the District of Columbia may be done with book typewriters. (May 18, 1910, 36 Stat. 382, ch. 248.)

§ 1–610 [25: 439]. Scale of plats.

The plats and squares and subdivisions of the city of Washington shall be drawn upon a uniform scale of not less than one inch to fifty feet, and shall show the lines of all subdivisions of the squares as the same existed at the date of the completion of each square. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1580.)

§ 1–611 [25: 440]. Transcripts as evidence.

All transcripts from such records certified by the surveyor shall be prima facie evidence thereof. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1575.)

Cross Reference

Replatting lands acquired under District of Columbia Alley Dwelling Act, §§ 5–103, 5–104.

§ 1–612 [25: 441]. Subdivision of United States squares.

Whenever the President shall deem it necessary to subdivide any square or lot belonging to the United States within the city of Washington, not reserved for public purposes, into convenient building lots or portions for sale and occupancy, and alleys for their accommodation, he may cause a plat to be made by the surveyor in the manner prescribed in this chapter, which plat shall be recorded by the surveyor; and the provisions of this chapter shall extend to the lots, pieces, and parcels of ground contained in such plat as fully as to subdivisions made by individual proprietors. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1594.)

§ 1–613 [25: 442]. Plats—Regulation—Recording.

The Commissioners are authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia under their jurisdiction; and no such plat or subdivision made in pursuance of such orders shall be admitted to record in the office of the surveyor of said District without an order to that effect indorsed thereon by the commissioners of said District. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1601.)

Cross References

Highway plans, §§ 7–108 to 7–131.

Plats or maps opening, extending, widening, straightening, closing, or abandoning alleys and minor streets, §§ 7–303 to 7–313.

Plats required to comply with highway plans, § 7–125.

§ 1–614 [25: 452]. Streets—Avenues—Alleys.

All spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with section 1–613. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1602.)

CROSS REFERENCES

Adoption as part of highway plans, § 7–117.

Highway plans, nature, effect, and requirements, §§ 7–108 to 7–131.

Opening, extending, widening, straightening, closing, or abandoning alleys or minor streets, §§ 7–303 to 7–313.

Platted highways outside cities of Washington and Georgetown declared to be public highways, § 7–104.

Refusal to dedicate streets in conformity with highway plan, power of Commissioners to condemn, §§ 7–216, 7–217.

See note to § 1–605. *Faulks* v. *Schrider* (69 App. D. C. 137, 99 Fed. (2d) 370).

§ 1–615 [25: 453]. Cemeteries—Right of way through.

If by the extension of any of the present streets or avenues or the opening of any public way it becomes necessary to traverse any grounds now used as a cemetery or place of burial, the commissioners are empowered to secure a right of way through the same by stipulation with the proprietors thereof. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1603.)

CROSS REFERENCE

Jurisdiction, power, and control concerning streets, § 7–102 and notes.

§ 1–616 [25: 443]. Surveys for District—Fees and documents.

It shall be the duty of the surveyor to execute any surveying work for the District of Columbia without charge, on the order of the commissioners; and all fees for surveys made by the surveyor or the assistant surveyor shall be paid over to the collector of taxes of the District of Columbia under regulations to be prescribed by the commissioners of the District of Columbia, and be covered into the treasury of the United States as other revenues of the District are now; and the field notes of the surveyor and his assistant shall be preserved and shall be a part of the public property of the District of Columbia, and all records, plats, plans, and other papers or documents now existing, or hereafter made or secured by the office of the said surveyor, shall be delivered by each surveyor to his successor in office, and no plat or survey of land shall be recorded in the office of the surveyor of the District of Columbia except it be certified to as correct by the surveyor of said District. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1591.)

CROSS REFERENCES

Disposition of fees, § 47–126.

Highway plans, §§ 7–108 to 7–131.

Opening, extending, widening, straightening, or closing minor streets or alleys, §§ 7–303 to 7–313, 7–326.

Plats of certain lands conveyed in establishment of public parks and playgrounds, § 8–120.

Plats or maps of public highways closed under Street Readjustment Act, § 7–403.

Schedule of fee prescribed by Commissioners, § 1–629.

§ 1–617 [25: 444]. Order of survey to be speedily executed.

The surveyor shall, as speedily as possible, execute any order of survey made by any court or private individual of any lot or square within the city of Washington, or of any land within the District of Columbia outside of said city, and shall make due return of a true plat and certificate thereof. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1590.)

§ 1–618 [25: 445]. Subdivisions — Alterations — Changes.

Whenever the proprietor of any tract or parcel of land in the District of Columbia shall desire or deem it necessary to subdivide or alter boundaries, or change the surveys of any such tract or parcel of land, such subdivision, alteration, or change shall be by the surveyor of the District of Columbia, or his assistant, only, and shall be entered in the plat book or books of said surveyor. All such subdivisions, alterations, or changes shall be certified by the surveyor, the party wishing such plat, and two competent witnesses, whose names shall be appended thereto. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1595.)

§ 1–619 [25: 446]. Boundaries of lots to be marked.

It shall also be the duty of the surveyor on the request of the proprietor or proprietors of any square, lot, or piece of ground within the District of Columbia to set out and mark the proper lines, and furnish to him, her, or them a certificate describing the dimensions and boundaries of the same, according to the plan. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1598.)

§ 1–620 [25: 447]. Subdivisions.

Whenever the proprietor of any square or lot shall deem it necessary to subdivide the same into convenient building lots or portions for sale and occupancy and alleys for their accommodation, he may cause a plat to be made by the surveyor, on which shall be expressed the dimensions and length of all the lines of such portions as are necessary for defining and laying off the same on the ground, and may certify such subdivision under his hand and seal, in the presence of two or more credible witnesses, upon the same plat or on a paper or parchment attached thereto. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1581.)

CROSS REFERENCES

Adoption of maps of highway plans, § 7–110.

Dedication of minor streets and alleys, §§ 7–303, 7–306, 7–307, 7–310.

Resubdivision to comply with highway plans, § 7–119.

§ 1–621 [25: 448]. Lots and parcels may be resurveyed to determine accuracy—Recording only on order.

At the request of the proprietor the surveyor shall examine whether the lots or parcels into which any square or lot may be subdivided as provided in section 1–620 agree in dimensions with the whole of the square or lot so intended to be subdivided, and whether the dimensions expressed on the plat of subdivision be the true dimensions of the parts so expressed; and whether said lots or parcels conform to the general orders of the Commissioners of the District of Columbia made under existing law or under authority of section 1–613; and if upon such examination he shall find the plat correct he shall

certify the same under his hand and seal to the said Commissioners with such remarks as appear to him necessary; but no such plat or subdivision shall be admitted to record in the office of the surveyor without an order to that effect, indorsed thereon by said Commissioners. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1582; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The material after the first semicolon was added by the 1902 amendment.

§ 1–622 [25: 449]. Reference to subdivisions.

When a subdivision of any square or lot shall be so certified, examined, and recorded, the purchaser of any part thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Commissioners and original proprietors. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1583.)

COMPILER'S NOTE

The words "of this code" refer to the 1901 Code.

CROSS REFERENCE

Jurisdiction and control of Commissioners over public alleys, streets, and highways, § 7–102 and notes.

§ 1–623 [25: 450]. Alleys—Police regulation.

The ways, alleys, or passages laid out or expressed on any plat of subdivision shall be and remain at all times under the same police regulations as the alleys laid off by the Commissioners on division with the original proprietors. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1584; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The words "to the public or subject to the uses declared by the person making such subdivision" which followed the word "remain" in the second line were deleted by the 1902 amendment.

§ 1–624 [25: 451]. Deficiency or excess in number of feet—Apportionment.

Whenever the surveyor shall lay off any lot, or any parts into which a square or lot may be subdivided, as provided in this chapter, he shall measure the whole of that front of the square on which said lot or part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, he shall, except in that portion of the city of Washington included within the limits of what formerly constituted the city of Georgetown, apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions; and in that portion of the city of Washington included within the limits of what formerly constituted the city of Georgetown he shall allow such excess or charge such deficiency to the highest numbered original lot on that front of the square, or apportion such excess or deficiency among any lots into which such highest numbered original lot may have been subdivided: *Provided,* That wherever in the former city of Georgetown a square or block of land is intersected by the division line between two original additions to said city, the excess or deficiency found between the street lines and said division line shall be applied to the highest numbered original lot on each side of said division line, or apportioned among any lots into which such highest numbered original lot may have been subdivided. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1585; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

Act of Mar. 3, 1901, read as follows: "Whenever the surveyor shall lay off any lot, or any parts into which a square or lot may be subdivided, as provided in this chapter, he shall measure the whole of that front of the square on which such lot or part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, he shall apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions."

§ 1–625 [25: 454]. Party walls.

Whenever, on such admeasurement, the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person in part less than seven inches in width thereon, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so occupied, to be decided by arbitrators or a jury, as the parties interested may agree. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1586.)

NOTES TO DECISIONS

IN GENERAL

There are but two lawful ways in which a party wall can be established, (1) by contract between the owners of the adjoining properties or (2) by force of statute. *Fowler* v. *Koehler* (43 App. D. C. 349, Ann. Cas. 1916E, 1161).

BUILDING REGULATIONS

"That the person or persons appointed by the commissioners to superintend the buildings may enter on the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof: which foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built, and shall be of the breadth and thickness determined by such person proper; and the first builder shall be reimbursed one moiety of the charge of such party wall, or so much thereof as the next builder shall have occasion to make use of, before such next builder shall any ways use or break into the wall. The charge or value thereof, to be set by the person or persons so appointed by the commissioners." Promulgated by President Washington, October 17, 1791.

The regulations governing party walls in force in the original federal city have been made applicable by custom to the territory of the city of Washington outside the original city, except where the property-owner objected at the time to an attempted construction of a party wall and took measures to prevent it. *Walker* v. *Gish* (260 U. S. 447, 67 L. Ed. 344, 43 Sup. Ct. 174), affg. (51 App. D. C. 4, 273 Fed. 366).

The building regulations of the District of Columbia in respect of party walls are neither statutes nor ordinances; they are mere rules for the enforcement of existing rights, and have no force outside the limits of the city of Washington as they existed at the time the regulations were promulgated. *Fowler* v. *Koehler* (43 App. D. C. 349, Ann. Cas. 1916E, 1161).

CONTRIBUTION

One making use of a party wall cannot avoid contributing to the cost thereof on the theory that the regulations governing such walls are so discriminatory as to the second users as to render them unconstitutional. *Walker*

v. *Gish* (260 U. S. 447, 67 L. Ed. 344, 43 Sup. Ct. 174), affg. (51 App. D. C. 4, 273 Fed. 366).

A landowner making use of a party wall erected by the adjoining owner is required to contribute his fair proportion of the cost thereof to the person erecting the wall, or his successor in interest, though the wall was not erected under an agreement to contribute. *Fowler* v. *Koehler* (43 App. D. C. 349, Ann. Cas. 1916E, 1161).

Where plaintiff built a substantial wall on the dividing line with the knowledge of one of the trustees of the adjoining property and with the consent and approval of the building inspector, and the said trustee made use of the said wall, the wall was a "party wall" and the trustees were bound to pay half of the cost thereof although the other trustee did not have knowledge. *Krupsaw* v. *Welch* ((D. C.-D. C.), 34 Fed. Sup. 396).

DAMAGES

An adjoining owner is obliged to make good all damages occasioned by his interference with a party wall. *Fowler* v. *Saks* (7 Mackey (18 D. C.) 570, 7 L. R. A. 649).

DIVISION WALL

Where the owner of two pieces of property erected attached buildings on each lot, the supporting wall between the buildings not being exactly on the dividing line between the lots, such wall was not a party wall but a division wall and when thereafter the owner sold the properties to different purchasers after which the buildings were torn down no party wall easement existed. The question of whether the purchasers might have made the division wall a party wall by mutual consent was not decided. *Moore* v. *Shoemaker* (10 App. D. C. 6).

One cannot compel the removal of a new, appropriate, and more substantial division wall and fence erected by one of the adjacent owners at his own expense, but without the consent of the other owner, when the original wall and fence had been erected by mutual consent and it was impractical to repair the old wall. *Perry* v. *Reeve* (56 App. D. C. 243, 12 Fed. (2d) 184).

EASEMENT CREATED

The erection of a party wall by one of two adjoining owners does not amount to a taking of property for private use but amounts only to the establishment of a mutual easement or servitude. *Fowler* v. *Koehler* (43 App. D. C. 349, Ann. Cas. 1916E, 1161). To same effect, *Perry* v. *Reeve* (56 App. D. C. 243, 12 Fed. (2d) 184).

ENCROACHMENT NOT PARTY WALL

Wall of bay window built on party line, the rest of the wall being 3 feet from the line, is merely an encroachment on adjoining property, rather than a wall built on dividing line for mutual advantage. *Smoot* v. *Heyl* (227 U. S. 518, 57 L. Ed. 621, 33 Sup. Ct. 336), affg. (34 App. D. C. 480).

MUST PROVE TITLE

Plaintiff must prove his own title in land in order to establish that he was owner of dominant servitude in party wall. *Johnson* v. *Simmons* (53 App. D. C. 356, 290 Fed. 331).

RIGHT OF SUBSEQUENT OWNER

Purchaser of lot with party wall on it, in which adjoining owner has not exercised his right, succeeds to rights of the builder, and is entitled to compensation when such wall is used by adjoining owner. *Walker* v. *Gish* (51 App. D. C. 4, 273 Fed. 366).

§ 1–626 [25: 455]. Wall extending over lot line.

If the wall of any house already erected cover seven inches or more in width of the adjoining lot, it shall be deemed a party wall, according to the regulations for building in the District, and the ground so occupied more than seven inches in width shall be paid for as provided in section 1–625. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1587.)

§ 1–627 [25: 456]. Surveyor to certify and record location of party wall.

The surveyor shall ascertain and certify and put on record, at the request and expense of any person interested therein, the fact of the occupation of land by a party wall, as mentioned in section 1–626. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1588.)

§ 1–628 [25: 457]. Adjusting lines of buildings—Certificate as evidence.

It shall be the duty of the surveyor to attend, and examine the foundation or walls of any house to be erected for the purpose of adjusting the line of the front of such building to the line of the street and correctly placing the party wall on the line of division between that and the adjoining lot; and his certificate of the fact shall be admitted as evidence and binding on the parties interested. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1589; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

Section 1589 of the act of 1901, cited to text, was amended by striking out the words "when requested," following "to attend," and by striking out the words "when the same shall be level with the street or surface of the ground," following the word "erected."

§ 1–629 [10: 22]. Commissioners of the District of Columbia to prescribe fees for surveyor—Schedule of fees to be displayed.

The Commissioners of the District of Columbia are hereby authorized from time to time to prescribe a schedule of fees to be charged by the surveyor for his services, which schedule shall be printed and conspicuously displayed in the office of the surveyor. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1593.)

CROSS REFERENCE

Power of Commissioners to regulate fees of surveyor and the payment thereof into the treasury, § 1–616.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

Sec.

1–701. Boiler Inspection Act—Short title.
1–702. "Person" defined.
1–703. Boiler inspection service created—Personnel.
1–704. Bond—Oath.
1–705. Inspection of designated steam boilers and unfired pressure vessels.
1–706. Operating at pressure greater than permitted.
1–707. Annual inspection—Certificate of inspection—Display.
1–708. Revocation or suspension of certificate.
1–709. Exemptions.
1–710. Fees—Certificate invalidated by cessation of insurance.
1–711. Right of inspectors to enter premises—Unlawful to deny admittance.
1–712. Records to be kept.
1–713. Unauthorized use deemed nuisance—Proceedings to abate.
1–714. Penalties.
1–715. Regulations—Fees.
1–716. Repeal, act concerning steam engineers not affected.
1–717. Separability provisions.
1–718. Effective date of §§ 1–701 to 1–718—Promulgation of regulations and schedule of fees.
1–719. Electric wiring—Inspection—Rules and regulations—Fees.
1–720. Inspection—Notice of violations—Penalty.

Sec.
1–721. Electrical engineer—Appointment—Qualifications—Assistant inspectors.
1–722. Assistant electrical engineer—Duties.
1–723. Connecting current before inspection—Penalty—Authority to remove connection.
1–724. Plumbing—Appointment of inspector—Duties.
1–725. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.
1–726. Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.
1–727. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.
1–728. Principal assistant inspector of buildings may discharge duties of inspector.
1–729. Assistant inspector of buildings to inspect elevators and fire escapes.

§ 1–701 [20: 368]. Boiler Inspection Act—Short title.

Sections 1–701 to 1–718 may be cited as the "Boiler Inspection Act of the District of Columbia." (June 25, 1936, 49 Stat. 1917, ch. 802, § 1.)

Cross References

Other inspection laws not found in this chapter are:

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Criminal penalty for impersonating inspector of a department of the government of the District, § 22–1305.

General provisions for the licensing, inspection, and supervision of business, § 47–2301 to § 47–2350.

Department of Weights, Measures, and Markets, inspection of devices and facilities, § 10–101, et seq.

Inspection of establishments that employ women, § 36–306, et seq.

Inspection of insanitary buildings, § 5–601, et seq.

Inspection of manufacture, renovation, and sale of mattresses, § 6–607.

Inspection of places and plants in the eradication of plant diseases and insect infections, §§ 6–904, 6–905.

Inspection of private hospitals and asylums, § 32–302.

Inspection of unsafe structures, § 5–501

Inspector of asphalt and cement, § 1–307.

Inspector of gas and electric meters, §§ 43–603, 43–605.

Investigation and inspection of institutions of charity supported by public funds, §§ 32–1001, 32–1002.

§ 1–702 [20: 368a]. "Person" defined.

Wherever the word "person" is used in sections 1–701 to 1–718 it shall include individuals, firms, partnerships, associations, and corporations. (June 25, 1936, 49 Stat. 1917, ch. 802, § 2.)

§ 1–703 [20: 368b]. Boiler inspection service created—Personnel.

There is hereby constituted a boiler inspection service in the Engineer Department of the District of Columbia, to be composed of the following: (a) A boiler inspector who shall be qualified by training and experience in the construction and operation of steam boilers and unfired pressure vessels, and who, under an official designated by the Commissioners of the District of Columbia, shall have charge of the enforcement of the provisions of sections 1–701 to 1–718 and of the regulations promulgated hereunder; (b) and such other employees as may be necessary for the proper performance of the work. All such officials and employees shall be appointed by the Commissioners of the District of Columbia. (June 25, 1936, 49 Stat. 1917, ch. 802, § 3.)

Cross References

Boiler inspector member of board for examination and licensing of steam and other operating engineers, § 2–1502.

Power of Commissioners to make rules and regulations, publication thereof, §§ 1–715, 1–718.

§ 1–704 [20: 67]. Bond—Oath.

The said inspector shall give bond, with two sufficient securities, to be approved by the Commissioners in the sum of $2,000, and he shall take and subscribe the following oath or affirmation before a notary public or a judge of the municipal court: "I do solemnly swear that I will diligently, faithfully, and impartially execute the duties of my office without favor." (Leg. Assem., June 25, 1873, ch. 25, § 4.)

§ 1–705 [20: 368c]. Inspection of designated steam boilers and unfired pressure vessels.

No person shall use or cause to be used any steam boiler operating at a pressure in excess of fifteen pounds per square inch, or operating at a pressure less than fifteen pounds per square inch unless provided with an unassisted gravity return, or any unfired pressure vessel operating at a pressure in excess of sixty pounds per square inch and having a capacity in excess of fifteen gallons, except such vessels as may be exempted by the Commissioners of the District of Columbia, without having first obtained a certificate of inspection from the boiler inspector. (June 25, 1936, 49 Stat. 1917, ch. 802, § 4.)

Cross References

Inspection fees, §§ 1–710, 1–715, 1–718.

Other exemptions, § 1–709.

Revocation of certificate, § 1–708.

§ 1–706 [20: 368d]. Operating at pressure greater than permitted.

No person shall operate or cause to be operated any boiler or unfired pressure vessel, referred to in section 1–705 at a pressure greater than that permitted by the certificate of inspection, or while feed pumps, gauges, cocks, valves, or automatic safety-control devices are not in proper working condition, or in violation of any of the regulations promulgated hereunder by the Commissioners of the District of Columbia. (June 25, 1936, 49 Stat. 1917, ch. 802, § 5.)

Cross References

Power of commission to make rules and regulations and publication thereof, §§ 1–715, 1–718.

Pressure vessels inspected and insured by approved insurance companies, exempted, § 1–707.

Revocation of certificate, § 1–708.

Vessels exempted, §§ 1–705, 1–709.

§ 1–707 [20: 368e]. Annual inspection—Certificate of inspection—Display.

The boiler inspector, or one of his assistants, shall inspect annually all boilers and unfired pressure vessels for which a certificate of inspection is required by section 1–705 and shall determine by actual tests the condition thereof from the standpoint of safety and fitness for operation. If such boiler or vessel be safe and fit for operation, the boiler inspector shall issue the certificate of inspection which shall state, among other things, the pressure per square inch such boiler or vessel may be allowed to carry. This certificate of inspection shall be dis-

played in a conspicuous place in close proximity to the boiler or vessel covered thereby. In the case of a steam boiler or unfired pressure vessel which is regularly insured and inspected at least once a year by an insurance company duly licensed in the District of Columbia and approved by the Commissioners of the said District as to its inspection service, where a report of such inspection filed within thirty days after such inspection with the boiler inspector shows any such boiler or unfired pressure vessel to be in a safe and insurable condition, such inspection and report shall take the place of the inspection hereinbefore provided and the certificate of inspection may be issued upon such report. Insurance companies shall report to the inspectors the cancelation of insurance of any certificate holder. (June 25, 1936, 49 Stat. 1917, ch. 802, § 6.)

CROSS REFERENCES

Inspection fees, §§ 1–710, 1–715, 1–718.
Revocation of certificate, § 1–708.

§ 1–708 [20: 368f]. Revocation or suspension of certificate.

The boiler inspector may in his discretion revoke or suspend the certificate of inspection provided in section 1–705 if at any time he shall find any boiler or unfired pressure vessel covered by such certificate to be unsafe or unfit for operation. (June 25, 1936, 49 Stat. 1917, ch. 802, § 7.)

§ 1–709 [20: 368g]. Exemptions.

Steam boilers and unfired pressure vessels located in or upon boats or vessels or other floating equipment, or boats or vessels owned or operated by the United States, or upon locomotives, street cars, busses, or other vehicles, operated under the regulations of any federal agency or the Public Utilities Commission of the District of Columbia, shall be exempt from the provisions of sections 1–701 to 1–718. (June 25, 1936, 49 Stat. 1917, ch. 802, § 8.)

CROSS REFERENCE

Exemption by rule of Commissioners, § 1–705.

§ 1–710 [20: 368h]. Fees—Certificate invalidated by cessation of insurance.

There shall be paid to the Collector of Taxes of the District of Columbia by the owner or user, for the issuance of a certificate as required by sections 1–701 to 1–718, fees to be fixed from time to time by the Commissioners of the District of Columbia for the annual inspection of each steam boiler or unfired pressure vessel, commensurate with the cost of inspection, with power to fix higher fees for the issuance of a certificate where the inspection in connection therewith is made on a Sunday or legal holiday. When an inspection report is filed by an insurance company with the said boiler inspector, showing that a boiler or unfired pressure vessel has been inspected and found to be in a safe and insurable condition as provided in section 1–707, the owner or user of such insured and inspected boiler or unfired vessel shall be exempt from the payment of all fees with the exception that there shall be paid to the Collector of Taxes of the District of Columbia a fee of $1 by the owner or user prior to the issuance of a certificate of inspection. No such certificate shall be valid after the boiler or unfired pressure vessel shall cease to be insured by an insurance company authorized as provided in section 1–707. (June 25, 1936, 49 Stat. 1917, ch. 802, § 9.)

§ 1–711 [20: 368i]. Right of inspectors to enter premises—Unlawful to deny admittance.

The boiler inspector and his assistants shall have the right to enter, in the performance of his or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such inspector or assistant or to interfere with him or them in the performance of his or their duties. (June 25, 1936, 49 Stat. 1917, ch. 802, § 10.)

§ 1–712 [20: 368j]. Records to be kept.

The boiler inspector shall keep in the office of the boiler inspection service all applications made, and a complete record thereof, as well as of all certificates issued. He shall also keep a complete record of each boiler and unfired pressure vessel inspected, and such other records and data pertaining to the boiler inspection service as may be directed by the Commissioners of the District of Columbia. (June 25, 1936, 49 Stat. 1917, ch. 802, § 11.)

§ 1–713 [20: 368k]. Unauthorized use deemed nuisance—Proceedings to abate.

The use of any steam boiler or unfired pressure vessel in violation of any of the prohibitions or requirements of sections 1–701 to 1–718, or of the regulations promulgated under the authority hereof, shall constitute a common nuisance and the Corporation Counsel of the District of Columbia may maintain an action in the District Court of the United States for the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. (June 25, 1936, 49 Stat. 1917, ch. 802, § 12.)

CROSS REFERENCE

Power of Commissioners to make rules and regulations, and publication thereof, §§ 1–715, 1–718.

§ 1–714 [20: 368*l*]. Penalties.

If any person shall violate any one or more of the provisions of sections 1–701 to 1–718 or of regulations duly promulgated hereunder, the Corporation Counsel of the District of Columbia, or any of his assistants, shall file an information in the police court in the name of the District of Columbia, and upon conviction such persons shall be subject to a fine not to exceed $100 or to imprisonment for not more than ninety days, or both, for each and every violation thereof, and each violation shall constitute a separate offense. (June 25, 1936, 49 Stat. 1917, ch. 802, § 13.)

§ 1–715 [20: 368m]. Regulations—Fees.

The Commissioners of the District of Columbia are hereby authorized and empowered to make such regulations as they may deem proper to carry out

the provisions of sections 1–701 to 1–718 and to fix the fees herein provided. (June 25, 1936, 49 Stat. 1917, ch. 802, § 14.)

Cross References

Other provisions concerning fees, §§ 1–710, 1–718.
Rules and regulations in general, § 1–226 and note.

§ 1–716 [20: 368n]. Repeal, act concerning steam engineers not affected.

All laws or parts of laws relating to boiler inspection in conflict with the provisions of sections 1–701 to 1–718 are hereby repealed: *Provided,* That no provision of sections 1–701 to 1–718 shall be deemed to amend, alter, or repeal sections 2–1501 to 2–1507. (June 25, 1936, 49 Stat. 1917, ch. 802, § 15.)

§ 1–717 [20: 368*o*]. Separability provisions.

If any provision of sections 1–701 to 1–718 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable. (June 25, 1936, 49 Stat. 1917, ch. 802, § 16.)

§ 1–718 [20: 368p]. Effective date of sections 1–701 to 1–718—Promulgation of regulations and schedule of fees.

Sections 1–701 to 1–718 shall become effective six months from the date of its approval (June 25, 1936). The regulations and schedule of fees herein provided for shall be promulgated by the Commissioners of the District of Columbia and printed in one or more of the daily newspapers published in the said District but shall not be enforced until thirty days after such publication or until December 25, 1936. Amendments to the regulations or new or additional schedules of fees, when and as the same may be adopted, shall likewise be printed in one or more of the daily newspapers published in the said District and no penalty for violation thereof or payment of new or additional fees prescribed shall be enforced until thirty days after such publication. (June 25, 1936, 49 Stat. 1917, ch. 802, § 17.)

Cross References

Other provisions concerning fees, §§ 1–710, 1–715.
Power of Commissioners to make rules and regulations, § 1–715.

§ 1–719 [20: 69]. Electric wiring—Inspection—Rules and regulations—Fees.

The Commissioners of the District of Columbia shall have power to make from time to time such rules and regulations respecting the production, use, and control of electricity for light, heat, and power purposes in the District of Columbia not inconsistent with existing laws, as in their judgment will afford safety and convenience to the public; and the Commissioners of said District are further authorized and empowered to prescribe such fees for the examination of the electrical wiring, machinery, and appliances in buildings as they may deem proper, to be paid to the Collector of Taxes of the District of Columbia, and any such rules and regulations shall after promulgation have the effect and force of law: *Provided,* That nothing in sections 1–719 to 1–723 contained shall apply to the power plants or buildings of incorporated companies engaged in the production and distribution of electric current for public service or use. (Apr. 26, 1904, 33 Stat. 306, ch. 1602, § 1.)

Cross References

Building regulations, § 5–413 and notes.
Disposition of fees, § 47–126.
Provisions concerning power of Commissioners over electric wiring in streets and alleys, § 43–1401 et seq.
Rules and regulations in general, § 1–226 and notes.

§ 1–720 [20: 70]. Inspection—Notice of violations—Penalty.

The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1–719 to 1–723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any provisions of said sections, or of any regulation of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1–719 to 1–723 shall be in the police court of said District, in the name of the District of Columbia. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 2.)

Cross Reference

Certification that certain businesses have complied with safety regulations before business license be issued, § 47–2302.

§ 1–721 [20: 71]. Electrical engineer—Appointment—Qualifications—Assistant inspectors.

There is hereby established, under the direction of the Commissioners of the District of Columbia, the office of electrical engineer, and the Commissioners of said District are hereby authorized and directed to appoint an electrical engineer, and said electrical engineer shall be an expert electrician, possessing a thorough knowledge of the most modern methods for the production, use, and control of electricity and electrical appliances, construction, wiring, and insulation, as well as such executive ability and adaptability to office work as is requisite for the efficient management of the said office. And the Commissioners are authorized and directed to appoint two electrical inspectors to assist in the work required

by the authority of sections 1–719 to 1–723, who shall perform such clerical duties as may be required by the commissioners. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 3.)

§ 1–722 [20: 72]. Assistant electrical engineer—Duties.

The assistant electrical engineer shall perform the duties of the electrical engineer in the absence or disability of the latter and shall have the same qualifications as to ability and technical knowledge as is required by law of the head of the department. (Mar. 2, 1911, 36 Stat. 981, ch. 192.)

COMPILER'S NOTES

The law as originally enacted provided for salary of $2,000.

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

§ 1–723 [20: 73]. Connecting current before inspection—Penalty—Authority to remove connection.

It shall be unlawful for any person, company, or corporation generating current for electric light, heat, or power in the District of Columbia to connect its system and furnish current for electrical purposes to any building or premises, the wiring of which shall not have been inspected and approved by the chief inspector of electrical work.

Any person, company, or corporation violating the provisions of this section shall, upon written notice from the chief inspector of electrical work to do so, immediately remove said connection and cut off the current, and shall not again supply said current until authorized by the said inspector. For failure to comply with said notice the offending person, company, or corporation shall be fined not less than $5 nor more than $100 for each and every day's failure or neglect to remove said connection and to cut off the current.

The chief inspector of electrical work is hereby authorized and empowered, with the approval of the commissioners, to cause said connection to be removed and the current cut off upon such failure of the offending person, company, or corporation, and to refuse to permit said connection to be replaced and the current to be used until the wiring shall be put in proper and safe condition. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 4.)

§ 1–724 [20: 60]. Plumbing—Appointment of inspector—Duties.

There shall be appointed by the Commissioners of the District of Columbia an inspector of plumbing for said District, whose duty it shall be, to inspect all houses in course of erection, and pass upon the plumbing and sewerage of said houses. (Jan. 25, 1881, 21 Stat. 318, ch. 27.)

CROSS REFERENCE

Licensing and regulation of plumbers, § 2–1401, et seq.

§ 1–725 [20: 61]. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.

The Commissioners of the District of Columbia and their successors are authorized and empowered to make, modify, and enforce regulations governing plumbing, house drainage, and the ventilation, preservation, and maintenance in good order of house sewers and public sewers in the District of Columbia, and also regulations governing the examination, registration, and licensing of plumbers and the practice of the business of plumbing and gas-fitting in said District; and any person who shall neglect or refuse to comply with the requirements of the provisions of said regulations after ten days' notice of the specific thing required to be done thereunder, within the time limited by the commissioners for doing such work, or as the said time may be extended by said Commissioners, shall upon conviction thereof be punishable by a fine of not more than $200 for each and every such offense, or in default of payment of fine, to imprisonment not to exceed thirty days. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 1; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

COMPILER'S NOTE

The provisions of this section concerning the regulation of examination, registration, and licensing of plumbers are probably superseded by § 2–1401, et seq.

AMENDMENT

The 1893 amendment extended the act to include the practice of the business of gas-fitting.

CROSS REFERENCES

Building regulations, § 5–413 and notes.

Commissioners' power to revoke or suspend licenses, § 2–1405.

Duty of Commissioners to require lots to be connected to public drains, §§ 6–402 to 6–404.

Penalties for violation of Plumbers' Licensing Law, § 2–1408.

Rules and regulations in general, § 1–226 and notes.

§ 1–726 [20: 62]. Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.

The said Commissioners and their successors, be, and they hereby are, authorized to establish and charge a fee for each permit granted to connect any building, premises, or establishment with any sewer, water, or gas main, or other underground structure located in any public street, avenue, alley, road, highway, or space; and also to establish and charge a fee for each permit granted to make an excavation in any public street, avenue, alley, highway, road, or space for the purpose of repairing, altering, or extending any house sewer, water main, or gas main, or other underground construction. The fees authorized by this section shall be paid to the Collector of Taxes of the District of Columbia and by him paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

The 1921 amendment changed the proportions in which fees deposited were to be credited from one-half each to the proportion shown in last sentence.

CROSS REFERENCES

Federal Government now makes a lump-sum appropriation for the District, § 47–134.

Making connections before streets are paved, § 7–605.

§ 1–727 [20: 63]. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.

The inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 4; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

AMENDMENT

The 1893 amendment extended the act to include the practice of the business of gas-fitting.

CROSS REFERENCE

Sec.

§ 1–728 [20: 86]. Principal assistant inspector of buildings may discharge duties of inspector.

The principal assistant inspector of buildings may perform and discharge any of the duties of the inspector of buildings when so directed by the Commissioners. (Mar. 3, 1899, 30 Stat. 1046, ch. 422.)

CROSS REFERENCES

Certification that certain businesses have complied with safety regulations before business license be issued, § 47–2302.

Construction and repair of school buildings, § 31–803.

Duties of building inspector—Approval of alley dwellings for grooms and stablemen, § 5–101.

Issuance of building permits and occupancy permits, § 5–422.

Member of board for condemnation of insanitary buildings, § 5–601.

Powers and duties concerning repair or removal of unsafe structures or excavations, §§ 5–501 to 5–503.

Service of notice to remove barbed-wire fences, § 7–1103.

Service on board for condemnation of insanitary buildings when inspector unable to act, § 5–602.

§ 1–729 [20: 87]. Assistant inspector of buildings to inspect elevators and fire escapes.

One of the assistant inspectors of buildings shall hereafter also perform the duties of inspector of elevators and fire escapes, without additional compensation. (Aug. 7, 1894, 28 Stat. 244, ch. 232.)

CROSS REFERENCES

Fire escapes and safety provisions for buildings, §§ 5–301 to 5–317.

Inspection fees, § 5–317.

Power of Commissioners to regulate operation and repair of elevators, § 1–229.

Chapter 8.—CONTRACTS

Sec.

1–801. Limitation on right of Commissioners to contract.
1–802. Contracts in which Commissioners personally interested to be void.
1–803. Commissioners' contracts to be in writing and filed.
1–804. Bond of contractors, laborers, materialmen—Right to sue or intervene—Surety—Liability—Limitations—Notice.
1–805. Contractor's bond not required for contracts not exceeding $1,000—Contracts not to be subdivided to reduce amount.
1–806. Formal contract with bond not required in contracts not exceeding $1,000.
1–807. Retents.
1–808. Advertisement for proposals—Limitation on authority to contract for purchase—Exception.
1–809. Cost of advertising.
1–810. Separate contracts for material and for labor authorized.
1–811. Operation of District quarry.
1–812. Use of agents, in purchasing sites for schools and public buildings—Commissions—Future enlargement.
1–813. Building materials may be tested by Bureau of Standards.
1–814. Testing materials in laboratory of highway department.
1–815. Wages of laborers and mechanics employed in construction, alteration, and repair of public buildings—Prevailing rate—Disputes—Suspension in national emergency.
1–816. Insurance of District of Columbia property.
1–816a. Payment of fire insurance premiums.
1–817. Sewerage agreement with Maryland authorized.
1–817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.
1–818. Sale of property unfit for service—Proceeds credited to appropriation.
1–819. Exchange of equipment on purchase of new.

§ 1–801 [20: 44]. Limitation on right of Commissioners to contract.

The commissioners, in the exercise of their duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. (June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

COMPILER'S NOTE

This section seems to be a general limitation upon the powers conferred upon the Commissioners by the present Organic Act, 20 Stat. 103, ch. 180, and it appears herein as the following sections: § 1 (§§ 1–102, 1–103); § 2 (§§1–201, 1–203, 1–204, 1–206 to 1–210, 1–220, 1–308, 1–802, 1–803, 7–101, 7–102, 47–120); § 3 (§§ 1–216, 1–218, 1–219, 1–221, 1–234, 43–1503, 43–1506, 43–1521); § 4 (§ 47–309); § 5 (§§ 1–212, 7–601 to 7–605); § 6 (§§ 4–119, 4–123, 4–126. 4–130, 4–133, 4–134, 4–136, 4–137, 4–139, 4–142, 4–144, 4–145, 4–147, 4–148, 4–155, 4–163, 4–169, 4–171, 4–174, 4–177); § 8 (§§ 6–101, 6–102); § 9 (§§ 6–103 to 6–105); § 10 (§ 6–106); § 12 (§ 1–236); § 13 (§ 47–102).

CROSS REFERENCES

Contracts for collection and disposal of garbage and other refuse, § 6–502.

Contracts for street and sewer construction or repair, §§ 7–601 to 7–634.

Contracts to obtain gas and electricity not required, § 7–704.

Sale of street sweepings, § 1–236.

§ 1–802 [20: 45]. Contracts in which Commissioners personally interested to be void.

All contracts made by the Commissioners in which any of the Commissioners shall be personally interested shall be void, and no payment shall be made

thereon by the District or any officers thereof. (R. S., D. C., § 82; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

COMPILER'S NOTES

Act of 1874 provided that the Commission shall make no contract, nor incur any obligation other than may be necessary for faithful administration of laws.

Act of 1878 specifically sets out only those contracts that may be entered into; others are void.

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

§ 1–803 [20: 46]. Commissioners' contracts to be in writing and filed.

All contracts made by the Commissioners shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the secretary of the District. (R. S., D. C., § 80; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCES

General limitation on power of Commissioners, § 1–801.
Written contract not required where amount is less than $1,000, § 1–806.

§ 1–804 [20: 47]. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.

Any person or persons entering into a formal contract with the District of Columbia for the construction of any public building, or the prosecution and completion of any public work, or for alteration and/or repairs, including painting and decorating, upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond in an amount not less than the contract price, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the District of Columbia on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the District of Columbia.

If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the District of Columbia, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the District of Columbia within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the District of Columbia that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the District of Columbia in the District Court of the United States for the District of Columbia, irrespective of the amount in controversy in such suit, and not elsewhere for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: *Provided,* That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: *Provided further,* That where a suit is instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into the registry of said court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the District of Columbia by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: *And provided further,* That in all suits instituted under the provisions of this section such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the District of Columbia, for at least three successive weeks, the last publication to be at least three months before the time limited therefor. (Feb. 28, 1899, 30 Stat. 906, ch. 218; July 7, 1932, 47 Stat. 608, ch. 441.)

COMPILER'S NOTE

The 1932 act. cited to the text, did not expressly amend the act of 1899, but rather superseded it.

NOTES TO DECISIONS

BOND MANDATORY

It is clearly evident from reading the enacting clause as well as title, that Congress recognized that no legislation was necessary to enable the Commissioners to require the usual penal bond with sufficient sureties. *Equitable Surety Co.* v. *United States ex rel. McMillan* (234 U. S. 448, 58 L. Ed. 1394, 34 Sup. Ct. 803).

There are two reasons why the bond cannot be treated as voluntary. One is that the declaration counts specifically upon a statutory bond. The second is that a suit in the name of the United States could not be brought upon a voluntary bond. *United States ex rel. W. A. Pierce Co.* v. *Faircloth* (49 App. D. C. 323, 265 Fed. 963).

CHANGES IN CONTRACT

In a contractor's bond given under this section for the erection of a public building, changes in the contract, without knowledge of the surety, do not release him from his obligation to pay for supplies, so far as they are supplied in accordance with the original contract. *Equitable*

Surety Co. v. *United States ex rel. McMillan* (234 U. S. 448, 58 L. Ed. 1394, 34 Sup. Ct. 803).

CONSTRUCTION

This act should receive liberal construction in aid of the object whose accomplishment is so evidently intended. *Equitable Surety Co.* v. *United States ex rel. McMillan* (234 U. S. 448, 58 L. Ed. 1394, 34 Sup. Ct. 803).

Decisions of Third Circuit Court of Appeals and Maryland Federal District Court, construing 40 U. S. C. § 270, limiting time for filing of creditor's intervening petition in action on bond of contractor for public work, are persuasive, but are not binding on District of Columbia Federal District Court construing this section. *District of Columbia* v. *American Excavation Co.* (D. C., D. C. 1946, 64 F. Supp. 19).

CONTRACT RELIED UPON

In action on a contractor's statutory bond, the exclusion of testimony as to the terms of a prior oral agreement was proper, when the witnesses had just made clear to the court that they were relying upon two instruments which together embodied the terms of the verbal agreement. *H. Herfurth, Jr., Inc.* v. *United States* (66 App. D. C. 220, 85 Fed. (2d) 719).

"FINAL SETTLEMENT"

Congress by merely transferring the function previously performed by the treasury to the General Accounting Office, did not intend to disturb the construction of the statute or to make final determinations in the executive departments any the less final settlements within the meaning of the Heard Act (U. S. C., title 40, sec. 270) than they had been before. *Globe Indemnity Co.* v. *United States* (291 U. S. 476, 78 L. Ed. 924, 54 Sup. Ct. 499).

Action taken by the assistant administrator in approving the report of the director of construction constituted a determination, made and recorded in accordance with established administrative practice by the department having the contract in charge, that the contract was completed and that the final payment was due. This action of the assistant administrator was a "final settlement" within the meaning of the Heard Act. *H. G. Christman Co.* v. *Michigan Gypsum Co.* (85 Fed. (2d) 474).

The settlement which is held "final" for the periods of limitation is a settlement of the entire contract and of all substantial claims arising under it and its performance. *United States Casualty Co.* v. *District of Columbia* (71 App. D. C. 92, 107 Fed. (2d) 652).

In construing the term "final settlement" in this section, the court considered decisions construing the Heard Act (U. S. C. Title 40, § 270) controlling. *United States Casualty Co.* v. *District of Columbia* (71 App. D. C. 92, 107 Fed. (2d) 652).

LIMITATION ON INTERVENTION

The limitation of one year in this section for filing of creditor's intervening petition in action on bond of contractor for public work is not jurisdictional, and the District of Columbia Federal District Court has discretion for good cause shown to grant leave to file such petition after the expiration of one year. *District of Columbia* v. *American Excavation Co.* (D. C., D. C. 1946, 64 F. Supp. 19).

In enacting this section prescribing one-year period within which must be filed a creditor's intervening petition in action on bond of contractor for public work, Congress would be assumed to have acted reasonably and not to have intended to place on a creditor desiring to assert his rights the burden of examining in the clerk's office the file of every suit instituted within the preceding year. *District of Columbia* v. *American Excavation Co.* (D. C., D. C. 1946, 64 F. Supp. 19).

Where a claimant had not been aware of pendency of another suit on bond of contractor for public work, and became aware of such fact after the expiration of a year, the District of Columbia Federal District Court had authority, in the exercise of sound discretion, to grant claimant leave to intervene nunc pro tunc, notwithstanding this section prescribing one-year period within which claimant's intervening petition must be filed. *District of Columbia* v. *American Excavation Co.* (D. C., D. C. 1946, 64 F. Supp. 19).

PARTIES TO ACTION

It is verified from the language of the act that an action on the bond may be brought against the surety alone. Adequate rules of procedure are available to make the contractor a party defendant should he interpose a defense helpful to the bondsman or one of the creditors. *United States ex rel. Goodenow* v. *Aetna Casualty & Surety Co.* (C. C. A. 6; 5 Fed. (2d) 412).

RIGHTS OF UNPAID MATERIALMEN

The object of the legislation was to give laborers and materialmen the right to bring an action on the bond. The nominal obligee is, with respect to these third parties, a mere trustee, and the obligors as well as the surety and principal contractor enter into the obligation in full view of this. *Equitable Surety Co.* v. *United States ex rel. McMillan* (234 U. S. 448, 58 L. Ed. 1394, 34 Sup. Ct. 803).

If under state statutes of similar language and purpose recovery would be allowed from the private owner of a building on the theory that plaintiff's material went into its construction, there is even greater reason for liability under a bond to pay all persons supplying materials in the prosecution of the work. *United States ex rel. Turnover* v. *Charles H. Tompkins Co.* (63 App. D. C. 332, 72 Fed. (2d) 383).

Although unpaid materialmen are not named parties in the reinsurance agreements and hence cannot at common law sue thereon as parties, and when appellants do not sue upon the first reinsurance agreements in the strict common-law sense, they may sue as a third-party beneficiary of the agreements as having rights in equity. *Bruckner-Mitchell* v. *Sun Indemnity Co.* (65 App. D. C. 178, 82 Fed. (2d) 434).

Materialman has action against surety on contractor's bond for balance of materials furnished although he contracted with dealer through which cement was supplied to the contractor, as the dealer was in financial difficulties and the materials were furnished to the contractor. *Continental Casualty Co.* v. *North American Cement Corp.* (67 App. D. C. 234, 91 Fed. (2d) 307).

SUIT ON BOND REMOVABLE

A suit wherein claim is made under a bond furnished pursuant to a law of the United States arises under a law of the United States and is removable. *Rogge* v. *Michael Del Balso, Inc.* (15 Fed. Supp. 499).

§ 1–805 [20: 48]. Contractors' bond not required for contracts not exceeding $1,000—Contracts not to be subdivided to reduce amount.

In all cases where the Commissioners of the District of Columbia contract for work or material involving a sum not exceeding $1,000, it shall not be necessary for said Commissioners to require a bond with said contract; but no work capable of execution under a single contract, nor any purchase of material where the total expenditure involved is greater than $1,000, shall be subdivided or lessened for the purpose of reducing the sum of money to be paid therefor to less than that amount. (June 28, 1906, 34 Stat. 546, ch. 3575; June 26, 1912, 37 Stat. 168, ch. 182.)

AMENDMENT

The 1912 amendment raised the amount from $500 to $1,000.

CROSS REFERENCE

Application of this section to contracts for construction or repair of streets or sewers, §§ 7–602 to 7–603.

§ 1–806 [20: 49]. Formal contract with bond not required in contracts not exceeding $1,000.

Formal written contracts with bond for work or the purchase of supplies and materials for the District of Columbia shall not be required in cases where

the cost of such work or supplies or materials does not exceed the sum of $1,000. (June 26, 1912, 37 Stat. 168, ch. 182.)

§ 1–807 [20: 50]. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: *Provided, however,* That whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made the Commissioners of the District of Columbia, in their sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Commissioners may authorize retention from such subsequent payments of less than 10 per centum thereof; and the said Commissioners, in their sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work. (Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386.)

AMENDMENTS

The act of Aug. 3, 1949, cited to text, removed the exception: "(except as provided in section 7–603)," formerly a part of the first sentence appearing after the words "construction work." The act deleted provisions regarding the duration of retent on contracts for the construction of pavements, bridges, sewers, buildings and other works, and added the proviso giving discretionary powers to the commissioners of the District of Columbia re retents and payments thereof.

§ 1–808 [20: 51]. Advertisement for proposals—Limitation on authority to contract for purchase—Exception.

Except as otherwise provided by law all purchases and contracts for supplies or services by the government of the District of Columbia, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or services required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals. No contract for purchase shall hereafter be made unless the same be authorized by law or be made under an appropriation adequate to its fulfilment. If any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner: *Provided,* That this section shall not be construed to be applied to any purchase or service rendered for the District of Columbia when the aggregate amount involved does not exceed the sum of $100. (Mar. 2, 1861, 12 Stat. 220, ch. 84, § 10; Jan. 27, 1894, 28 Stat. 33, ch. 22; Mar. 2, 1911, 36 Stat. 975, ch. 192; Oct. 10, 1940, 54 Stat. 1109, ch. 851, § 1.)

COMPILER'S NOTES

The act of January 27, 1894, March 2, 1911, and Oct. 10, 1940, amended R. S., § 3709, U. S. C., Title 41, § 5, insofar as that section related to the government of the District of Columbia.

36 Stat. 861, ch. 431, § 23, approved June 25, 1910, and 36 Stat. 531, ch. 297, § 4, approved June 17, 1910 (U. S. C., Title 41, §§ 5, 7), apparently do not apply to the District of Columbia or supersede this section. (See 21 O. A. G. 349; 28 O. A. G. 438. See also 42 Stat. 1244, ch. 72, approved Feb. 13, 1923 (U. S. C., Title 41, § 6); 22 O. A. G. 1.)

CROSS REFERENCE

As to street repairs, § 7–601 et seq.

§ 1–809 [20: 52]. Cost of advertising.

After May 30, 1908, there shall not be paid by the government of the District of Columbia, for general advertising authorized and required by law and for tax and school notices and notices of changes in regulations, rates exceeding those charged to individuals or commercial interests for similar advertising in the District of Columbia. (May 30, 1908, 35 Stat. 493, ch. 227.)

CROSS REFERENCE

See notes to § 1–808.

§ 1–810 [20: 53]. Separate contracts for material and for labor authorized.

After July 5, 1884, in executing public works, the Commissioners are authorized to make separate contracts for materials and for labor. (July 5, 1884, 23 Stat. 125, ch. 227.)

§ 1–811 [20: 54]. Operation of District quarry.

The Commissioners of the District of Columbia are hereby authorized to invite bids and to make contracts for operating the District quarry for such periods, not exceeding five years each, as may be determined by them to be most advantageous to the District. (Mar. 3, 1905, 33 Stat. 892, ch. 1406.)

§ 1–812 [20: 55]. Use of agents in purchasing sites for schools and public buildings—Commissions—Future enlargement.

After March 2, 1889, the Commissioners in making purchases of sites for schools or other public buildings shall do so without the employment of agents or through other persons not regular dealers in real estate in the District of Columbia, or through such regular dealers who have not had the property for sale continuously from March 2, 1889, and in no case shall commission be paid to more than one person or firm greater than the usual commission.

After June 6, 1900, in the purchase of sites and in preparing plans for new school buildings proper regard shall be had for future enlargement of said buildings. (Mar. 2, 1889, 25 Stat. 802, ch. 370; June 6, 1900, 31 Stat. 568, ch. 789.)

AMENDMENT

The 1900 act added the last paragraph.

§ 1–813 [20: 56]. Building materials may be tested by Bureau of Standards.

Materials for fireproof buildings, other structural materials, and all materials, other than materials for paving and for fuel, purchased for and to be used by the government of the District of Columbia, when necessary in the judgment of the Commissioners to be tested, shall be tested by the Bureau of Standards under the same conditions as similar testing is required to be done for the United States government. (Mar. 4, 1913, 37 Stat. 945, ch. 150.)

§ 1–814 [20: 56a]. Testing materials in laboratory of highway department.

The Commissioners under such conditions as they may prescribe are further authorized to utilize the existing testing laboratory of the highways department for making tests of all materials for other departments and activities of the District government. (June 29, 1932, 47 Stat. 354, ch. 308.)

§ 1–815 [20: 56b]. Wages of laborers and mechanics employed in construction, alteration, and repair of public buildings—Prevailing rate—Disputes—Suspension in national emergency.

Every contract in excess of $5,000 in amount, to which the United States or the District of Columbia is a party, which requires or involves the employment of laborers or mechanics in the construction, alteration, and/or repair of any public buildings of the United States or the District of Columbia within the geographical limits of the District of Columbia, shall contain a provision to the effect that the rate of wage for all laborers and mechanics employed by the contractor or any subcontractor on the public buildings covered by the contract shall be not less than the prevailing rate of wages for work of a similar nature in the District of Columbia, and a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature applicable to the contract which can not be adjusted by the contracting officer, the matter shall be referred to the Secretary of Labor for determination and his decision thereon shall be conclusive on all parties to the contract: *Provided,* That in case of national emergency the President is authorized to suspend the provisions of this section. (Mar. 3, 1931, 46 Stat. 1494, ch. 411, § 1.)

CROSS REFERENCES

Hours of labor limited, §§ 22–3407 to 22–3408.
Minimum wage law, § 36–401, et seq.

STATUTORY REFERENCE

This section is contained in U. S. C., Title 40, § 276a.

NOTES TO DECISIONS

LABORERS

Executive order requiring employment of persons on relief for all projects would seem to exceed the executive authority given by the act which limits such preference to road-building projects only. It also prohibits discrimination in favor of veterans, and thereby denies the applicability of the Veterans' Preference Act. *Spang* v. *Roper* (13 Fed. Supp. 840).

RATE WHEN FIXED BY SECRETARY OF LABOR

Secretary of Labor does not have the power, when he has once found that the rates prevailing at a particular point of time differ from the rates then being paid by the contractor, to postpone or defer the time when his findings shall become effective. *United States ex rel. Wylie* v. *W. S. Barstow & Co.* (79 Fed. (2d) 496).

Surety cannot reduce the amount of the claims on the ground that the prevailing rate of wages for work of a similar nature in Batavia, N. Y., where the buildings were constructed, was lower than the rate fixed by the Secretary of Labor, as the contract and statute provide the rate of the Secretary of Labor shall be conclusive and acknowledgment of the contractor before laborers went to work of the right of the Government to fix the rate of wage. *United States ex rel. Johnson* v. *Morley Construction Co.* (17 Fed. Supp. 378).

RELEASE BY ANOTHER CONTRACT

This section which forbade any contract that did not protect laborers on public buildings also forbade any release—another contract—which deprived them of the protection so granted. *United States ex rel. Johnson* v. *Morley Construction Co.* (98 Fed. (2d) 78).

REMEDY OF LABORERS

Congress did not contemplate that laborers and mechanics employed on public buildings may accept compensation at something less than the alleged prevailing wage and thereafter proceed under the Heard Act (U. S. C., title 40, § 270) upon the contractor's bond in a court of law to recover additional compensation upon theory that they were entitled to a different classification as to character of labor performed and therefore to a higher rate of wages. *United States ex rel. Boucher* v. *Murphy* (11 Fed. Sup. 572).

SUFFICIENCY OF INDICTMENT

When action is based upon the failure to pay workmen the prevailing wage, the indictment is defective for failure to specify what was the prevailing wage. *United States* v. *Terranova* (7 Fed. Sup. 989).

§ 1–816 [20: 57]. Insurance of District of Columbia property.

After February 25, 1885, property belonging to the District of Columbia may be insured in advance for periods of five years or less. (Feb. 25, 1885, 23 Stat. 313, ch. 145.)

§ 1–816a. Payment of fire insurance premiums.

No District of Columbia appropriation shall be used for the payment of premiums or other cost of fire insurance. (June 28, 1944, 58 Stat. 533, ch. 300, § 12.)

§ 1–817 [20: 58]. Sewerage agreement with Maryland authorized.

For the protection of streams flowing through United States government parks and reservations in the District of Columbia from pollution by sewage discharged therein from sewerage systems of Maryland towns and villages bordering said District, the Commissioners are authorized to enter into an agreement with the proper authorities of the state of Maryland for the drainage of such sewerage systems into and through the sewerage system of the District of Columbia; and the said Commissioners are further authorized to permit connections of Maryland sewers with the District of Columbia sewerage system at or near the District line whenever, in their judgment, the sanitary conditions of streams flowing into and through such United States government parks and reservations in the District of Columbia are such as to demand the elimination of such pollution: *Provided,* That all cost of construction of such sewers

to and connection with the sewerage system of the District of Columbia shall be paid by the proper authorities of the state of Maryland, and that said state shall enter into such agreement with the Commissioners and shall guarantee the protection of the District of Columbia sewerage system from unauthorized connections thereto, and shall reimburse the District of Columbia for the actual cost of pumping and handling such sewerage by annual payments for such service as determined by the commissioners in such agreement; all such sums collected therefor to be paid into the treasury of the United States through the Collector of Taxes to the credit of the District of Columbia. (Sept. 1, 1916, 39 Stat. 717, ch. 433, § 9.)

COMPILER'S NOTE

Act of July 11, 1940, 54 Stat. 748, ch. 579, grants the consent of Congress to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia as signatory bodies, to enter into a compact for the creation of a Potomac Valley Conservancy District and the establishment of the Interstate Commission on the Potomac River basin.

CROSS REFERENCE

Contracts with Maryland and Virginia municipalities for use of District refuse incinerators, § 6–511.

§ 1–817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.

The Commissioners of the District of Columbia are hereby authorized to provide for the removal of sludge, a byproduct of the District of Columbia sewage-treatment plant, deposited or proposed to be deposited at the District of Columbia Reformatory, Lorton, Virginia, by contract or otherwise, and to enter into contract or contracts for such removal, for periods not exceeding five years. Mar. 24, 1950, 64 Stat. 343, ch. 465, § 1.)

§ 1–818 [20: 99]. Sale of property unfit for service—Proceeds credited to appropriation.

Whenever any horses, carriages, or wagons, or property, of any description may become unfit for service, in the judgment of the commissioners, the same shall be sold at auction to the highest bidder, after due advertisement, and the proceeds thereof shall be paid into the treasury of the United States to the credit of the appropriation out of which the purchase was made. (Mar. 3, 1883, 22 Stat. 470, ch. 95, § 1.)

§ 1–819 [20: 100]. Exchange of equipment on purchase of new.

The Commissioners of the District of Columbia are hereby authorized and empowered, when in their discretion it shall be deemed to the advantage of the public service, to exchange typewriters, adding machines, pianos, machinery, and other equipment, in part or full payment for new articles of similar or improved character, credit for the value of said personal property so exchanged to be allowed on vouchers in payment for such new articles as may be purchased, the balance remaining due after said credit to be paid out of the appropriation to which said purchase is properly chargeable. (June 26, 1912, 37 Stat. 147, ch. 182.)

Chapter 9.—CLAIMS AGAINST DISTRICT

Sec.
1–901. Service of process.
1–902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.
1–903. Refund of taxes when similar assessments have been held void by court decisions—Limitations.
1–904. Settlements limited to $5,000—Report to Congress—Appropriations authorized.
1–905. Effective date.

§ 1–901 [20: 25]. Service of process.

In suits commenced after June 20, 1874, against the District of Columbia, process may be served on any one of said Commissioners, until otherwise provided by law. (June 20, 1874, 18 Stat. 117, ch. 337, § 2.)

CROSS REFERENCE

Written notice condition precedent to action for unliquidated damages, § 12–208.

RULES OF CIVIL PROCEDURE

Service of process, Rule 4 (d).

§ 1–902 [20: 103]. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.

The Commissioners of the District of Columbia are empowered to settle, in their discretion, claims and suits, either at law or in equity, against the District of Columbia whenever the cause of action—

(a) Arises out of the negligence or wrongful act, either of commission or omission, of any officer or employee of the District of Columbia for whose negligence or acts the District of Columbia, if a private individual, would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or a governmental function of said District: *Provided, however,* That nothing herein contained shall be construed as depriving the District of Columbia of any defense it may have to any suit, either at law or in equity, which may be instituted against it or to give any person, corporation, partnership, or association any right to institute any suit against the District of Columbia which did not exist prior to June 5, 1930.

(b) Arises out of the existence of facts and circumstances which place the claim or suit within the doctrines and principles of law decided by the courts of the District of Columbia or by the Supreme Court of the United States to be controlling in the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 1; June 5, 1930, 46 Stat. 500, ch. 400.)

AMENDMENT

The 1930 amendment added the matter in subdivision (a) following the words "District of Columbia" in line 4 of this subdivision.

NOTES TO DECISIONS

DEFENSES

District is not responsible when conducting a hospital in a governmental capacity and when exerting its police power in caring for the sick. *Jones* v. *District of Columbia* (51 App. D. C. 319, 279 Fed. 188).

Congress authorized the Commissioners to waive the statute of limitations in favor of property owners where claims were presented not later than February 11, 1930;

but as to claims filed later, the District was required to avail itself of the defense of the statute. *Lake, to Use of Peyser* v. *District of Columbia* (63 App. D. C. 306, 72 Fed. (2d) 174).

SETTLEMENT OF CLAIM

Section allows the Commissioners to settle claims in suits against the District for negligent or wrongful acts of its employees when the District, "if a private individual would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or governmental function of said District." *District of Columbia* v. *World Fire and Marine Insurance Co.* (D. C. Mun. App. 1949, 68 A. 2d 222).

§ 1–903 [20: 104]. Refund of taxes when similar assessments have been held void by court decisions—Limitations.

The Commissioners of the District of Columbia are hereby authorized and empowered to grant relief in claims for refund of taxes paid, or for cancelation of assessments heretofore made and subsequent to September 1, 1916, in such cases where like assessments, or assessments against property of similar character, have been held to be void or erroneous by decision of the District Court of the United States for the District of Columbia, the United States Court of Appeals for the District of Columbia, or the Supreme Court of the United States: *Provided,* That any claims for refunds of taxes paid before February 11, 1929, or for cancelations of assessments before February 11, 1929, shall be filed within one year from February 11, 1929.

Nothing contained in sections 1–902 to 1–905 shall be construed as reducing the period of the statute of limitations. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 2.)

CROSS REFERENCE

Other provisions concerning refund of taxes and assessments, §§ 47–1017 to 47–1019 and notes.

NOTES TO DECISIONS

LIMITATIONS

There was no reference to refunds to be made by the Commissioners, or acknowledgment of indebtedness to persons who had paid their assessments, so as to take the case out of the operation of the statute of limitations. *Lake, to Use of Peyser,* v. *District of Columbia* (63 App. D. C. 306, 72 Fed. (2d) 174).

§ 1–904 [20: 105]. Settlements limited to $5,000—Report to Congress—Appropriations authorized.

No settlement of any claim or cause of action herein authorized by sections 1–902 to 1–905 to be made by the Commissioners of the District of Columbia shall in any event exceed the sum of $5,000 and all settlements entered into by the commissioners of the District of Columbia acting under the terms and provisions of sections 1–902 to 1–905 shall be presented to the Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement, with a summary of the evidence and circumstances under which the settlement was made. Appropriations for the payment of such settlements are hereby authorized, payment thereof to be made in the same manner as are other expenditures for the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 3.)

§ 1–905 [20: 106]. Effective date.

Sections 1–902 to 1–905 shall take effect from and after February 11, 1929, but nothing herein contained shall be construed as prohibiting the Commissioners of the District of Columbia from proceeding according to the terms and provisions hereof to settle any claim or suit pending on February 11, 1929, irrespective of the date of presentation of the claim to the Commissioners of the District of Columbia or the date of the filing of the suit. (Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 4.)

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap.		Sec.
1.	Healing Arts Practice Act	2–101
2.	Anatomical Board	2–201
3.	Dentists	2–301
4.	Nurses	2–401
5.	Optometrists	2–501
6.	Pharmacy	2–601
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8.	Veterinarians	2–801
9.	Accountants	2–901
10.	Architects	2–1001
11.	Barbers	2–1101
12.	Boxing Commission	2–1201
13.	Cosmetologists	2–1301
14.	Plumbers	2–1401
15.	Steam and other operating engineers	2–1501
16.	Washington National Airport [Transferred].	
17.	Armory Board	2–1701
18.	Professional Engineers	2–1801

Chapter 1.—HEALING ARTS PRACTICE ACT

Sec.
2–101. The healing art—Definitions—Exclusions.
2–102. License required—Terms of license to be observed.
2–103. Commission on licensure — Creation — Officers — Seal—Standards—License on years of practice.
2–104. Commission on licensure to receive and record applications for licenses—Issuance of licenses—Registration and payment of fees—Penalties.
2–105. Power to appoint and discharge examiners and other employees—Contract for quarters and supplies.
2–106. Boards of examiners—Appointment and tenure—Qualifications—Rules.
2–107. Board of Examiners in Basic Sciences—Qualifications.
2–108. Reference of applicants to Board of Examiners in Basic Sciences—Examination—Subjects—Acceptance of examination before foreign board—Certification to other boards.
2–109. Board of Examiners in Medicine and Osteopathy to be appointed by commission—Duties and qualifications.
2–110. Reference of applicants to Board of Examiners in Medicine and Osteopathy.
2–111. Creation of examining board upon petition of adherents of any drugless method of healing—Definition of method of practice—Appointment of board members—Qualifications.
2–112. Reference of applicants to appropriate board of examiners.
2–113. Board of Examiners in Midwifery—Appointment—Reference of applicants to board.
2–114. Examinations—Time of holding—Notice—Publication.
2–115. Examinations—Method of conducting—Uniform standard.
2–116. Examining boards to submit examination questions to commission.
2–117. Examinations—Method of conducting—Reports of boards.
2–118. Commission to issue licenses based on reports of boards—Retention of examination papers—Papers open to inspection.
2–119. Applications for licenses to be filed with commission—Contents of applications—Fees—Refunds.
2–120. Licensees in medicine, surgery, or midwifery under prior law to be relicensed—Osteopaths, chiropractors, and those who practice the healing arts to apply for license—License without examination.
2–121. Reciprocity with other States and foreign countries—Exception—Proof required.
2–122. Evidence to be submitted with application—Licensing of those practicing before effective date of this chapter—Education and training.
2–122a. Certificate or diploma from national examining board—Proof required.
2–123. Suspension and revocation of license—Procedure.
2–124. Filing false data—Disclosing identity number—False impersonation of applicant prohibited.
2–125. Premature disclosure of examination—False impersonation of licensee prohibited.
2–126. Altering or forging diploma or seal of commission.
2–127. Unfair rating of applicants prohibited.
2–128. False swearing to be perjury.
2–129. License may be refused for cause—Procedure—Attendance of witnesses before commission—Review and appeal.
2–130. Penalties.
2–131. Suspension or revocation of license upon conviction of felony—Appeal as supersedeas.
2–132. Enjoining unlawful practice of healing art—Procedure.
2–133. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients.
2–134. Exemptions from operation of license laws—Emergency cases—Massage, dietetics, or hygienic measures, X-ray or laboratory technicians—Prayer or spiritual treatment—Sale of drugs.
2–135. Funds to be paid to collector of taxes—Payment of expenses.
2–136. Boards of Medical Supervisors and Examiners to deliver records and property to commission.
2–137. Enforcement.
2–138. Commission to report to Congress.
2–139. Chapter may be cited as "Healing Arts Practice Act."
2–140. Saving clause—Prior, contrary, or inconsistent laws repealed.

§ 2–101 [20: 121]. The healing art—Definitions—Exclusions.

For the purpose of this chapter, the following words and phrases have the meanings assigned to them, respectively, except where the context otherwise requires:

(a) "Disease" means any blemish, defect, deformity, infirmity, disorder, disease, or injury of the human body or mind, and pregnancy, and the effects of any of them.

(b) "The healing art" means the art of detecting or attempting to detect the presence of any disease; of determining or attempting to determine the nature and state of any disease, if present; of preventing, relieving, correcting, or curing, or of attempting to prevent, relieve, correct, or cure any disease; of

safeguarding or attempting to safeguard the life of any woman and infant through pregnancy and parturition; and of doing or attempting to do any of the acts enumerated above: *Provided,* That for the purposes of this chapter the term "the healing art" does not include—

(1) Dentistry as defined in chapter 3 of this title; nor

(2) Podiatry as defined in section 2–711; nor

(3) Optometry as defined in chapter 5 of this title; nor

(4) Pharmacy as defined in chapter 6 of this title; nor

(5) Nursing as defined in chapter 4 of this title.

(c) "To practice" means to do or to attempt to do, or to hold oneself out or to allow oneself to be held out as ready to do, any act enumerated in subsection (b) of this section as constituting a part of the healing art, for a fee, gift, or reward, or in anticipation of any fee, gift, or reward, whether tangible or intangible.

(d) "Commission" means the Commission on Licensure to Practice the Healing Art, created by this chapter.

(e) "Board" means a board of examiners created by this chapter.

(f) "Drugless healing" means any system of healing that does not resort to the use of drugs, medicine, or operative surgery for the prevention, relief, or cure of any disease.

(g) "School" means any school, college, or university. (Feb. 27, 1929, 45 Stat. 1326, ch. 352, § 1.)

CROSS REFERENCES

Duty to prevent blindness of new-born infants, § 6–201.
Duty to report births, § 6–301.
Exempted from operation of law regulating barbers, § 2–1115.
Exempted from operation of law regulating cosmetologists, § 2–1324.
Exemption from pharmacy regulations, § 2–601.
Exemption from provisions of Alcoholic Beverage Control Act, § 25–109.
Furnishing or prescribing drugs to drug addicts, § 2–611.
Prescribing poisonous medicines, drugs, or compounds, § 2–612.

CROSS REFERENCES TO BOARDS AND COMMISSIONS NOT FOUND IN THIS TITLE

Alcoholic Beverage Control Board, § 25–104.
"Authority" for administration of Alley Dwelling Act, § 5–104.
Board for condemnation of insanitary buildings, § 5–601.
Board of Education, § 31–101.
Board of Equalization and Review of Taxation, §§ 47–605, 47–2405.
Board of Examiners for examination of school teachers, § 31–601.
Board of Indeterminate Sentence and Parole, § 24–201.
Board of Library Trustees, § 37–104.
Board of Personal Tax Appeals, § 47–605.
Board of Public Welfare, § 3–102 et seq.
Board of Tax Appeals, § 47–2402.
Board of Zoning Adjustment, § 5–420.
Commission on Mental Health, § 21–308.
Commission to acquire land connecting Zoological and Rock Creek Parks, §§ 8–157, 8–158.
Committee to make awards for meritorious service by members of police and fire department, § 4–702.
Department of Vehicles and Traffic, § 40–603.
Department of Weights, Measures, and Markets, § 10–101.
District Unemployment Compensation Board, § 46–315.
Federal Parole Board, § 24–209.
Health Department, § 6–101 et seq.
Insurance Department, § 35–101.
Jury Commission, § 11–1401.
Minimum Wage Board, § 36–401.
National Capitol Park and Planning Commission, § 8–101.
Permanent Board of Assistant Tax Assessors, § 47–604.
Police and Firemen's Retiring and Relief Board, § 4–510.
Probation Department for Juveniles, § 11–922 et seq.
Public Utilities Commission, § 43–201.
Real Estate Commission, § 45–1403.
Trial boards for Metropolitan Police or Fire Department, §§ 4–122, 4–601 to 4–604.
Zoning Advisory Council, § 5–417.
Zoning Commission, §§ 5–412 to 5–428.

NOTES TO DECISIONS

LIABILITY OF HOSPITAL

Where judgment was obtained against appellant hospital for the death by negligence of a patient resulting from a transfusion of incompatible blood erroneously tested and reported as compatible by a technician in the hospital laboratory, such judgment must be affirmed since the doctrine of respondent superior applies. Such responsibility is unaffected even though agreeably to the requirements of Title 2 of the Code, the technical work was put under the "direction of a physician." *National Homeopathic Hospital* v. *Phillips* (C. A. D. C. 1950, 181 F. 2d 293, 86 U. S. App. D. C. 295).

SCOPE

This section embraces "the practice of the healing art," instead of merely "the practice of medicine and surgery." *Rubin* v. *United States* (59 App. D. C. 195, 37 Fed. (2d) 991).

§ 2–102 [20: 122]. License required—Terms of license to be observed.

No person shall practice the healing art in the District of Columbia who is not (a) licensed so to do, or (b) if exempted from licensure under sections 2–133 or 2–134, then duly registered.

No person shall practice the healing art in the District of Columbia otherwise than in accordance with the terms of his license or of his registration, as the case may be. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, §§ 2, 3.)

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

NOTES TO DECISIONS

CIVIL ACTION

Where defendant, who was not licensed under this section, represented to plaintiff that he could either cure or help her by giving her treatments for arthritis for a price, and plaintiff paid part of price, plaintiff was entitled to recover from defendant amount paid on ground that she was not in pari delicto with defendant and, even if she were, the law having been passed for protection of public, public interest would be best served by requiring defendant to pay back fruits of his illegal agreement. *Rubin* v. *Douglas* (D. C. Mun. App. 1948, 59 A. 2d 690).

EVIDENCE

Evidence that defendant told patient he would cure her of asthma for a stated price, that patient was put to bed in rear bedroom of defendant's home, and that defendant put patient on a diet, brought food to her, and administered pills and liquid medicine was sufficient to sustain conviction for "practicing the healing art" without a license. *Powers* v. *U. S.* (App. D. C. 1942, 128 F. 2d 300, certiorari denied 62 S. Ct. 1300, 316 U. S. 693, 86 L. Ed. 1764).

INFORMATION

An information charging in language of this section that defendant unlawfully practiced the healing art by examining, treating, and prescribing for a named person without having first obtained a license to do so was sufficient to charge an offense even though it did not include the definition of practice in section 2–101. *Powers* v. *U. S.* (App. D. C. 1942, 128 F. 2d 300, certiorari denied 62 S. Ct. 1300, 316 U. S. 693, 86 L. Ed. 1764).

LIABILITY OF HOSPITAL

Where judgment was obtained against appellant hospital for the death by negligence of a patient resulting from a transfusion of incompatible blood erroneously tested and reported as compatible by a technician in the hospital laboratory, such judgment must be affirmed since the doctrine of respondent superior applies. Such responsibility is unaffected even though agreeably to the requirements of Title 2 of the Code, the technical work was put under the "direction of a physician." *National Homeopathic Hospital* v. *Phillips* (C. A. D. C. 1950, 181 F. 2d 293, 86 U. S. App. D. C. 295).

REVIEW

In determining whether evidence was sufficient to sustain conviction for unlawfully practicing the healing art without a license, the reviewing court was required to look at all of defendant's actions as they appeared in the record and to conclude therefrom whether the evidence was sufficient to support the determination of the trial court. *Powers* v. *U. S.* (App. D. C. 1942, 128 F. 2d 300, certiorari denied 62 S. Ct. 1300, 316 U. S. 693, 86 L. Ed. 1764).

§ 2–103 [20: 123]. Commission on licensure—Creation—Officers—Seal—Standards—License on years of practice.

There is hereby created a Commission on Licensure to Practice the Healing Art in the District of Columbia, consisting of the president of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the United States District Attorney for the District of Columbia, the superintendent of public schools of the District of Columbia, and the health officer of the District of Columbia, each ex officio. The Commission shall elect a president and a vice-president. The health officer shall be the secretary and treasurer of the commission. The Commission shall make and from time to time may alter such rules as it deems necessary for the conduct of its business, and for the execution and enforcement of the provisions of this chapter. It shall adopt a common seal, and from time to time alter the same as to it seems proper. The courts shall take judicial notice of such seal.

The Commission shall establish minimum standards of preprofessional and professional education in the healing art and may establish minimum standards for hospitals for interne training. It may determine whether preprofessional and professional schools, and whether hospitals, attain such standards. It shall keep a record of its investigations and determinations with respect to all schools and hospitals and shall approve and enter in a proper register every school and every hospital attaining the prescribed standard or which had attained such standard during its existence. The Commission may redetermine from time to time the standing of any school or hospital and may revise its register accordingly. The Commission shall give no credit for any certificate, diploma, or degree emanating from any school, and it may refuse to give any credit for any certificate or diploma emanating from any hospital, not duly registered as provided by this chapter: *Provided,* That this requirement as to registration shall not apply in the case of persons applying for license on years of practice under the provisions of section 2–120. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, §§ 4, 5.)

CROSS REFERENCES

Application of this chapter to Pharmacy Board, § 2–608.
Nature and extent of examination prescribed by rules, §§ 2–115, 2–117.
Rules and regulations by examining boards, § 2–106.
Rules and regulations in general, § 1–226.

§ 2–104 [20: 124]. Commission on licensure to receive and record applications for licenses—Issuance of licenses—Registration and payment of fees—Penalties.

The Commission shall receive, number consecutively, and record all applications presented in due form for licenses and for registration; but such applications may be classified according to their respective purposes, and numbered consecutively and registered according to the several classes thus established. If the Commission finds that an applicant is entitled to a license by virtue of an outstanding license to practice medicine and surgery in the District of Columbia or by virtue of years of practice, under the provisions of section 2–120, or by virtue of reciprocity, under the provisions of section 2–121, or by virtue of a certificate or diploma by a national examining board as provided in section 2–121a, it shall issue to him a license accordingly. If the Commission finds that an applicant has submitted satisfactory proof of age, moral character, preprofessional education, professional education, and, if required by the Commission, of hospital training, but must be subjected to an examination to determine his professional fitness, under section 2–122, it shall certify him to the proper examining board for that purpose; and upon receipt of a report from any such board, satisfactory to the Commission, showing that the applicant has passed such an examination, the Commission, being of the opinion that the applicant is in all other respects legally qualified, shall issue to him a license to practice the healing art in the manner described in his application and as authorized by law, in whatever class the Commission shall find him qualified to so practice.

During the month of December each year, every person holding a license to practice the healing art in the District of Columbia issued by the Commission on Licensure shall register with the secretary-treasurer of said Commission his name and office address and such other information as the Commission may deem necessary upon blanks obtainable from said secretary-treasurer and thereupon pay a registration fee of $2, said fee to be paid in the manner provided in section 2–135. On or before the 1st day of December each year it shall be the duty of the secretary-treasurer to mail to each person holding a license to practice the healing art in the District of Columbia issued by the Commission on Licensure, at his last-known address, a blank form for registration. Every person holding more than one type of license to practice the healing art in the District of Columbia issued by the Commission on Licensure shall be re-

quired to register each license separately. In the event of failure to register on or before the 31st of December a penalty of $5 will be imposed which shall be paid in the manner provided in section 2–135. Should the licentiate fail to register and pay the penalty imposed, and continue to practice his profession in the District of Columbia, he shall at the end of ten days from said date be considered as practicing without a license and penalized as otherwise provided in this chapter.

Upon receipt of the application blank properly executed together with the $2 registration fee the registrant shall be mailed a registration card showing that the registration fee has been paid for the coming calendar year.

On or before the 1st day of April each year, the said Commission shall cause to be printed and mailed to each person who shall have registered in accordance with the provisions of this section a list of the names of all such registered persons. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, § 6; Sept. 26, 1942, 56 Stat. 757, ch. 562, § 1; April 20, 1948, 62 Stat. 174, ch. 216, § 1.)

AMENDMENTS

Act of April 20, 1948, cited to text, amended the first paragraph by adding the words "or by virtue of a certificate or diploma by a national examining board as provided in section 2–121a".

The act of Sept. 26, 1942, cited to text, amended section by adding last three paragraphs.

The catchline has been reworded.

§ 2–105 [20: 125]. Power to appoint and discharge examiners and other employees—Contract for quarters and supplies.

The Commission may (a) appoint, suspend, and remove such examiners, counsel, clerks, inspectors, and other officers and employees as may be authorized by law; (b) enter into contracts for the use and occupancy of such quarters as may be necessary for its purposes; but the Commissioners of the District of Columbia are hereby authorized to furnish such quarters without cost to the Commission if the necessary space is available in any building under their control; and (c) buy such supplies as may be necessary for its work and for the execution and enforcement of this chapter: *Provided,* That the Commission incurs no indebtedness in excess of money actually available. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, § 7.)

§ 2–106 [20: 126]. Boards of Examiners—Appointment and tenure—Qualifications—Rules.

The Commission shall appoint boards of examiners as follows: (a) A Board of Examiners in the Basic Sciences; (b) a Board of Examiners in Medicine and Osteopathy; (c) a Board of Examiners in Chiropractic; and (d) a Board of Examiners in Naturopathy. The commission shall appoint (e) a Board of Examiners in Midwifery; and (f) such other boards of examiners in drugless healing as are necessary under the provisions of this chapter. The Board of Examiners in the Basic Sciences, and the Board of Examiners in Medicine and Osteopathy, shall each consist of five members. Boards of Examiners in Midwifery and boards of examiners in drugless healing may consist of three to five members, as the Commission deems proper. No examiner shall be appointed for a term longer than five years, and all appointments shall be made so that the term of one member of each board shall expire on the 31st day of December of each year. The Commission shall appoint no person as a member of any such board who is not a citizen of the United States and who has not been a resident of the District of Columbia for at least three years immediately preceding his appointment. The Commission may appoint as members of such boards persons employed in the service of the federal government and of the government of the District of Columbia; and persons so employed may accept such appointment and may receive such compensation for their services as examiners as may be provided by law and by the regulations of the Commission. A member of any board is not debarred by such membership from employment under the federal government or the government of the District of Columbia, not inconsistent with the discharge of his duties as a member of such board.

Each examining board shall elect a chairman and a secretary and may make such rules regarding the discharge of its duties as the Commission may approve. Each board shall conduct examinations and make reports as required by law and by the rules of the commission. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, §§ 8, 9.)

CROSS REFERENCE

General provisions as to rules and regulations, § 2–103.

§ 2–107 [20: 127]. Board of Examiners in Basic Sciences—Qualifications.

The Commission shall appoint the several members of the Board of Examiners in the Basic Sciences so that there will be on said Board at all times one or more members capable of determining whether applicants have or have not a sufficient knowledge of the sciences of anatomy, physiology, chemistry, bacteriology, and pathology to enable such applicants to understand and to apply such sciences in the study and practice of the healing art. No member of the Board of Examiners in the Basic Sciences shall teach or practice the healing art while serving in that capacity. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, § 10.)

§ 2–108 [20: 128]. Reference of applicants to Board of Examiners in Basic Sciences—Examination—Subjects—Acceptance of examination before foreign board—Certification to other boards.

The Commission shall refer to the Board of Examiners in the Basic Sciences every applicant for a license to practice the healing art in the District of Columbia, except those entitled to licenses by virtue of licenses to practice medicine and surgery in the District of Columbia outstanding February 27, 1929, or by virtue of years of practice of osteopathy or some form of drugless healing in the District of Columbia at that time, for determination of the applicant's ability to understand and to apply the sciences of anatomy, physiology, chemistry, bacteriology, and pathology to the study and practice of the healing art. The Commission shall refer such applicants so that the Board of Examiners in

the Basic Sciences and any member of that Board shall not know the method of practice the applicant has studied or the method of practice he intends to follow. The Board of Examiners in the Basic Sciences may examine any applicant referred to it, but it may accept in lieu of examination proof that the applicant has passed, before a Board of Examiners in the Basic Sciences, by whatsoever name it may be known, or before any examining or licensing board in the healing art as that art is hereinbefore defined, of any State, Territory, or other jurisdiction under the United States, or of any foreign country, an examination in anatomy, physiology, chemistry, bacteriology, and pathology, as comprehensive and as exhaustive as that required in the District of Columbia under authority of this chapter. The Board of Examiners in the Basic Sciences shall report its findings to the Commission. An applicant who is reported by the Board as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology, but who is not entitled to a license to practice the healing art, without examination, shall be certified by the Commission to the Board of Examiners in Medicine and Osteopathy, or a board of Examiners in drugless healing, as the case may be, for determination of his professional fitness. An applicant who is reported by the Board as qualified in said sciences and who is entitled to a license by reciprocity, without examination, or by virtue of a certificate or diploma issued by a national examining board, shall thereupon be given such a license. The Commission shall issue no license to practice the healing art to any person who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology, except to such persons as are entitled to licenses by virtue of licenses to practice medicine and surgery in the District of Columbia outstanding on February 27, 1929, and by virtue of years of practice of osteopathy or some form of drugless healing in said district prior to February 27, 1929, and except to applicants for licenses to practice midwifery. (Feb. 27, 1929, 45 Stat. 1329, ch. 352, § 11; April 20, 1948, 62 Stat. 175, ch. 216, § 2.)

AMENDMENTS

The act of April 20, 1948, cited to text, added the words "or by virtue of a certificate or diploma issued by a national examining board" in the next-to-last sentence.

§ 2–109 [20: 129]. Board of Examiners in Medicine and Osteopathy to be appointed by Commission—Duties and qualifications.

The Commission shall appoint as members of the Board of Examiners in Medicine and Osteopathy persons who have been graduated with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree by a school registered under this chapter and who have taught or practiced, or taught and practiced, medicine and surgery or osteopathy for not less than five consecutive years, the last three of which, at least, immediately preceding their respective appointments, have been in the District of Columbia.

The Board of Examiners in Medicine and Osteopathy shall be composed of four practitioners of medicine and surgery, one of whom shall be an adherent of the homeopathic school, and an osteopath. The degrees doctor of medicine and doctor of osteopathy shall be accorded the same rights and privileges under governmental regulations. They shall examine into the qualifications of all persons referred to them who desire to practice medicine and osteopathy. The questions propounded to such applicants shall be identical in every respect; with the exception of questions in the practice of medicine and practice of osteopathy which shall be propounded to applicants of these respective schools only, as the case may be, and the replies shall be examined and graded by the member or members of the board representing such schools of practice.

The Board of Examiners in Medicine and Osteopathy shall certify to the commission applicants whom they have found qualified to be licensed to practice medicine and surgery, or osteopathy and surgery, as the case may be. (Feb. 27, 1929, 45 Stat. 1329, ch. 352, § 12.)

COMPILER'S NOTE

The act of June 3, 1896, 29 Stat. 198, ch. 313, entitled "An act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," created a Board of Medical Supervisors of the District of Columbia and defined its powers and duties. Presumably, this board has been superseded and its duties and powers transferred to the commission on licensure by the act of 1929, cited to the text, and such parts of the act of 1896 as are inconsistent with the act of 1929 are repealed by § 49 (§ 2–140) thereof.

§ 2–110 [20: 130]. Reference of applicants to Board of Examiners in Medicine and Osteopathy.

The Commission shall refer to the Board of Examiners in Medicine and Osteopathy every applicant for a license to practice the healing art who does not intend and in his application agree to limit his practice to some named drugless method of healing and who is not entitled to a license without examination: *Provided,* That no applicant shall be certified to the Board of Examiners in Medicine and Osteopathy for examination who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology. (Feb. 27, 1929, 45 Stat. 1330, ch. 352, § 13.)

§ 2–111 [20: 131]. Creation of examining board upon petition of adherents of any drugless method of healing—Definition of method of practice—Appointment of board members—Qualifications.

On petition of five or more adherents of any drugless method of healing, the Commission shall appoint a board of examiners to determine the fitness of applicants for licenses to practice the healing art in the District of Columbia according to that method. Every such petitioner, at the time of signing the petition, shall have practiced the healing art in some manner, not necessarily in the manner described in the petition, for not less than five consecutive years immediately preceding, in the District of Columbia. The petition shall define the

method of healing for which an examining board is desired, so as clearly to differentiate that method from the unrestricted practice of the healing art. The petition shall show as nearly as may be the number of schools teaching the method of healing described in it, and shall show the nature and extent of the facilities available for the education and training of practitioners of that method. It shall supply such other information as the commission may designate. The petition shall be sworn to by each of the petitioners to the best of his knowledge and belief.

Upon the filing of proper petition for the appointment of an examining board to determine the qualifications of applicants for licenses to practice according to the method of healing defined in the petition, the Commission shall by resolution provide for the appointment of such a board and define exactly the method of practice to be covered by it and to be pursued by applicants licensed after examination by it. After the adoption of any such resolution, the Commission shall from time to time appoint boards to examine such applicants as may apply for licenses to practice the method of healing defined in such resolution. The Commission shall appoint as members of any such board persons of good repute who have been graduated with some degree appropriate to the method of practice that the appointee has followed or intends to follow, by some school registered under this chapter, and who have somewhere taught or practiced, or taught and practiced, the method of healing defined in the resolution for not less than five years immediately preceding their respective appointments, under authority of licenses empowering them so to do. In making such appointments, however, the commission shall give preference, when circumstances permit and other things are equal, to persons who have taught or practiced, or taught and practiced, the healing art according to the method defined in the resolution, in the District of Columbia, under licenses authorizing them so to do, for not less than three years immediately preceding their respective appointments: *Provided,* That any adherent of a method of healing for which the Commission has provided a board of examiners, who has been graduated with an appropriate degree by some school representative of that method, who has practiced according to that system in the District of Columbia for not less than five consecutive years immediately preceding February 27, 1929, and who is entitled to a license, without examination, by virtue of the provisions of section 2–120, is eligible for appointment as a member of that board. (Feb. 27, 1929, 45 Stat. 1330, ch. 352, § 14.)

§ 2–112 [20: 132]. Reference of applicants to appropriate board of examiners.

The Commission shall refer to the appropriate board of examiners in drugless healing every applicant for a license to practice the healing art according to any method of drugless healing defined by the Commission, who intends and in his application agrees to limit his practice to the system so defined, for determination of the applicant's fitness so to practice, and who is not entitled to a license to practice without examination: *Provided,* That no applicant shall be certified to any board of examiners in drugless healing who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, § 15.)

§ 2–113 [20: 133]. Board of Examiners in Midwifery—Appointment—Reference of applicants to board.

The Commission may appoint, from time to time, as it deems expedient, a Board of Examiners in Midwifery, consisting of not less than three and not more than five persons, who have practiced the healing art in the District of Columbia for not less than three years immediately preceding their respective appointments, under authority of licenses authorizing them so to practice. Appointments to such boards shall be made for such terms as the Commission deems proper. The Commission may abolish any such board at any time. The Commission shall refer to a Board of Examiners in Midwifery every applicant for a license to practice midwifery who intends and in her application agrees to limit her practice to the care of women during normal pregnancy and parturition, in so far as the licentiate is able to determine whether pregnancy and parturition are normal in any particular case, for determination of the applicant's fitness so to practice, and who is not entitled to a license by virtue of an outstanding license to practice midwifery in the District of Columbia in force on February 27, 1929. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, §§ 16, 17.)

Cross References

Duties of midwife as to prevention of blindness of newborn infants, §§ 6–201 to 6–204.

Duty of midwife to report births, § 6–301.

§ 2–114 [20: 134]. Examinations—Time of holding—Notice—Publication.

Examinations shall be held by the Board of Examiners in Medicine and Osteopathy, the Boards of Examiners in Drugless Healing, and the Board of Examiners in Midwifery at such times as the commission may by rule or by special order determine. Examinations shall be held by the Board of Examiners in the Basic Sciences at such times as the Commission may by rule or by special order determine, having due relation to the dates of the examinations held by the Board of Examiners in Medicine and Osteopathy and the Boards of Examiners in Drugless Healing. The Commission shall publish notice of the time and place of each examination and of other pertinent information concerning it, not less than thirty days before the first day of each such examination, in one or more newspapers of local circulation and, except in so far as relates to examinations for licenses to practice midwifery, in one or more medical or osteopathic journals of national circulation; and if there be any board or boards of examiners in drugless healing, then in a journal or journals, if there be any, of national circulation, representing a method or methods of healing corresponding to the method or methods repre-

sented by such board or boards. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, § 18; Aug. 11, 1939, 53 Stat. 1419, ch. 718.)

AMENDMENT

The 1939 amendment struck out the words "beginning on the second Monday in January and July of each year and at such other" following the word "midwifery" in the fourth line and inserted in lieu thereof the words "at such."

§ 2–115 [20: 135]. Examinations—Method of conducting—Uniform standard.

The Commission shall by rule prescribe the nature and extent of the examinations to be conducted by each of the examining boards. All applicants examined by the Board of Examiners in the Basic Sciences shall be subjected to the same examination and rated on the same scale, as nearly as may be. All applicants, except applicants for licenses to practice midwifery, shall be subjected to the same examination and rated on the same scale, by the respective examining boards to which they are referred by the Commission, in the diagnosis and prevention of communicable disease. Every examination shall be in writing, in the English language, but each shall be supplemented, if practicable, by laboratory and clinical tests and, if the Commission deems proper, may be supplemented by oral examinations. Every examination shall be conducted, so far as the character of the examination permits, so that no examining board and no member thereof shall know the identity of the person examined. In any one examination by any one board the questions propounded to and the problems set for each applicant shall be as nearly the same as the character of the examination will permit. As a guide for determining whether an applicant has or has not passed, the Commission shall fix by rule a uniform standard for all applicants, except that the commission may fix maximum credits to be allowed for such experience as the applicant may have had as a licensed practitioner and in the discretion of the Commission may require an applicant claiming any such credit to be subjected to clinical and laboratory tests to demonstrate what credit he shall be allowed, if any. The general rules formulated by the commission to govern examination may be modified with respect to examinations conducted by the Board of Examiners in the Basic Sciences and by Boards of Examiners in Midwifery, in so far as the nature and function of the examinations conducted by those boards require. Except as hereinbefore stated, all examinations shall conform as nearly as may be to a uniform standard, to the end that every licensed practitioner of the healing art in the District of Columbia may conform so far as may be possible to a single uniform standard of professional fitness. (Feb. 27, 1929, 45 Stat. 1332, ch. 352, § 19.)

CROSS REFERENCE

General provisions concerning rules and regulations, § 2–103.

§ 2–116 [20: 136]. Examining boards to submit examination questions to commission.

The Board of Examiners in the Basic Sciences, the Board of Examiners in Medicine and Osteopathy, and each board of examiners in drugless healing before which any applicant is to appear at the next ensuing examination, shall submit to the Commission, not less than ten days before each examination, such questions as may be required by the rules of the Commission governing examinations. The Commission shall cause the questions so submitted to be prepared for distribution and to be distributed in the course of the examination at appropriate times; but from the questions submitted by the several examining boards in the diagnosis and prevention of communicable diseases, the commission shall select the questions to be used, and if the commission deems proper may revise and supplement such questions, and shall submit to all applicants appearing at one examination the identical questions with respect to the subject named. (Feb. 27, 1929, 45 Stat. 1332, ch. 352, § 20.)

§ 2–117 [20: 137]. Examinations—Method of conducting—Reports of boards.

The Commission shall provide the place or places and all necessary facilities for examinations, including such supervisors or proctors as the commission deems necessary. The Commission shall assign to each applicant a number under which his examination shall be conducted, with a view to the concealment of the identity of the examinee from the examiner, so far as may be practicable. The supervisor or proctor designated by the Commission shall collect all examination papers and deliver them or cause them to be delivered to the several examiners who are to examine them. Each examining board shall, as speedily as possible, examine all applicants referred to it and report its findings to the Commission. All reports of written examinations shall be made under the numbers of the several examiners and not under their names; but each board shall report to the Commission, under the names of the several examinees, the results of the clinical and laboratory tests and of the oral examination, if any, to which the examinee has been subjected. The written and the oral examination and the clinical and the laboratory tests shall each be rated on a basis of one hundred, and the reports of the several boards of examiners shall be made accordingly. The relative weight to be given to each, the passing grade, and the weight to be allowed for experience, shall be fixed by the Commission by regulations. The final standing of each applicant shall be determined by the Commission in accordance therewith. (Feb. 27, 1929, 45 Stat. 1332, ch. 352, § 21.)

CROSS REFERENCE

General provisions concerning rules and regulations, § 2–103.

§ 2–118 [20: 138]. Commission to issue licenses based on reports of boards—Retention of examination papers—Papers open to inspection.

The Commission shall carefully consider the reports of the Board of Examiners in the Basic Sciences and of the examining board by which any applicant has been examined, purporting to show the qualifications of the applicant. If the Commission is satisfied that the applicant is qualified to practice the healing art

in accordance with law and within the limits fixed by his application, the Commission shall issue to him a license attesting that fact and authorizing him so to practice in whatever class of practice the commission has found him qualified, so long as that license is unsuspended and unrevoked. All reports of examining boards and all questions to and answers by applicants in written examinations shall be open to inspection by any person who shows to the satisfaction of the Commission that he has some proper interest in them. All examination papers shall be preserved by the Commission for a period of not less than two years. The Commission shall record all licenses in a book kept for that purpose, which shall be duly indexed. Licenses shall be consecutively numbered, except that licenses of different classes may be numbered and recorded in separate series. Licenses shall show on their faces the class of practice for which they are issued, and licentiates shall display the same prominently in their offices at all times. (Feb. 27, 1929, 45 Stat. 1333, ch. 352, § 22.)

§ 2–119 [20: 139]. Applications for licenses to be filed with Commission—Contents of applications—Fees—Refunds.

Any person desiring to practice the healing art in the District of Columbia shall apply to the Commission, in writing, for authority so to do. The application shall be in such form and accompanied by such evidence of the qualifications of the applicant as the Commission requires. Each application shall show whether the applicant (a) seeks a license (1) on the basis of a license to practice medicine and surgery in the District of Columbia, under section 2–120; (2) on the basis of years of practice, under section 2–120; (3) on the basis of reciprocity, under section 2–121; (4) by virtue of a certificate or diploma issued by a national examining board, as provided in section 2–121a; or (5) on the basis of examination under section 2–122; or (b) seeks registration as a person exempted from licensure, under section 2–133. Each application shall be accompanied by a fee, as follows: For a license on the basis of a license to practice medicine and surgery in the District of Columbia, a fee of $1; on the basis of years of practice in the District of Columbia, a fee of $25; for a license on the basis of reciprocity, a fee of $50; for a license on the basis of a certificate or diploma from a national examining board, a fee of $25; for certification of applications for license by reciprocity in other jurisdictions, a fee of $10; for a license on the basis of examination, a fee of $25; for registration as a person exempted from license, a fee of $1; but physicians and surgeons of the United States Army, Navy, and Public Health Service, and medical officers in any other branch of the federal government whatsoever, and practitioners of the healing art residing within and licensed by states bordering on the District of Columbia, who do not maintain an office or appoint places where patients may be met within the District of Columbia, applying for registration as persons exempted from licensure in the District of Columbia, shall not be required to pay any fee in connection with any such application. The Commission may, on showing of any adequate cause, refund to an applicant for a license on the basis of examination any or all of the fee paid by him, prior to the reference of his application to an examining board for consideration, and thereafter if the applicant is by reason of sickness or other adequate cause prevented from entering the examination, the Commission may refund not more than 50 per centum of such fee. An applicant for a license by reciprocity who fails to establish his right to such a license, and an applicant for registration as a person exempted from licensure who fails to establish his right to such registration, may be repaid by the Commission not to exceed 80 per centum of the amount deposited by him with his application. (Feb. 29, 1929, 45 Stat. 1333, ch. 352, § 23; April 20, 1948, 62 Stat. 175, ch. 216, §§ 3 (a), 3 (b).)

AMENDMENTS

The act of April 20, 1948, cited to text, added provisions relating to certificate or diplomas issued by a national examining board, in third and fourth sentences.

§ 2–120 [20: 140]. Licensees in medicine, surgery, or midwifery under prior law to be relicensed—Osteopaths, chiropractors, and those who practice the healing arts to apply for license—License without examination.

Every person licensed to practice medicine and surgery or to practice midwifery in the District of Columbia under the provisions of an Act entitled "An Act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," as approved June 3, 1896, as amended, who desires to continue so to practice after February 27, 1929, shall apply for a license so to do. As soon as practicable after February 27, 1929, the Commission shall by publication give notice of this requirement in one or more newspapers of general circulation in the District of Columbia and in one or more medical journals of national circulation. Application for such relicensing shall be made within ninety days after the publication of such notice. A licentiate who within the time thus limited applies for relicensing may continue to practice until the Commission has acted on his application and granted to him a new license, if he be entitled thereto. A licentiate who fails to make application for relicensing within the time thus limited, but who later makes such application, shall not practice until after a new license, if the Commission finds him entitled thereto, has been issued to him. Every license issued under the provisions of this section shall show whether the licentiate was licensed in the first instance on the basis of a diploma and of registration without examination, or on the basis of examination, and shall show the date of such original registration, if there be any, and of such original license.

Any person who was engaged in the practice of osteopathy in the District of Columbia on or before January 1, 1928, may deliver to the Commission, within ninety days after February 27, 1929, a written application for a license to practice osteopathy and

surgery in the District of Columbia, together with satisfactory proof that the applicant is not less than twenty-one years of age and of good moral character, and had previously obtained a diploma from some legally incorporated school or college of osteopathy, and had been actively engaged in the practice of osteopathy for the past ten years, or had previously obtained a diploma from some legally incorporated college of osteopathy whose requirements were equal to those recognized by the American Osteopathic Association.

When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to him a license to practice osteopathy and surgery: *Provided,* That the Commission may, in its discretion, issue to such applicants licenses to practice osteopathy only, which licenses shall not permit the practice of surgery unless they satisfy the commission that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to practice surgery. Each license so to do shall show that it was issued on the basis of years of practice in the District of Columbia and without examination.

Any person who was engaged in the practice of chiropractic in the District of Columbia on or before January 1, 1928, may deliver to the Commission, within ninety days after February 27, 1929, a written application for license to practice chiropractic in the District of Columbia, together with satisfactory proof that the applicant is not less than twenty-one years of age and of good moral character, and had previously obtained a diploma from some legally chartered or incorporated and duly established school or college of chiropractic and was actually engaged in the practice of chiropractic in said District on January 1, 1928.

When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to him a license to practice chiropractic. Each license so to do shall show that it was issued on the basis of actual practice in the District of Columbia without examination.

Any person who has been engaged in the practice of the healing art as defined in this chapter in the District of Columbia on or before January 1, 1928, according to any other drugless method of healing, who has been graduated with a degree appropriate to the system of drugless healing that he has practiced by a legally chartered or incorporated and duly established school, and who desires to continue so to practice, shall within ninety days after February 27, 1929, submit proof, satisfactory to the commission, of such date of practice and of graduation, of the fact that he is not less than twenty-one years of age and of good moral character, and of the name, character, and limits of the method of healing practiced by him. When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to the applicant a license to practice the healing art in accordance with the system described by the applicant, if recognized by the commission as a named system of drugless healing, which shall be clearly defined and limited in the license so as to distinguish it from all other systems of practice. A license issued in any such case shall show that it was issued on the basis of years of practice and not on the basis of examination. (Feb. 27, 1929, 45 Stat. 1334, ch. 352, § 24; Aug. 11, 1937, 50 Stat. 620, ch. 579.)

AMENDMENT

The act of 1937 amended this section by striking out the sixth sentence of the first paragraph, which read as follows: "After five years after February 27, 1929, the Commission shall issue no license to practice the healing art in the District of Columbia on the basis of a license to practice medicine and surgery or to practice midwifery, in the District of Columbia, in force on February 27, 1929."

CROSS REFERENCE

Refund of fees where license is refused, § 47–1018.

§ 2–121 [20: 141]. Reciprocity with other States and foreign countries—Exception—Proof required.

An applicant who desires to obtain a license without examination, by virtue of a license issued to him by a state, territory, or other jurisdiction forming a part of the United States, or by a foreign country, shall submit proof, satisfactory to the Commission, that he is not less than twenty-one years of age and is of good moral character; that he was licensed to practice the healing art in the jurisdiction whence he comes under conditions that at that time would have enabled him to obtain a license to practice the healing art in the District of Columbia, or to have obtained a license under the provisions of this chapter were it then in force; that he practiced the healing art after the issuance of said license for not less than one continuous year out of three years immediately preceding the date of his application and that he intends, if licensed by the Commission, to practice in the District of Columbia. The required one continuous year's practice may be either private, institutional or governmental, or a combination thereof. The applicant shall submit, also, proof that the licensing agency of the jurisdiction whence he comes or desires to come grants, under substantially the same terms and conditions, to licentiates of the District of Columbia of the same class, licenses to practice the healing art within its jurisdiction. When the Commission is satisfied as to the qualifications of the applicant as aforesaid and as to the readiness of the licensing agency of the jurisdiction whence the applicant comes to license, under substantially the same terms and conditions, licentiates of the licensing agency of the District of Columbia of the same class, the Commission shall issue to the applicant a license to practice the healing art corresponding in scope as nearly as may be to the license issued to him by the jurisdiction whence he comes: *Provided,* That an applicant who has been examined under authority of the Commission and who has failed, shall not thereafter be licensed by the Commission by virtue of reciprocity with another jurisdiction. (As amended Dec. 15, 1944, 58 Stat. 805, ch. 587.)

AMENDMENTS

The act of Dec. 15, 1944, cited to text, amended section by striking out "that he practiced the healing art under authority of said license for not less than two consecutive

years immediately preceding the date of his application" and inserting in lieu thereof "that he practiced the healing art after issuance of said license for not less than one continuous year out of three years immediately preceding the date of his application" in the first sentence, inserting the second sentence, and striking out words "without examination" and inserting in lieu thereof "under substantially the same conditions and terms" wherever appearing in second and third sentences.

§ 2–122 [20: 142]. Evidence to be submitted with application—Licensing of those practicing before effective date of this chapter—Education and training.

Each applicant for a license to practice the healing art, to be issued after examination, shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this chapter, and has been graduated by such a school with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this chapter: *Provided,* That an applicant who has had the education and training required above, in preprofessional and professional schools, but whose graduation has been deferred by the professional school he last attended until after he has completed his training in a registered hospital, may be admitted to examination; but no license shall be issued to any such applicant until after he has been graduated from a registered school: *Provided further,* That an applicant for a license to be issued after examination who was graduated before February 27, 1929, by a school registered under this chapter may, if otherwise qualified, be admitted to examination upon proof by the applicant of such preprofessional and professional education and training, and of such graduation, as were required by the laws of the District of Columbia regulating the practice of medicine and surgery at the time of such graduation: *Provided further,* That an applicant for a license to practice osteopathy and surgery who has been graduated as aforesaid prior to December 31, 1930, shall be examined and licensed on showing that he was graduated by a high school acceptable to the Commission before he entered on the study of osteopathy and that he in all other respects is qualified as aforesaid for examination: *And provided further,* That an applicant for a license to practice drugless healing, who has been graduated before December 31, 1935, may be admitted to examination on proof that before entering on the study of drugless healing he was graduated by a high school acceptable to the Commission, and that he in all other respects is qualified as aforesaid for examination, and was graduated by a school registered under this chapter, teaching the method of healing that he intends to follow, with a degree appropriate to that method of healing, after not less than three graded courses of resident study and training of at least six months each. After December 31, 1935, every such applicant shall be required to submit, before he is referred to an examining board for examination, evidence of not less than two years' education in a college acceptable to the Commission and not less than four graded resident courses of professional study of not less than nine months each, in the same manner and to the same extent as are required of other applicants for licenses to practice the healing art.

An applicant for a license to practice midwifery shall submit proof, satisfactory to the commission, that before beginning the study of midwifery she had been graduated by a high school acceptable to the commission and thereafter studied midwifery in a school of midwifery registered under this chapter, for at least two graded courses of six months each, including attendance of not less than twenty-five cases of labor, and was duly graduated by that school. (Feb. 27, 1929, 45 Stat. 1336, ch. 352, § 26.)

§ 2–122a. Certificate or diploma from national examining board—Proof required.

The Commission may issue a license, without examination, to anyone holding a certificate or diploma from a national examining board: *Provided,* That the examination given by the national examining board was as comprehensive and as exhaustive as that required in the District of Columbia. The applicant for license on this basis shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this Act, and has been graduated by such school with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this Act: *Provided further,* That the license issued on the basis of a certificate or diploma from a national examining board shall so state on its face. (Feb. 27, 1929, § 25 (a) as added April 20, 1948, 62 Stat. 175, ch. 216, § 4.)

§ 2–123 [20: 143]. Suspension and revocation of license—Procedure.

The District Court of the United States for the District of Columbia, sitting as a court of equity, may suspend or revoke any license issued and any registration effected under this chapter, upon evidence showing to the satisfaction of the court that the licentiate or registrant, as the case may be, has been guilty of misconduct or is professionally incapacitated.

Proceedings looking toward the suspension or revocation of a license or registration shall be begun by petition filed in the District Court of the United States for the District of Columbia in the name of the Commission on Licensure to Practice the Healing Art, or of the Commissioners of the District of Columbia, or of the major and superintendent of police of said District, and shall be verified by oath. Proceedings shall be conducted according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purpose and intent of this chapter; and said court is hereby authorized to make such supplementary rules. An appeal may be taken from the decision of the District Court of the United States for the District of Columbia to the United States Court of Appeals for the said District. Any such appeal on behalf of the Commission or of the Commissioners of the District of Columbia or of the major and superintendent of police of said District may be filed without bond. The District Court of the United States for the District of Columbia may determine whether a license or registration shall be suspended or be revoked, and if such license is to be suspended said court may determine the duration of such suspension and the conditions under which such suspension shall terminate. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, § 27.)

CROSS REFERENCES

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, § 33–418.

Revocation or suspension of license upon conviction of felony, § 2–131.

§ 2–124 [20: 144]. Filing false data—Disclosing identity number—False impersonation of applicant prohibited.

No person shall file or attempt to file with the Commission any statement, diploma, certificate, credential, or other evidence when he knows, or when he might by reasonable diligence ascertain, that it is false and misleading.

No person who has been referred by the Commission to an examining board for examination and to whom has been assigned by the Commission a number under which to write and deliver his answers in connection with the written examination shall disclose to any examiner, or permit to be disclosed to any examiner, the number so assigned, or in any other avoidable manner enable the examiner to determine the identity of the applicant whose papers he is examining.

No person shall allow any other person to impersonate him in any manner whatsoever, in obtaining or attempting to obtain any certificate, license, or registration. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, §§ 28, 29, and 30.)

§ 2–125 [20: 145]. Premature disclosure of examination—False impersonation of licensee prohibited.

No person shall disclose, directly or indirectly, to an applicant for a license, in advance of any examination or test to which the applicant is to be subjected, any question to be propounded to the applicant or any test to which he is to be subjected. No applicant for a certificate, license, or registration under this chapter, and no other person whosoever shall procure or undertake to procure any such disclosure.

No person licensed or registered under this chapter shall allow any other person to impersonate him in connection with practice under any such license or registration.

No person shall impersonate a person licensed or registered under this chapter in connection with the practice of the healing art under such license or registration. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, §§ 31–33.)

§ 2–126 [20: 146]. Altering or forging diploma or seal of Commission.

No person shall alter or forge, or attempt to alter or forge, any diploma or other evidence of graduation in the healing art, or any certificate or evidence of any kind, with the intent that it shall be used to evade the provisions of this chapter.

No person shall alter or forge, or attempt to alter or forge, any license or evidence of registration, or counterfeit the seal of the Commission, or make any counterfeit impression of that seal. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, §§ 34, 35.)

§ 2–127 [20: 147]. Unfair rating of applicants prohibited.

No person having any office or duty to perform with respect to the licensing or registration of applicants for licenses and for registration under the provisions of this chapter shall knowingly rate unfairly or give any unauthorized advantage to, or impose any unfair disadvantages on, any such applicant. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 36.)

§ 2–128 [20: 148]. False swearing to be perjury.

Any person who swears or affirms to the truth of any matter or opinion that he knows to be false, for the purpose of evading, hindering, or impeding the purposes of this chapter is guilty of perjury. Any person who swears or affirms falsely, outside of the District of Columbia, if his oath or affirmation be delivered to the Commission in said District shall be guilty of perjury in said District and shall be tried and punished under the laws thereof. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 37.)

§ 2–129 [20: 149]. License may be refused for cause—Procedure—Attendance of witnesses before Commission—Review and appeal.

The Commission may refuse to license or to register any person for any cause that in the judgment of the Commission would, under the provisions of section 2–123, authorize the District Court of the United States for the District of Columbia to suspend or revoke a license or registration, if issued or granted. Before the Commission refuses to license or register any applicant for any cause under the provisions of this section, it shall give that applicant an opportunity to be heard in person or by attorney, and to produce witnesses on his behalf. Witnesses may be produced on behalf of the Com-

mission and on behalf of any interested person. The attendance and testimony of witnesses may be compelled by subpœna issued by the District Court of the United States for the District of Columbia, and said court is hereby authorized to issue and to enforce such subpœnas, on petition of the Commission. Any person failing or refusing, without just cause, to appear and testify in response to any such subpœna, or in any way obstructing the course of any hearing to which he has been subpœnaed, is guilty of contempt of court and may be punished as other persons guilty of contempt of court are punished. Any member of the Commission may administer oaths at any such hearing. On the petition of any applicant to whom a license or registration has been denied by the Commission by virtue of this section, the action of the commission may be reviewed by the District Court of the United States for the District of Columbia on a writ of certiorari, subject to appeal to the United States Court of Appeals for the District of Columbia, in the same manner as appeals are taken in similar cases. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 38.)

§ 2–130 [20: 150]. Penalties.

Any person violating the provisions of this chapter shall upon conviction thereof be punished by a fine of not more than $100 or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 39.)

§ 2–131 [20: 151]. Suspension or revocation of license upon conviction of felony—Appeal as supersedeas.

If a person licensed or registered under the provisions of this chapter be convicted in the District Court of the United States for the District of Columbia of any felony, the court, without further hearing or procedure, may suspend for such time and under such conditions as it deems proper, or may revoke, the license or registration of the defendant, in addition to imposing any other penalty provided by law. An appeal by the defendant in any such case from the conviction of the offense shall act as a supersedeas to the judgment of the court suspending or revoking his license or registration. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 40.)

§ 2–132 [20: 152]. Enjoining unlawful practice of healing art—Procedure.

The unlawful practice of the healing art may be enjoined by the District Court of the United States for the District of Columbia, sitting as a court of equity, on petition by the Commission, or by the Commissioners of the District of Columbia, or by the major and superintendent of police of this District; but no such proceeding shall be entertained in advance of the conviction of the person sought to be enjoined, of violation of the provisions of this chapter. In any such proceeding, it shall not be necessary to show that any person is individually injured by the act or acts complained of. No injunction, either temporary or permanent, shall be granted until after final trial and final judgment on the merits of the case, nor until after a hearing is had on the petition. If, on the trial, it is shown that the respondent has been unlawfully practicing the healing art, the court shall perpetually enjoin him from so practicing or continuing to practice, unless and until he has been duly licensed so to do. Procedure in such cases shall be the same as in any other injunction suit, as nearly as may be. The remedy by injunction given hereby is in addition to criminal prosecution and punishment based thereon, and not in lieu thereof. Such cases shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate court, in the same manner and under the same law and regulations as apply to other suits for injunction. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 41.)

RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65.

§ 2–133 [20: 153]. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients.

The provisions of this chapter forbidding the practice of the healing art without a license shall not apply (a) to commissioned surgeons of the United States Army, Navy, or Public Health Service, or to medical officers in any other branch of the federal government whatsoever, in the discharge of their official duties; nor (b) to practitioners of the healing art duly licensed to practice their respective callings in states or territories, or in jurisdictions under the control of the federal government, or in foreign countries, and actually called from such states, territories, jurisdictions, or countries, in consultation, to visit specified patients in the District of Columbia or to give demonstrations or clinics under the auspices and for the members of an incorporated organization made up of licensed practitioners of the healing art in the District of Columbia; nor (c) to practitioners licensed to practice their respective callings in states and territories, and in other jurisdictions forming a part of the United States, or in foreign countries, and called from such states, territories, jurisdictions, or countries to visit, on their own behalf and not in consultation, specified patients in the District of Columbia: *Provided*, That all practitioners claiming exemption under the provisions of this section, except those called into the District of Columbia on consultations only, shall file with the Commission, in such manner as the commission may prescribe, evidence of their right to such exemption. Upon proof of that right, to the satisfaction of the commission, the commission shall enter the name of the applicant in a register kept for that purpose and shall issue to the applicant a certificate in evidence of such registration. (Feb. 27, 1929, 45 Stat. 1339, ch. 352, § 42.)

§ 2–134 [20: 154]. Exemptions from operation of license laws—Emergency cases—Massage, dietetics, or hygienic measures, X-ray or laboratory technicians—Prayer or spiritual treatment—Sale of drugs.

The provisions of this chapter shall not be construed to apply to (a) the treatment of any case

of actual emergency; or (b) to the practice of massage, or dietetics, or the use of hygienic measures, for the relief of disease or to the practice of any other form of physiotherapy for the relief of disease, or to the practice of X-ray or laboratory technicians, under the direction of a person licensed to practice the healing art in the District of Columbia: *Provided,* That clinical and radiographic laboratories in operation and practitioners of clystertory treatment, within the District of Columbia January 1, 1928, may continue to so operate under the provisions of this chapter; or (c) to the use of ordinary hygienic, dietetic, or domestic remedies: *Provided,* That such use is not in violation of the provisions of sections 2–101 and 2–102; or (d) to persons treating human ailments by prayer or spiritual means, as an exercise or enjoyment of religious freedom: *Provided,* That the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated; or (e) to the sale, manufacture, or advertising of drugs and medicines: *Provided,* That the vendor, maker, or advertiser refrains from any attempt to diagnose: *Provided,* That it shall not be necessary to negative any of the aforesaid exemptions in any prosecution brought under this chapter, but the burden of proof of any such exemption shall be on the defendant. (Feb. 27, 1929, 45 Stat. 1339, ch. 352, § 43.)

NOTES TO DECISIONS

LIABILITY OF HOSPITAL

Where judgment was obtained against appellant hospital for the death by negligence of a patient resulting from a transfusion of incompatible blood erroneously tested and reported as compatible by a technician in the hospital laboratory, such judgment must be affirmed since the doctrine of respondent superior applies. Such responsibility is unaffected even though agreeably to the requirements of Title 2 of the Code, the technical work was put under the "direction of a physician." *National Homeopathic Hospital* v. *Phillips* (C. A. D. C. 1950, 181 F. 2d 293, 86 U. S. App. D. C. 295).

§ 2–135 [20: 155]. Funds to be paid to Collector of Taxes—Payment of expenses.

All money payable under the provisions of this chapter shall be paid to the Collector of Taxes of the District of Columbia and be by him deposited as a special fund to the credit of the Commission. The Commission shall pay from such fund all of the expenses of carrying this chapter into effect. Payments by the Commission shall be made by check, signed by the president and treasurer of the Commission. Members of the several examining boards and all officers and employees of the Commission shall be paid at such rates as the Commission deems proper. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 44; Sept. 26, 1942, 56 Stat. 758, ch. 562, § 2.)

AMENDMENTS

The act of Sept. 26, 1942, cited to text, amended section by deleting from second sentence the following language: "except such as may be incident to criminal prosecutions and to supervision and investigation with a view to criminal prosecution, the cost of which shall be paid from appropriations in the same manner as the expenses of other criminal prosecutions and supervisory work and investigations incident thereto are paid."

§ 2–136 [20: 156]. Boards of Medical Supervisors and Examiners to deliver records and property to Commission.

As soon as practicable after February 27, 1929, the Board of Medical Supervisors of the District of Columbia, the Board of Medical Examiners of said District, the Board of Homeopathic Medical Examiners, and the Board of Electric Medical Examiners shall deliver to the Commission on Licensure to Practice the Healing Art in the District of Columbia all records and property in their possession, respectively. The Board of Medical Supervisors of the District of Columbia shall transfer to said Commission all money remaining to the credit of said board after the payment in full of all outstanding obligations against it; and the money so transferred may be used by the Commission to defray the expenses of carrying this chapter into effect in the same manner as other money coming into the custody of the Commission is used for that purpose. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 45.)

§ 2–137 [20: 157]. Enforcement.

It shall be the duty of the Commissioners of the District of Columbia and of the major and superintendent of police of said District to enforce the provisions of this chapter. Criminal prosecution shall be conducted by the United States District Attorney for the District of Columbia. Proceedings looking toward the suspension or revocation of licenses or registration and toward the issue of injunctions, under the provisions of this chapter, shall be conducted by said United States District Attorney when instituted on behalf of the Commission, and by the corporation counsel for the District of Columbia when instituted on behalf of the Commissioners of said District or by the major and superintendent of police of said District. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 46.)

§ 2–138 [20: 158]. Commission to report to Congress.

The Commission shall report annually to Congress, on the first Monday in December, its proceedings under the provisions of this chapter during the next preceding fiscal year, with recommendations for such further legislation as may be necessary to protect the people of the District of Columbia from ignorance and quackery in the practice of the healing art in said District. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 47.)

§ 2–139 [20: 159]. Chapter may be cited as "Healing Arts Practice Act."

This chapter may be cited as the "Healing Arts Practice Act, District of Columbia, 1928." (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 48.)

§ 2–140 [20: 160]. Saving clause—Prior, contrary, or inconsistent laws repealed.

Matters pending before the Board of Medical Supervisors of the District of Columbia on February 27, 1929, shall be disposed of by the Commission in accordance with the provisions of this chapter unless in the judgment of the Commission it would be unjust or oppressive so to do; any matter, which in the

judgment of the Commission, it would be unjust or oppressive so to dispose of, may be disposed of by the Commission, in so far as may be practicable, in accordance with the provisions of the law in force when the matter first came before the Board of Medical Supervisors. Criminal prosecutions may be instituted and, if instituted on February 27, 1929, may be continued, and penalties may be imposed, under the provisions of the law in force at the time of the alleged offense, notwithstanding the passage of this chapter. Except as provided above, all laws contrary to this chapter or inconsistent therewith are hereby repealed. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 49.)

Chapter 2.—ANATOMICAL BOARD

Sec.

2–201. Anatomical Board of the District of Columbia—Creation, duties, and powers.
2–202. Dead bodies for burial at public expense to be reported to board—Removal—Exceptions.
2–203. Board may receive bodies and distribute among schools and boards—Allotment—Notice.
2–204. Bond to be furnished by school receiving bodies.
2–205. Bodies to be used in District of Columbia—Purposes of use.
2–206. Purchase, sale, traffic, transmission, and disturbance or removal from grave of bodies prohibited—Penalty.
2–207. Bodies to be delivered at expense of institutions receiving them.
2–208. Penalty for wilful neglect to perform duties.
2–209. Prosecutions.

§ 2–201 [20: 381]. Anatomical Board of the District of Columbia—Creation, duties, and powers.

There shall be, and is hereby, created, in and for the District of Columbia, a board for the control of the dead human bodies hereinafter described, and for the distribution of such bodies among and to the schools in said District conferring the degree of doctor of medicine or doctor of dental surgery, or both; the Post Graduate School of Medicine, incorporated by an Act of Congress, approved February 7, 1896, entitled "An Act to incorporate the Post Graduate School of Medicine of the District of Columbia;" the medical schools of the United States Army and Navy; the medical examining boards of the United States Army, Navy, and Public Health Service; and the Commission on Licensure for the Practice of the Healing Arts. Said board shall be known as the "Anatomical Board of the District of Columbia," and shall consist of the health officer of said District and two representatives from each school aforesaid actually engaged in teaching, to be selected by and from the faculty thereof in accordance with the by-laws of such faculty, except in the case of the medical schools of the United States Army and Navy, the representatives from which shall be selected and detailed by the Surgeon-General of the Army and the Surgeon-General of the Navy. Said Anatomical Board shall have full power to establish by-laws for its government and to appoint and to remove proper officers and agents, and shall keep full and complete records of its transactions and of all material facts pertaining to the receipt and distribution of bodies. Said records shall be open at all times for inspection by any member of said Anatomical Board and by the United States Attorney for the District of Columbia. (Apr. 29, 1902, 32 Stat. 173, ch. 638, § 1; Aug. 14, 1912, 37 Stat. 309, ch. 288; Feb. 27, 1929, 45 Stat. 1326, ch. 352.)

AMENDMENTS

The 1912 act, cited to the text, changed the name of the Marine Hospital Service to the Public Health Service.

The words "Board of Medical Supervisors" were changed to read "Commission on Licensure to Practice the Healing Arts" on authority of the act of 1929, cited to text.

CROSS REFERENCES

Disposition of human bodies in general, §§ 27–101 to 27–131.

Public crematory, §§ 27–129 to 27–131.

§ 2–202 [20: 382]. Dead bodies for burial at public expense to be reported to board—Removal—Exceptions.

Every public officer, agent, and servant, and every officer, agent, and servant of any and every almshouse, prison, jail, asylum, morgue, hospital, and other public institutions and offices having charge or control of dead human bodies requiring to be buried at public expense, shall notify said anatomical board, or such person as may be designated by the said Board, whenever any dead human body comes into his possession, charge, or control for burial at public expense. And every such officer, agent, and servant shall, upon application by said Anatomical Board or its agent, without fee or reward, and complying with the laws and regulations governing the removal of dead human bodies in the District of Columbia, deliver every such body to said board and permit said Board or its agent to take and remove the same. The notice aforesaid shall be given in writing and forwarded to said anatomical board within twenty-four hours after said officer, agent, or servant comes into possession, charge, or control of such body for burial, and shall include such material information as said board may designate. But no such body shall be delivered if the deceased person, during his last illness, without suggestion or solicitation, requested to be buried or cremated; or if within the time specified above and before the actual delivery thereof any person claiming to be and satisfying the officer in charge of such body that he is of kindred or is related by marriage to the deceased shall claim the said body for burial or cremation, or request in writing that it be buried at public expense; or if within the time specified above and before actual delivery any person claiming to be and satisfying the officer in charge of said body that he is a friend of the deceased arranges to have the same properly buried or cremated without expense to the District, or if the deceased person was a traveler who died suddenly; but in any such case said body shall be buried or delivered to said applicant for burial. (Apr. 29, 1902, 32 Stat. 173, ch. 638, § 2.)

§ 2–203 [20: 383]. Board may receive bodies and distribute among schools and boards—Allotment—Notice.

The said Anatomical Board may receive the bodies reported to it as aforesaid, and may distribute and deliver such as are received among and to such of the schools and boards entitled thereto as request

in writing to receive the same, except as otherwise expressly directed in this chapter. Each such school and board shall receive annually, as nearly as may be practicable, such proportion of the entire number of bodies distributed as the number of students enrolled and in regular attendance at such school, and the number of candidates appearing for examination before such board, respectively, engaged bona fide at such school, or examined by said board in dissecting, and operative surgery on the cadaver, bears to the total number of students so enrolled in attendance, and engaged, and of persons so examined, in the District of Columbia. The secretary, dean, or other proper officer of each such schools and boards shall report to said Anatomical Board the names of all such students in attendance at such school or persons examined by said board, as the case may be, at such times and in such form as said board may direct. All bodies shall be delivered among such schools and boards in regular order so as to maintain, as nearly as may be practicable, an equitable allotment at all times; and bodies assigned to any school or board in regular order and refused by such school or board without sufficient cause shall be charged against the quota of such school or board in such manner as not to prejudice any other school or board. But no body shall be delivered to any school or board unless within not less than twenty-four hours prior to such delivery notice of the death has been given by said Anatomical Board to the nearest known kinsman, relative by marriage, or friend of the deceased, or if none such be known, published by said Anatomical Board at least once in a daily newspaper published in the city of Washington, District of Columbia. The notice required by this section shall be deemed to have been given if served in writing on the person to be notified, or if left at his usual place of residence with some adult person residing therein, or a member of the family of such person. Said Board shall take receipts by name, or, if the name be unknown, by a description, for each body delivered; all receipts so obtained by said Board shall be properly filed by it. (April 29, 1902, 32 Stat. 174, ch. 638, § 3.)

§ 2–204 [20: 384]. Bond to be furnished by school receiving bodies.

No school except the medical schools of the United States Army and Navy shall receive any body under the provisions of this chapter until said school has given bond to the District of Columbia, and the Board of Commissioners of said District has approved such bond, which said bond shall be in the penal sum of two hundred dollars and conditioned that all bodies which said school shall receive shall be used in said District and only for the promotion of the science and art of medicine and of dentistry. (Apr. 29, 1902, 32 Stat. 174, ch. 638, § 4.)

§ 2–205 [20: 385]. Bodies to be used in District of Columbia—Purposes of use.

It shall be the duty of each and every officer, agent, and employee of every school and board receiving bodies under the provisions of this chapter to see that such bodies are used in the District of Columbia and for the promotion of the science and art of medicine and of dentistry, and for no other purpose whatsoever, and that after being so used the remains thereof are disposed of in accordance with law. (Apr. 29, 1902, 32 Stat. 174, ch. 638, § 5.)

§ 2–206 [20: 386]. Purchase, sale, traffic, transmission, and disturbance or removal from grave of bodies prohibited—Penalty.

Any person who shall, in the District of Columbia, sell or buy any body aforesaid, or in any way traffic therewith, or transmit or convey any such body to any place outside of said District, or cause or procure any such body to be so transmitted or conveyed, or who shall, in said District, disturb or remove, without legal permit, any body from any grave or vault, shall, on conviction thereof, be fined not more than two hundred dollars or imprisoned in the workhouse of said District for not more than one year. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 6.)

CROSS REFERENCE

Grave robbery, buying or selling dead bodies, penalty, § 22–3103.

§ 2–207 [20: 387]. Bodies to be delivered at expense of institutions receiving them.

Neither the United States nor the District of Columbia, nor any officer, agent, or servant thereof, shall be at any expense by reason of the delivery of any body or bodies aforesaid, except such as may be properly chargeable on account of bodies delivered to the medical schools of the Army and Navy, the medical examining boards of the Army, the Navy, and the Public Health Service, and the Commission on Licensure for the Practice of the Healing Arts; but all expenses of such delivery and distribution, except as hereinbefore specified, and of said Anatomical Board, shall be paid by the schools receiving such bodies, in such manner as may be specified by said board and by such school in proportion to the number of bodies which it has received; and no school which has failed or refused to pay its just proportion of such expense as determined by said board shall be allowed to receive any body or bodies, or parts thereof, while the amount so due remains unpaid. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 7; Aug. 14, 1912, 37 Stat. 309, ch. 288; Feb. 27, 1929, 45 Stat. 1326, ch. 352.)

AMENDMENT

The 1912 act, cited to the text, changed the name of the Marine-Hospital Service to the Public Health Service. The words "Board of Medical Supervisors" have been changed to read "Commissioners on Licensure to Practice the Healing Arts," in accordance with the 1929 act, cited to the text.

§ 2–208 [20: 388]. Penalty for wilful neglect to perform duties.

Any person having any duty enjoined upon him by the provisions of this chapter who wilfully neglects, refuses, or fails to perform the same, shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprison-

ment in the workhouse of the District of Columbia for not more one year. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 8.)

§ 2–209 [20: 389]. Prosecutions.

All prosecutions under this chapter shall be in the police court of the District of Columbia, on information brought in the name of said District on its behalf. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 9.)

Chapter 3.—DENTISTS

Sec.

2–301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.
2–302. Officers—Bond—Rules and regulations for admission to and practice of dentistry—Dental internes for hospitals—Sessions of board.
2–303. Official seal—Record of proceedings—Register of licenses issued or revoked—Certified copy of record as evidence.
2–304. Procedure—Attendance of witnesses—Production of books and papers.
2–305. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.
2–306. Annual report of finances and official acts.
2–307. Application for license, form and requirements—Photograph—Citizenship—Verification—Fees.
2–308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories.
2–309. License—Form and execution—Registration with health officer—Duplicate licenses.
2–310. Practice of dentistry declared to be subject to regulation and control as affecting public health and safety.
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2–329. Second or subsequent offense—Penalty.
2–330. Definitions.
2–331. Rules and regulations—Promulgation—Notice.

§ 2–301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.

Members of the Board of Dental Examiners, five in number, shall be appointed by the Board of Commissioners of the District of Columbia.

No person shall be eligible for appointment to the Board of Dental Examiners who is not a citizen of the United States and who has not been for five years next preceding his appointment a resident of and in the active and reputable practice of dentistry in the District of Columbia. Appointments shall be for a term of five years or until their successors are appointed and qualified, and shall be from a list of three to seven eligibles submitted by the dental societies of the District of Columbia; and no officer or member of the faculty of any dental school or college shall be eligible for appointment upon said Board. (July 2, 1940, 54 Stat. 716, ch. 513, § 1.)

COMPILER'S NOTE

The 1940 act, cited to the text, purported to amend the act of June 6, 1892 (27 Stat. 42, ch. 89) and acts amendatory thereof (June 7, 1924, 43 Stat. 599, ch. 315, § 1). The former law (D. C. 1929, Title 20, §§ 211–238) was substantially rewritten and superseded by the act of 1940, cited to text.

CROSS REFERENCES

Application of act to dental hygienists, §§ 2–322 to 2–327.
Definitions, § 2–330.
Dentist not to prescribe drugs or medicines except in course of treatment of patients, § 2–611.
Exempted from operation of Healing Arts Practice Act, § 2–101.
Exempted from operation of law regulating cosmetologists, § 2–1324.
Exemption from provisions of Alcoholic Beverage Control Act, § 25–109.
General penalty for violations of the act, § 2–328.
Persons exempted from operation of act, § 2–317.

NOTES TO DECISIONS

PURPOSE

The purpose of this chapter is to maintain high professional standards and to eliminate "bait advertising" as a means of competition. *Johnston* v. *Board of Dental Examiners, D. C.*, 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

§ 2–302. Officers—Bond—Rules and regulations for admission to and practice of dentistry—Dental internes for hospitals—Sessions of board.

The Board of Dental Examiners shall organize by electing from its members a president, and a secretary-treasurer who shall give bond to the United States in the sum of $5,000. The board shall make and adopt such rules and regulations not inconsistent herewith as it deems necessary to effect the purposes of this chapter, including (but not limited thereto) rules and regulations respecting the eligibility of candidates, the scope of examinations, the conducting of examinations, and the said Board hereby is specifically authorized to make and enforce such rules as it may deem proper for the purpose of regulating professional announcements and the number of offices of a licensed dentist. The Board, in its discretion, and under such rules and regulations as it may prescribe, is hereby authorized to permit in hospitals the use of dental internes who are graduates of approved dental schools. The

Board shall hold in January and June of each year, in such place as it may designate, examinations to determine the fitness of applicants for licenses as dentists under this chapter. (July 2, 1940, 54 Stat. 716, ch. 513, § 2.)

CROSS REFERENCES

Board has same general authority over dental hygienists, § 2–327.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Promulgation, publication, and notice of rules and regulations, § 2–331.

Rules and regulations in general, § 1–226 and notes.

See note to § 2–301.

NOTES TO DECISIONS

ADVERTISING, REGULATIONS AS TO

Regulation of Board of Dental Examiners limiting a licensee to a single advertisement not to exceed 2¼ inches in width and 1 inch in height in a copy of any newspaper or publication at one time is reasonable under this chapter. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

GENERALLY

Under this chapter giving Board of Dental Examiners authority to make regulations, the Board's regulations are valid so long as they are not unreasonable or arbitrary. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119 certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Under this chapter giving Board of Dental Examiners authority to make regulations, if doubt exists as to validity of Board's regulations, they are to be upheld. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

§ 2–303. Official seal—Record of proceedings—Register of licenses issued or revoked—Certified copy of record as evidence.

The Board of Dental Examiners shall have an official seal, and shall keep a record of its proceedings, a complete record of the credentials of each licensee, and a register of persons licensed as dentists and of licenses revoked. A transcript of an entry in such records, certified by the secretary-treasurer under seal of the Board, shall be evidence of the facts therein stated. (July 2, 1940, 54 Stat. 716, ch. 513, § 3.)

CROSS REFERENCE

Powers and duties of the Board as to dental hygienists, § 2–327.

§ 2–304. Procedure—Attendance of witnesses—Production of books and papers.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The president and secretary-treasurer of the Board shall have power to issue subpenas and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce documents when duly directed by said board, the Board shall have power to refer the said matter to any justice of the District Court of the United States for the District of Columbia, who may order the attendance of such witness, or the production of such documents, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such documents, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. Witnesses who have been subpenaed by the Board, and who testify if called upon, shall be paid the same fees that are paid witnesses in the District Court of the United States for the District of Columbia. (July 2, 1940, 54 Stat. 716, ch. 513, § 4.)

§ 2–305. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.

(1) It shall be the duty of the secretary-treasurer of the Board to enforce the provisions of all laws relating to the practice of dentistry in the District of Columbia, and all violations of said laws shall be prosecuted in the police court of the District of Columbia by the Corporation Counsel or one of his assistants; and the Corporation Counsel and his assistants shall render such other legal services as may from time to time be required by the Board of Dental Examiners.

(2) The major and superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigations and prosecutions incident to the enforcement of this chapter. The Board is authorized to employ such other persons as it deems necessary to assist in the investigation and prosecutions incident to the enforcement of this chapter. (July 2, 1940, 54 Stat. 717, ch. 513, § 5.)

CROSS REFERENCE

Power of Board over dental hygienists, § 2–327.

§ 2–306. Annual report of finances and official acts.

The Board of Dental Examiners shall make annual reports to the District commissioners, containing a statement of moneys received and disbursed and a summary of its official acts during the preceding year. (July 2, 1940, 54 Stat. 717, ch. 513, § 6.)

§ 2–307. Application for license, form and requirements—Photograph—Citizenship — Verification—Fees.

Any person who desires to practice dentistry within the District of Columbia shall file with the secretary-treasurer of the Board a written application for a license, and furnish satisfactory proof that he is a citizen of the United States or has duly declared his intention to become a citizen of the United States, and is a graduate of a dental college approved by the Board. Such application must be upon the form prescribed by the Board, verified by oath, and accompanied by the required fee and a recent unmounted autographed photograph of the applicant. Any license issued to a person who is a citizen of a foreign country and who has duly declared his intention to become a citizen of the United States shall automatically terminate and the registration of the candidate be annulled in the event such candidate shall

fail to submit to the Board satisfactory evidence within six years from the date of such license that he has become a citizen of the United States. (July 2, 1940, 54 Stat. 717, ch. 513, § 7.)

CROSS REFERENCE

Application for license as dental hygienist, § 2–323.

§ 2–308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories.

An applicant for a license to practice dentistry shall appear before the Board at its first meeting after the filing of his application, and pass a satisfactory examination, consisting of practical demonstrations and written or oral test, or both, in the following subjects: Anatomy, anesthetics, bacteriology, chemistry, histology, operative dentistry, oral surgery, orthodontia, pathology, physiology, prosthetic dentistry, materia medica, metallurgy, and therapeutics, and such other subjects as the Board may from time to time direct: *Provided,* That the Board may waive the theoretical examination in the case of an applicant who furnishes proof satisfactory to said Board that he is a graduate from a reputable dental college of a state or territory of the United States, approved by the Board, and holds a license from a similar dental board, with requirements equal to those of the District of Columbia, and who, for five consecutive years next prior to filing his application, has been in the lawful and reputable practice of dentistry in the state or territory of the United States from which he applies: *Provided,* That the laws of such state or territory accord equal rights to a dentist of the District of Columbia holding a license from the board of the District of Columbia, who desires to practice his profession in such state or territory of the United States. An applicant desiring to register in the District of Columbia under this section must furnish the Board with a letter from the secretary of the Board of Dental Examiners under seal of the Board of Dental Examiners of the state or territory of the United States from which he applies, which shall state that he has been in the lawful and reputable practice of dentistry in the state or territory from which he applies for the five years next prior to filing his application, and shall also attest to his moral character and professional qualifications. (July 2, 1940, 54 Stat. 717, ch. 513, § 8.)

CROSS REFERENCE

Examination and admission to practice of dental hygienists, §§ 2–324, 2–326.

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAW

Writ of mandamus will not issue when applicant has adequate remedy at law with permission to take a subsequent examination before board of dentistry. *United States ex rel. McDuffie* v. *Hawley* (50 App. D. C. 137, 269 Fed. 479).

§ 2–309. License—Form and execution—Registration with health officer—Duplicate licenses.

If such applicant passes the examination and is, in the opinion of the Board, of good moral character, he shall receive a license from the Board, attested by its seal, signed by the members of the Board, and registered with the health officer, which, after being registered with the health officer, shall be conclusive evidence of his right to practice dentistry in the District of Columbia. If the loss of a license is satisfactorily shown, a duplicate thereof shall be issued by the Board upon payment of the required fee. (July 2, 1940, 54 Stat. 718, ch. 513, § 9.)

§ 2–310. Practice of dentistry declared to be subject to regulation and control as affecting public health and safety.

The practice of dentistry in the District of Columbia is hereby declared to affect the public health and safety and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the District of Columbia. All provisions of this chapter relating to the practice of dentistry shall be construed in accordance with this declaration of policy. (July 2, 1940, 54 Stat. 718, ch. 513, § 10.)

§ 2–311. Revocation or suspension of license—Jurisdiction of court—Grounds.

The District Court of the United States for the District of Columbia may revoke or suspend the license of any dentist in the District of Columbia upon proof satisfactory to said court—

(a) That said license or registration was procured through fraud or misrepresentation.

(b) That the holder thereof has been convicted of an offense involving moral turpitude.

(c) That the holder thereof is guilty of chronic or persistent inebriety, or addiction to habit-forming drugs.

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridgework, or any portion of the human head; employing or making use of solicitors or free publicity press agents directly or indirectly; or advertising any free dental work, or free examination; or advertising to guarantee any dental service or to perform any dental operation painlessly.

(e) That such holder is guilty of conduct which disqualifies him to practice with safety to the public.

(f) That such holder is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice dentistry.

(g) That such holder, being a manager, proprietor, operator, or conductor of a place where dental operations are performed, employs a person who is not a licensed dentist to practice dentistry as defined in this chapter, or permits such persons to practice dentistry in his office.

(h) That such holder is guilty of unprofessional conduct.

The following acts on the part of a licensed dentist are hereby declared to constitute unprofessional conduct:

(1) Practicing while his license is suspended.

(2) Wilfully deceiving or attempting to deceive the Board or their agents with reference to any matter under investigation by the board.

(3) Advertising by any medium other than the carrying or publishing of a modest professional card or the display of a modest window or street sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections, and, if his practice is so limited, his specialty: *Provided,* That in case of announcement of change of address or the starting of practice, the usual size card of announcement may be used. The size of said cards or signs shall be designated by the Board.

(4) Practicing dentistry under a false or assumed name or corporate name other than a partnership name containing the names of the partners, or any name except his full proper name which shall be the name used in his license granted by the Board.

(5) Violating this chapter or aiding any person to violate this chapter or violating or aiding any person to knowingly violate the dental practice act of any state or territory.

(6) Practicing in the employment of, or in association with, any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced, or as limiting or restricting the said court from holding that other or similar acts also constitute unprofessional conduct. (July 2, 1940, 54 Stat. 718, ch. 513, § 11.)

COMPILER'S NOTE

The former law (D. C., 1929, Title 20, §§ 213, 226, 228) gave the Board power to revoke or suspend licenses or to reinstate licenses. However, the present act contains several additional causes for revocation or suspension. See also, Compiler's Note to § 2–301.

CROSS REFERENCES

Dentist not to prescribe drugs or medicines except in course of treatment of patients, § 2–611.

Revocation or suspension of dentist's license for improper employment of dental hygienist, § 2–325.

Revocation or suspension of license for violation of the Uniform Narcotic Act, § 33–418.

Revocation or suspension of license of dental hygienist, § 2–325.

NOTES TO DECISIONS

ADVERTISING

This section, by terms of which a dentist who employs "bait advertising", large or glaring light signs, pictorial or diagrammatic exhibitions or other extravagant means of alluring or attracting patients, subjects himself to suspension or revocation of his license to practice, contains terms sufficiently definite. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

This section, prohibiting advertising by any medium other than display of modest sign at licensee's office which shall display only the name, address, profession, office hours, telephone connection and, if his practice is so limited, his specialty, gives dentist right to maintain a window or building sign at his office and to put on that sign any and all of such information. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Regulation of Board of Dental Examiners limiting a licensee to a single advertisement not to exceed 2¼ inches in width and 1 inch in height in a copy of any newspaper or publication at one time is reasonable under this chapter. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

SIGNS

This section, authorizing Board of Dental Examiners to make regulations designating size of sign does not require that the Board consider each licensee separately in respect to location of his office building, his floor space, and local traffic conditions, etc. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Under this section authorizing Board of Dental Examiners to designate the size of signs of licensee, the Board has authority to designate the number of signs that a licensee may employ since the word "signs" as used in this section means aggregate signs. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Regulation of Board of Dental Examiners providing that window signs and signs flush with building may not exceed 288 square inches in area with lettering limited to 3 inches in height and that signs of licensee protruding from building may not exceed 144 square inches in area with letters similarly limited to 3 inches in height is not unreasonable. *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Under this chapter, giving Board of Dental Examiners authority to designate size of licensee's sign, if a general dimensional regulation is reasonable and substantially effectuates the purpose of an act designed to promote public health and safety, it does not contravene U. S. Const. Amend. 5 guaranteeing "due process of law". *Johnston* v. *Board of Dental Examiners, D. C.,* 1943 (134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

§ 2–312. Procedure in revoking or suspending license—Petition—Appeal—Terms of suspension.

The District Court of the United States for the District of Columbia may suspend or revoke any license issued and any registration upon evidence showing to the satisfaction of the court that the licentiate or registrant, as the case may be, has been guilty of misconduct or is professionally incapacitated.

Proceedings looking toward the suspension or revocation of a license or registration shall be begun by petition filed in the District Court of the United States for the District of Columbia in the name of the Board of Dental Examiners and shall be verified by oath. Proceedings shall be conducted according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purposes and intent of this chapter; and said court is hereby authorized to make such supplementary rules. An appeal may be taken from the decision of the District Court of the United States for the District of Columbia to the United States Court of Appeals of said District. Any such appeal on behalf of the Board of Dental Examiners may be filed without bond. The District Court of the United States for the District of Columbia may determine whether a license or registration shall be suspended or revoked, and if such license is to be suspended said court may determine the dura-

tion of such suspension and the conditions under which such suspension shall terminate. (July 2, 1940, 54 Stat. 719, ch. 513, § 12.)

COMPILER'S NOTE

The former law (D. C. Code, 1929 ed., title 20, § 228) provided for reinstatement of dentist or dental hygienist after revocation or suspension, but there seems to be no provisions in the present law for such reinstatement. See also, Compiler's Note to § 2–301.

§ 2–313. Fees—Expenses of board—Compensation of members.

That in addition to the fees heretofore fixed herein each applicant for a license as dentist shall deposit with his application a fee of $20; with each application for a duplicate license a fee of $5 shall be paid to said Board, and for each certificate issued by said board a fee of $1 shall be paid. That out of the fees paid to said board, as provided by this chapter, there shall be defrayed all expenses incurred in carrying out the provisions herein contained, including the detection and prosecution of violations of this act, together with a fee of $10 per diem for each member of said Board for each day he may be actually engaged upon business pertaining to his official duties as such Board member: *Provided,* That such expense shall in no event exceed the total of receipts. (July 2, 1940, 54 Stat. 719, ch. 513, § 13.)

COMPILER'S NOTE

The former law (D. C. 1929, title 20, § 229) contained similar provisions and also provided for payment of unexpended funds for any fiscal year in excess of $1,000 into the Treasury of the United States to the credit of the District of Columbia. See also Compiler's Note to § 2–301.

CROSS REFERENCES

Annual registration fees, §§ 2–314, 2–327.
Fees for dental hygienists, §§ 2–323, 2–326, 2–327.
Refund of fees where license is refused, § 47–1018.

§ 2–314. Annual registration of dentists—Fees—Penalty for failure to register—Reinstatement—Copy of register to each dentist.

During the month of December of each year, every licensed dentist shall register with the secretary-treasurer of the Board his name and office address and such other information as the Board may deem necessary upon blanks obtainable from said secretary-treasurer, and thereupon pay a registration fee of $5. On or before the 1st day of November of each year it shall be the duty of the secretary-treasurer of the Board to mail to each dentist licensed in the District of Columbia, at his last-known address, a blank form for registration. In the event of failure to register on or before the 31st day of December a fine of $5 and the registration fee of $5 will be imposed, and should the practitioner fail to register and pay the fine imposed and continue to practice his profession in the District of Columbia, he shall at the end of ten days from said date be considered as practicing illegally and penalized as otherwise provided for in this chapter. If he suspends his practice he may, in the discretion of the Board, upon furnishing satisfactory evidence as to his moral character and professional standing, be reinstated at any time upon registering and paying a prescribed fee of $25. On or before the 1st day of February, annually, said board shall issue a printed register of the names and addresses so received, together with other information deemed interesting to the profession, a copy of which shall be mailed or otherwise sent to each registrant thereon. (July 2, 1940, 54 Stat. 720, ch. 513, § 14.)

COMPILER'S NOTE

The former law (D. C. 1929, Title 20, § 230) contained similar provisions; however, the registration fee was $2 and the reinstatement fee was $5. See also Compiler's Note to § 2–301.

CROSS REFERENCES

Annual registration of dental hygienists, § 2–327.
Fees in general, §§ 2–313, 2–323.

§ 2–315. "Practice of dentistry" defined.

Any person shall be deemed to be practicing dentistry who performs, or attempts or advertises to perform, any dental operation or oral surgery or dental service of any kind gratuitously or for a salary, fee, money, or other remunerations paid, or to be paid, directly or indirectly, to himself or to any other person or agency; or who is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed; or who directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or any other structure to be worn in the human mouth, except on the written prescription of a duly licensed and practicing dentist; or who places such appliance or structure in the human mouth or attempts to adjust the same, or delivers the same to any person other than the dentist upon whose prescription the work was performed; or who advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; or who diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth or jaws, or adjacent structures; or who extracts or attempts to extract human teeth, or corrects or attempts or professes to correct malpositions of teeth or of the jaws; or who gives, or professes to give interpretations or readings of dental roentgenograms; or who administers an anesthetic of any nature in connection with a dental operation; or who uses the words "dentist," "dental surgeon," "oral surgeon," the letters "D. D. S.," "D. M. D.," or any other words, letters, title, or descriptive matter which in any way represent him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth or jaws, or adjacent structures; or who states, or advertises or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith or who engages in any of the practices included in the curricula of recognized dental colleges. Notwithstanding the provisions of this section, no person shall be deemed to be practicing

dentistry who on July 2, 1940, is operating a radiographic laboratory for the purpose of making radiographs, or giving written clinical interpretations or readings of dental radiographs, to be used solely by dentists and physicians in making diagnoses. (July 2, 1940, 54 Stat. 720, ch. 513, § 15.)

COMPILER'S NOTE

The former law (D. C. 1929, Title 20, § 231) contained a much shorter and less complete definition of the practice of dentistry. See also Compiler's Note to § 2–301.

CROSS REFERENCES

Dentist not to prescribe drugs or medicines except in course of treatment of patients, § 2–611.

Services which may be rendered or performed by a dental hygienist, § 2–325.

§ 2–316. Practicing under improper name—Penalty.

On and after July 2, 1940, it shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery under any name except his proper name, which shall be the name used in his license granted to him as a dentist, as provided for in this chapter; and unlawful to use the name of any company, association, corporation, trade name, or business name in connection with the practice of dentistry as defined in this law. Any person convicted of a violation of the provisions of this section shall be fined for the first offense not more than $200, and upon a second or any subsequent conviction thereof, by a fine not to exceed $500, and upon conviction his license may be suspended or revoked. (July 2, 1940, 54 Stat. 721, ch. 513, § 16.)

§ 2–317. Exemptions.

Nothing in this chapter shall apply to a bona fide student of dentistry in the clinic rooms of a reputable dental college; to a legally qualified physician or surgeon unless he practices dentistry as a specialty; to a qualified anesthetist, physician, or registered nurse employed to give an anesthetic for a dental operation under the direct supervision of a licensed dentist; to a dental surgeon of the United States Army, Navy, Public Health Service, or Veterans' Administration, in the discharge of his official duties, nor to a lawful practitioner of dentistry in another state or territory making a clinical demonstration before a dental society, convention, association of dentists, or dental college, or performing his duties in connection with a specific case on which he may have been called to the District of Columbia. (July 2, 1940, 54 Stat. 721, ch. 513, § 17.)

COMPILER'S NOTE

The former law (D. C. 1929, title 20, § 233) did not exempt qualified anesthetists. See also Compiler's Note to § 2–301.

§ 2–318. Display of license and annual registration card—Penalty for violation.

Whoever engages in the practice of dentistry and fails to keep displayed in a conspicuous place in the operating room in which he practices, and in such manner as to be easily seen and read, the license and annual registration card granted him pursuant to the laws of the District of Columbia, shall be fined not more than $50. (July 2, 1940, 54 Stat. 721, ch. 513, § 18.)

§ 2–319. Sale of or offer to sell diploma or certificate—Fraudulent use—Alteration—Penalty.

Whoever sells or offers to sell a diploma conferring a dental degree or a certificate granted for postgraduate work, or a license granted pursuant to this chapter, or whoever, not being the person to whom a diploma, certificate, or license was granted, procures such diploma, certificate, or license with intent to use the same as evidence of his right to practice dentistry, or whoever, with fraudulent intent, alters any diploma, certificate, or license, or uses or attempts to use the same, shall be fined not more than $1,000. (July 2, 1940, 54 Stat. 721, ch. 513, § 19.)

COMPILER'S NOTE

The former law (D. C. 1929, title 20, § 235) provided for a fine of not less than $100 nor more than $200. See also Compiler's Note to § 2–301.

§ 2–320. Practice of dentistry under false name—False representations concerning degree, application for license or examination—Penalty.

Whoever practices dentistry under a false name, or assumes a title, or appends or prefixes to his name letters which falsely represent him as having a degree from a chartered dental college, or makes use of the words "dental college" or "school" or equivalent words when not lawfully authorized so to do, or impersonates another at an examination held by the board, or knowingly makes a false application or a false representation in connection with such examination, shall be fined not more than $1,000. (July 2, 1940, 54 Stat. 721, ch. 513, § 20.)

COMPILER'S NOTE

The former law (D. C. 1929, title 20, § 236) provided for a fine of not less than $100 nor more than $200. See also Compiler's Note to § 2–301.

§ 2–321. Postgraduate classes in dentistry—Approval of board—Penalty for violation.

No person or persons, corporation, or educational institution, except those now duly chartered, shall conduct classes or a school for postgraduate dentistry in the District of Columbia unless with the approval of the board, and whoever violates this provision shall, upon conviction, be fined not more than $500. (July 2, 1940, 54 Stat. 721, ch. 513, § 21.)

§ 2–322. Dental hygienists—License and registration.

It shall be unlawful for any person to follow the occupation of dental hygienist in the District of Columbia without having first complied with the provisions of this chapter and having been registered as hereinafter provided. (July 2, 1940, 54 Stat. 722, ch. 513, § 22.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Persons exempted from act, § 2–317.

§ 2–323. Dental hygienists—Eligibility and qualifications — Application — Form and requirements — Photograph—Verification—Fees.

Any person of good moral character and a citizen of the United States being not less than eighteen years of age, who desires to register as a dental

hygienist in the District of Columbia and files with the secretary-treasurer of the board a written application for a license, and furnishes satisfactory proof that he is a graduate of a training school for dental hygienists requiring a course of not less than one academic year, and approved by the board, may make application to be licensed as a dental hygienist in the District of Columbia upon the form prescribed by the Board, verified by oath, and accompanied by the required fee ($10), and a recent unmounted autographed photograph of applicant. (July 2, 1940, 54 Stat. 722, ch. 513, § 23.)

CROSS REFERENCES

Fees, §§ 2–313, 2–326, 2–327.
Power of the board, § 2–327.
Refund of fees when license is refused, § 47–1018.

§ 2–324. Dental hygienists — Examination—License—Form and execution—Registration with health officer.

An applicant for a license as dental hygienist shall appear before the Board at its first examination after the filing of his application and pass a satisfactory examination consisting of practical demonstrations and written or oral tests on such subjects as the board may direct. If such applicant passes the examination and is of good moral character, he shall receive a license from the board, attested by its seal, signed by the members of the Board, which after being registered with the health officer shall be conclusive evidence of his right to practice as a dental hygienist in the District of Columbia according to the provisions of this chapter. (July 2, 1940, 54 Stat. 722, ch. 513, § 24.)

COMPILER'S NOTE

The former law (D. C. 1929, Title 20, § 223) authorized admission after 2-year experience with a licensed dentist, if applicant registered with the board within three months after June 7, 1924. See also Compiler's Note to § 2–301.

§ 2–325. Employment of more than two dental hygienists—Permission of board—Services permitted to be performed—Revocation of licenses.

No licensed dentist may employ more than two such licensed dental hygienists without written permission of the Board. Public institutions and the Health Department of the District of Columbia may employ such licensed dental hygienists and shall not be limited as to the number of licensed dental hygienists that may be employed. A licensed dental hygienist may remove calcic deposits, accretions, and stains from the surfaces of the teeth, but shall not perform any other operation, or diagnose or treat any pathological conditions of the teeth or tissues of the mouth. A registered dental hygienist may operate only under the general direction or supervision of a licensed dentist, in his office or in any public school or other institution rendering dental services, not in violation of the provisions of this chapter. The District Court of the United States for the District of Columbia may suspend, or revoke, the license of any dentist who shall permit any dental hygienist, operating under his supervision, to perform any operation other than that permitted under the provisions of this section, and it also may suspend or revoke, the license of any dental hygienist violating the provisions of this chapter; the procedure to be followed in the case of such suspension or revocation, shall be the same as that prescribed by law in the case of suspension or revocation of the license of a dentist. (July 2, 1940, 54 Stat. 722, ch. 513, § 25.)

CROSS REFERENCE

General provisions for revocation or suspension of licenses, §§ 2–311, 2–312.

§ 2–326. Admission to practice on practical examination—Reciprocity with States or Territories—Fees.

Any dental hygienist of good moral character duly licensed to practice as such in any State or Territory of the United States, having and maintaining an equal standard of laws regulating the practice of dental hygiene with the laws of the District of Columbia, who has been in the lawful practice of dental hygiene for a period of not less than two years in such state or territory and who files with the secretary-treasurer of the board of the District of Columbia a certificate from the Board of the state or territory in which he is licensed, certifying to his professional qualifications and length of service, and who passes a satisfactory practical examination conducted by the Board, may at the discretion of the board be licensed without further examination upon the payment of the required fee of $10 and the certificate fee of $1: *Provided,* That the laws of such State or Territory accord equal rights to a dental hygienist of the District of Columbia holding a license from the board of the District of Columbia who desires to practice dental hygiene in such state or territory of the United States. (July 2, 1940, 54 Stat. 722, ch. 513, § 26.)

COMPILER'S NOTE

The former law (D. C. 1929, Title 20, § 223) authorized admission after 2 years' experience with a licensed dentist, if applicant registered with the board within 3 months after June 7, 1924. See also Compiler's Note to § 2–301.

CROSS REFERENCE

Fees, §§ 2–313, 2–323, 2–327.

§ 2–327. Duties and powers of board—Practice of dental hygiene declared to be subject to regulation and control as affecting public health and safety.

The duties and powers of the Board respecting the practice of dentistry as set forth in this chapter shall apply, unless otherwise specified, equally and in all respects whatsoever to the practice of dental hygiene; and the practice of dental hygiene is hereby declared to affect the public health and safety and to be subject to regulation and control in the public interest to the same extent as herein set forth with respect to the practice of dentistry. The annual registration fee for licensed dental hygienists shall be $3. (July 2, 1940, 54 Stat. 723, ch. 513, § 27.)

CROSS REFERENCES

Annual registration, § 2–314.
Fees, §§ 2–313, 2–323, 2–326.

§ 2–328. Practicing without a license—Violations of law—Penalties.

Whoever engages in the practice of dentistry without a license so to do, or whoever violates any provision of law relating to the practice of dentistry or dental hygiene or the application for examination and licensing of dentists and dental hygienists, for which no specific penalty has been prescribed shall be fined not more than $1,000. (July 2, 1940, 54 Stat. 723, ch. 513, § 28.)

COMPILER'S NOTE

The former law (D. C. 1929, Title 20, § 237) provided for a fine of not less than $50 or more than $100. See also Compiler's Note to § 2–301.

CROSS REFERENCES

Conducting postgraduate course in dentistry without approval of board, § 2–321.

Failure to display license and annual registration card, § 2–318.

Failure to register annually, § 2–314.

Improper employment of dental hygienists by licensed dentists, § 2–325.

Practicing dental hygiene without a license, § 2–322.

Practicing under false name, false representations generally, § 2–320.

Revocation or suspension of license, §§ 2–311, 2–312.

Sale of diploma, dental degree, certificate or license or fraudulent alteration thereof, § 2–319.

Unlawful use of names, § 2–316.

§ 2–329. Second or subsequent offense—Penalty.

A second or subsequent conviction under sections 2–319 to 2–321, 2–328, shall be punished by the maximum penalties prescribed therein, or imprisonment in jail or workhouse not less than six months nor more than one year, or by both such fine and imprisonment. (July 2, 1940, 54 Stat. 723, ch. 513, § 29.)

COMPILER'S NOTE

The former law (D. C. 1929, Title 20, § 238) provided for imprisonment of not less than ten or more than sixty days. See also Compiler's Note to § 2–301.

§ 2–330. Definitions.

When used in this chapter—

(1) Personal pronouns include all genders.

(2) The term "Board" means the Board of Dental Examiners.

(3) Advertising shall be deemed to include those in public print, by radio, or any other form of public announcement. (July 2, 1940, 54 Stat. 723, ch. 513, § 30.)

§ 2–331. Rules and regulations—Promulgation—Notice. tice.

Rules and regulations adopted by the Board shall become effective thirty days after promulgation: *Provided,* That notice of such rules and regulations is published once a week for three consecutive weeks during that period in a newspaper of general circulation in the District of Columbia, and that notice be mailed to each registered dentist and dental hygienist in the District of Columbia. (July 2, 1940, 54 Stat. 723, ch. 513, § 31.)

COMPILER'S NOTE

Section 32 of the act approved July 2, 1940, 54 Stat. —, provided as follows: "Should any section or provision of this act be decided by the courts to be unconstitutional or invalid, the validity of the act as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. The right to alter, amend, or repeal this act is hereby expressly reserved."

REPEAL

Section 33 of the act approved July 2, 1940, ch. 513, 54 Stat. 723, provided as follows: "All acts or parts thereof heretofore enacted into law and inconsistent herewith are hereby repealed."

CROSS REFERENCE

Power of the board to make rules and regulations, § 2–302.

Chapter 4.—NURSES

Sec.

2–401. Registration required.
2–402. Examining board—Constitution—Qualifications—Tenure—Removal.
2–403. Examining board—Organization—Officers—Duties—By-laws—Registration of nurses—Examinations—Notice—Inspection of schools.
2–404. Registration—Application—Requirements—Registration of training schools.
2–405. Registration without examination of nurses holding State licenses.
2–406. Annual registration—Nurses—Training schools—Cancelation by failure to reregister—Restoration.
2–407. Suspension or revocation of certificate for filing false document or evidence—Procedure—Appeal.
2–408. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.
2–409. Penalties.
2–410. Nonregistered nurses may practice as such.
2–411. Construction.

§ 2–401 [20: 241]. Registration required.

No person shall in the District of Columbia in any manner whatsoever represent herself to be a registered, certified graduate, or trained nurse, or allow herself to be so represented, unless she has been and is registered or is registered by the Nurses' Examining Board in accordance with the provisions of this chapter. (Feb. 9, 1907, 34 Stat. 887, ch. 913, § 1; Mar. 2, 1929, 45 Stat. 1519, ch. 540, § 1.)

AMENDMENT

The 1929 amendment added "certified graduate, or trained nurse."

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Definition of terms, § 2–411.

Duties as to prevention of blindness of newborn infants, §§ 6–201 to 6–204.

Duty to report births, § 6–301.

Exempted from operation of Healing Arts Practice Act, § 2–101.

Exemption from operation of law regulating barbers, § 2–1115.

Persons exempted from act, § 2–410.

§ 2–402 [20: 242]. Examining board — Constitution — Qualifications—Tenure—Removal.

The Nurses' Examining Board shall be composed of five members appointed by the Commissioners of the District of Columbia. Those persons who are members of the Nurses' Examining Board on June 30, 1929, shall continue to be members of the said Board for the remainder of the terms for which they were appointed. The term of each member of said board shall be five years. All appointments shall be made so that the term of one member expires on the 30th day of June of each year. Each vacancy or unexpired term shall be filled by appointment

from a list of five nominees submitted to the Commissioners of the District of Columbia by the Graduate Nurses' Association of the District of Columbia. Each nominee shall have had not less than five years' experience in the profession of nursing, be a registered nurse registered in the District of Columbia, and a member of the Graduate Nurses' Association of the District of Columbia. The Graduate Nurses' Association of the District of Columbia shall make such nominations to the said Commissioners. No member of said Board shall enter upon the discharge of her duties until she has taken oath faithfully and impartially to perform the same; and the said Commissioners may remove any member of said Board for neglect of duty or for any just cause. (Feb. 9, 1907, 34 Stat. 887, ch. 913, § 2; Mar. 2, 1929, 45 Stat. 1519, ch. 540, § 2.)

AMENDMENT

The 1907 act provided for the nomination by the Graduate Nurses' Association of 10 of its members to the Commissioners for appointment of 5 to the Board, and for the filling of vacancies from 3 nominees submitted by the said association.

§ 2–403 [20: 243]. Examining board — Organization — Officers — Duties — By-laws — Registration of nurses — Examinations — Notice — Inspection of schools.

The Nurses' Examining Board shall meet in the District of Columbia annually in the month of April for the annual organization of the Board. At each such organization meeting the Board shall elect from its members a president and a vice-president, and it shall also appoint an executive secretary of the Board, who shall not be a member of the Board, but who shall possess the requirements necessary for membership in the Board. The executive secretary shall ex officio act as treasurer of the Board and as such shall furnish a bond in the penal sum which shall be fixed by the Commissioners of the District of Columbia. The said Board shall adopt such by-laws as it shall deem necessary for carrying into effect the provisions of this chapter and may amend such by-laws from time to time at the discretion of said Board. The executive secretary shall be required to keep a record of all meetings of the Board and also a register of all nurses duly registered or reregistered under this chapter, and to furnish a certificate of registration or of reregistration to all such nurses; also to maintain a registry of nurses' training schools in the District of Columbia approved by said Board. The Board shall hold examinations not less frequently than once a year, and notice of each examination shall be given in one daily newspaper published in Washington and in one nursing journal at least thirty days prior to the examination. The executive secretary shall inspect all recognized schools of nursing in the District of Columbia, and report to said Board as to the sufficiency and quality of training afforded by said schools. The executive secretary may be removed by a majority vote of the said Board for neglected duty or any just cause. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 3; Mar. 2, 1929, 45 Stat. 1519, ch. 540, § 3.)

COMPILER'S NOTE

The first sentence of § 3 of the act of March 2, 1929, cited to the text, provides: "The Nurses' Examining Board shall meet in the District of Columbia between June 30, 1929, and July 15, 1929, and organize the Board in accordance with the provisions of this act." It also provided that the secretary-treasurer holding office on July 1, 1929, shall cease to do so thereafter. These provisions have been omitted as executed.

AMENDMENT

The 1929 amendment provided for a vice-president and an executive secretary, required a register of training schools be kept, and added the last two sentences of the section.

CROSS REFERENCE

Rules and regulations in general, § 1–226 and notes.

§ 2–404 [20: 244]. Registration—Application—Requirements—Registration of training schools.

Every nurse desiring to register in the District of Columbia shall make application to the Nurses' Examining Board for examination and registration, and at the time of making such application shall pay to the treasurer of said Board $15. Said applicant must furnish satisfactory evidence that she is over twenty-one years of age, or that she will attain the age of twenty-one years within six months after the date fixed for the necessary examination to be held by said Board after the date of such application. Except as otherwise provided in this chapter, an applicant shall not be registered unless she has passed an examination by the Nurses' Examining Board. No nurse shall be registered in the District of Columbia who has not attained the age of twenty-one years. Said applicant must also furnish satisfactory evidence of good moral character, and further that she holds a diploma from a training school for nurses which has been registered by the Nurses' Examining Board of the District of Columbia: *Provided, however,* That no training school shall be registered which does not maintain proper educational standards and give not less than two years' training in a general hospital, or in a special hospital with adequate affiliations, all of which shall be determined by the Nurses' Examining Board. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 4; Mar. 2, 1929, 45 Stat. 1520, ch. 540, § 4; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 1.)

AMENDMENTS

Sec. 1 of Act Aug. 8, 1946, cited to text, increased the application fee from $10 to $15.

AMENDMENT

The 1929 amendment raised the amount of the application fee from $5 to $10; provided for registration of those who will attain the age of 21 within 6 months after examination; required passing of examination; and provided that no one shall be registered who is under 21 years old.

CROSS REFERENCE

Refund of fees where license is refused, § 47–1018.

§ 2–405 [20: 246]. Registration without examination of nurses holding State licenses.

The Nurses' Examining Board shall register in like manner without examination any graduate or trained nurse registered as a nurse by examination in another state or territory who holds a diploma from a nurse's training school outside of the District

of Columbia which, in the opinion of said Board, maintains a standard substantially equivalent to that provided for by this chapter. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 9; Mar. 2, 1929, 45 Stat. 1520, ch. 540, § 6.)

AMENDMENT

The 1929 act, cited to text, changed words "person who has been registered as a professional nurse" to "any graduate or trained nurse registered as a nurse by examination * * * who holds a diploma from a nurses' training school."

§ 2–406 [20: 247]. Annual registration — Nurses — Training schools—Cancelation by failure to reregister—Restoration.

Each nurse who has been registered in the District of Columbia shall be reregistered each year on the 1st day of July upon application to the executive secretary of said board and the payment of a fee of $1: *Provided,* That such fee of $1 shall not be payable in case the applicant has been originally registered within the twelve months next preceding the day for reregistration. Application for reregistration may be made within sixty days preceding the day of reregistration. Registration of any nurse who does not thus apply for reregistration for any year shall be automatically canceled as of the beginning of such year. The by-laws adopted by the Nurses' Examining Board shall define the conditions upon which the registration of a nurse may be restored. Schools of nursing in the District of Columbia may apply to said Board for registration and, with the exception of schools of nursing maintained at government expense, shall pay a fee of $25 at the time application is made. Each such school registered shall apply each year for reregistration, and, with the exception of schools of nursing maintained at government expense, at the same time pay a fee of $1: *Provided further,* That on the petition of any applicant to whom registration or reregistration has been denied by the Nurses' Examining Board, the action of the Board may be reviewed by the District Court of the United States for the District of Columbia on a writ of certiorari, subject to appeal to the United States Court of Appeals of the District of Columbia, in the same manner as appeals are taken in similar cases. (Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 7.)

§ 2–407 [20: 248]. Suspension or revocation of certificate for filing false document or evidence—Procedure—Appeal.

No person shall file or attempt to file with the Nurses' Examining Board of the District of Columbia any statement, diploma, certificate, credential, or other evidence which she knows, or when she might by reasonable diligence ascertain, that it is false and misleading. The District Court of the United States for the District of Columbia, sitting as a court of equity, may suspend or revoke any certificate issued and any registration effected under this chapter upon evidence showing to the satisfaction of the court that the registrant has been guilty of misconduct or is professionally incapacitated. Proceedings looking toward the suspension or revocation of a certificate or registration shall be begun by petition filed in the District Court of the United States for the District of Columbia in the name of the Nurses' Examining Board, or of the Commissioners of the District of Columbia, or of the major and superintendent of police of said District, and shall be verified by oath. Proceedings shall be conducted by the United States Attorney for the District of Columbia according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purpose and intent of this chapter. An appeal may be taken from the decision of the District Court of the United States for the District of Columbia to the Court of Appeals of said District. Any such appeal on behalf of the Commissioners of the District of Columbia or of the major and superintendent of police of said District may be filed without bond. The District Court of the United States for the District of Columbia may determine whether a certificate or registration shall be suspended or be revoked, and if such certificate or registration is to be suspended said court may determine the duration of such suspension and the conditions under which said suspension shall terminate. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 6; Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 8.)

AMENDMENT

The 1907 act, cited to the text, simply provided for the revocation by the majority vote of the board for obtaining registration by fraud or for being guilty of "any act derogatory to the standards and morals of the profession"; and provided for 30 days' notice to the nurse.

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–408. [20: 249]. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.

All expenses incident to the execution of the provisions of this Act shall be paid from fees collected (a) from schools of nursing, (b) from registration or reregistration of nurses, and (c) from the following services—

(1) for repeat examinations of nurses;

(2) for the evaluation of each high-school record of a candidate for admission to a school of nursing;

(3) for verification of records;

(4) for a duplicate certificate of registration upon proof acceptable to the nurses' examining board that the original certificate has been lost or destroyed;

(5) for duplicate annual registration cards;

(6) for mailing a certificate of registration a second time if no notification of change of address has been made; and

(7) for proctoring examination for out-of-State applicants when the examination is held at a time other than the regular examination of the District of Columbia. The fees referred to in clause (c) shall be reasonable fees fixed by the nurses' examining board, subject to the approval of the Commissioners of the District of Columbia.

The executive secretary of said Board may receive a salary to be fixed by said Board at its annual organization meeting in accordance with the Classification Act of 1923, as amended. Each member of the Board shall receive a per diem allowance at the rate of $10 per day for each full day such member is actually engaged in the performance of duties as a member of the Board. The payment of such per diem allowance shall be made from any unexpended balance in the treasury of said Board remaining on June 30 of the year during which the services have been rendered, and if the unexpended balance is insufficient to meet the total amount of such per diem allowance, the rate of compensation shall be reduced to a rate which will permit payment from such unexpended balance. Such expenses shall in no event exceed the total of receipts. All registration or reregistration fees shall be paid to the treasurer of the Board, and shall be paid out under the orders of the Board. It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Nurses' Examining Board at the end of each fiscal year and to make report thereof in writing to the Commissioners of the District of Columbia. The said auditor shall have free access to all books, papers, and records of the Board. The Nurses' Examining Board shall make annual reports to the Commissioners of the District of Columbia containing a statement of moneys received and disbursed, and a summary of its official acts during the preceding year. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 7; Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 9; July 2, 1945, 59 Stat. 315, ch. 224; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 2.)

REFERENCE IN TEXT

The Classification Act of 1923, as amended is set out in 5 U. S. C. §§ 661–663, 664–673, and 674.

AMENDMENTS

The 1907 act, cited to the text, contained the first sentence of the present section; and provided that, if any balance remained on June 30th of each year, the secretary and treasurer should receive $100 and the Board members a per diem of $5; and provided money received by the treasurer should be paid out under the orders of the Board.

The act of July 2, 1945, cited to text, amended section by striking the second sentence and inserting in lieu thereof a new sentence.

Act of Aug. 8, 1946, cited to text, amended first sentence by setting out itemization of services.

§ 2–409 [20: 250]. Penalties.

Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $200 or by imprisonment in the workhouse for a period not exceeding sixty days. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 8; Mar. 2, 1929, 45 Stat. 1522, ch. 540, § 10.)

AMENDMENT

The 1929 amendment merely reenacted verbatim the 1907 provision.

§ 2–410 [20: 251]. Nonregistered nurses may practice as such.

Nothing in this chapter shall be construed to prevent any person from nursing any other person in the District of Columbia, either gratuitously or for hire: *Provided,* That such person so nursing shall not represent herself as being a registered, certified, graduate, or trained nurse. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 10; Mar. 2, 1929, 45 Stat. 1522, ch. 540, § 11.)

AMENDMENT

The 1929 amendment changed the words "a registered nurse" to "a registered, certified, graduate or trained nurse"; and deleted the provision that "Nothing in this act shall be construed to authorize any person to practice medicine or surgery, or midwifery * * * otherwise than in accordance with" the act of June 3, 1896, regulating the practice of medicine and surgery.

§ 2–411 [20: 252]. Construction.

The word "she" and the derivatives thereof, wherever they occur in this chapter, shall be construed so as to include the word "he" and derivatives. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 11; Mar. 2, 1929, 45 Stat. 1522, ch. 540, § 12.)

AMENDMENT

The 1929 act merely reenacted verbatim the 1907 provision.

Chapter 5.—OPTOMETRISTS

Sec.

2–501. "Optometry" defined.
2–502. Practice of optometry without license, prohibited—Misrepresentation—False impersonation—Penalties.
2–503. Board of Optometry — Qualifications — Tenure — Oath—Removal.
2–504. Organization—Meetings—Quorum.
2–505. By-laws and regulations.
2–506. Secretary-treasurer to give bond.
2–507. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.
2–508. Official seal—Records—Reports.
2–509. Examination to practice optometry required.
2–510. Limited examination for those already practicing.
2–511. Standard examination—Qualifications of applicants.
2–512. Changes in educational standards authorized.
2–513. Application for license—Examinations—Issuance—Re-examinations—Display of license.
2–514. Fees for examination, registration, and renewals—Revocation of license—Reinstatement—Effect of temporary retirement.
2–515. Board to have office in District of Columbia—Seal—Design of license.
2–516. Licenses—Cancelation, revocation, suspension, and refusal to grant—Causes.
2–517. Notice to licensee—Hearing.
2–518. Reciprocity with other States.
2–519. Holder of license not entitled to use any title or degree by virtue of such license.
2–520. Physicians, surgeons, persons selling spectacles or eyeglasses not to be governed by this chapter.
2–521. Construction—Singular number to include plural—Masculine gender to include feminine.
2–522. Invalidity of any provision not to affect the remainder.

§ 2–501 [20: 261]. "Optometry" defined.

The practice of optometry is defined to be the application of optical principles through technical methods and devices in the examination of the human eye for the purpose of determining visual defects, and the adaptation of lenses for the aid and relief thereof. (May 28, 1924, 43 Stat. 177, ch. 202, § 1.)

CROSS REFERENCE

Exempted from operation of Healing Arts Practice Act, § 2–101.

§ 2–502 [20: 262]. Practice of optometry without license prohibited—Misrepresentation—False impersonation—Penalties.

It shall be unlawful for any person in the District of Columbia to engage in the practice of optometry or represent himself to be a practitioner of optometry, or attempt to determine by an examination of the eyes the kind of eyeglasses required by any person, or represent himself to be a licensed optometrist when not so licensed, or to represent himself as capable of examining the eyes of any person for the purpose of fitting glasses, excepting those hereinafter exempted, unless he shall have fulfilled the requirements and complied with the conditions of this chapter and shall have obtained a license from the District of Columbia Board of Optometry, created by this chapter; nor shall it be lawful for any person in the District of Columbia to represent that he is a lawful holder of a license as provided by this chapter when in fact he is not such lawful holder, or to impersonate any licensed practitioner of optometry, or shall fail to register the certificate as provided in section 2–513.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction for the first offense shall be fined not more than $500, and upon conviction for any subsequent offense shall be fined not less than $500 nor more than $1,000, or be imprisoned in the District jail not less than three months nor more than one year, or both, in the discretion of the court. (May 28, 1924, 43 Stat. 177, ch. 202, § 2.)

EFFECTIVE DATE

This section and section 9 of the act, § 2–509 herein, provided that the act should take effect "in and after six months from the passage of this act." The act was approved May 28, 1924.

CROSS REFERENCES

Construction of terms, § 2–521.
Persons exempted from act, § 2–520.

NOTES TO DECISIONS

APPLICATION OF ACT

The licensing statute for optometrists does not prevent a corporation from furnishing to its customers or clients the services of a licensed optometrist, since the profession of optometry is not a "learned profession" but relates to the measurement of the powers of vision and the adaptation of lenses thereto. *Silver* v. *Lansburgh* (72 App. D. C. 77, 111 Fed. (2d) 518.)

§ 2–503 [20: 263]. Board of Optometry—Qualifications—Tenure—Oath—Removal.

The Commissioners of the District of Columbia shall appoint a Board of Optometry consisting of five persons to be selected from a list of ten optometrists submitted by a majority vote at some regular meeting of the District of Columbia Optometric Society, each of whom shall be a citizen of the United States, over the age of twenty-one years, actually engaged in the practice of optometry as defined in section 2–501, and who shall have been engaged in the actual and continuous practice of the same in the District of Columbia for at least three years next preceding his appointment. The said Board of Optometry shall be so appointed within thirty days after May 28, 1924, and of the first appointees the said Commissioners shall designate two, who shall serve for a term of one year, two for a term of two years, and one for a term of three years from the date of said appointment, and each year thereafter the commissioners shall appoint successors to those whose terms expire as members of said board to serve for a term of three years; and in case of death, resignation, or removal of any member, the vacancy for the unexpired term shall be filled by the said commissioners in the same manner as other appointments.

Each appointee to the Board of Optometry as hereinbefore provided for shall, within fifteen days from the date of his appointment, qualify by subscribing to the following oath of office before any officer authorized to administer oaths in the District of Columbia: "I do solemnly swear that I will faithfully, impartially, with fidelity and according to law, perform the duties of a member of the Board of Optometry of the District of Columbia, to the best of my ability, so help me God."

Upon such oath being filed with the Commissioners, they shall issue to said member a certificate of his appointment.

The Commissioners are herewith vested with authority to remove from office at any time any member of said Board for neglect of duty, incompetency, improper conduct, or when the license to practice optometry of any member of said Board shall have been suspended or revoked. (May 28, 1924, 43 Stat. 178, ch. 202, § 3.)

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 2–504 [20: 264]. Organization—Meetings—Quorum.

At each annual meeting of the Board of Optometry the members shall organize by electing a president, vice president, and a secretary-treasurer, who shall hold office for one year or until their respective successors have been appointed and have qualified. Said Board shall hold its meetings at the end of every six months at such hour and place as it may designate for the examination of applicants for license to practice optometry in the District of Columbia, and for the transaction of such other business as may legally come before it; and may hold such additional meetings upon the call of the president of the said Board, or upon a call of a majority of the members of the Board as the same become necessary for the examination of applicants for licenses or for carrying into effect the provisions of this chapter. If the date of any of said meetings shall fall upon a Sunday or a legal holiday, said meeting shall be held on the first business day thereafter.

Three members of the Board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for

any meeting those present may adjourn from day to day until a quorum be present. (May 28, 1924, 43 Stat. 178, ch. 202, § 4.)

§ 2–505 [20: 265]. By-laws and regulations.

The Board shall have authority and it shall be its duty to make all by-laws and necessary regulations for the proper discharge of its duties, and submit same to the Commissioners of the District of Columbia for approval. (May 28, 1924, 43 Stat. 179, ch. 202, § 5.)

CROSS REFERENCES

Power to change educational standards, § 2–512.
Rules and regulations in general, § 1–226 and notes.

§ 2–506 [20: 266]. Secretary-treasurer to give bond.

Before entering upon the discharge of the duties of his office the secretary-treasurer of the Board shall give such bond for the performance of his duties as the Commissioners of the District of Columbia shall require, the premium of such bond to be paid from the funds in the possession of the board. (May 28, 1924, 43 Stat. 179, ch. 202, § 6.)

§ 2–507 [20: 267]. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.

The secretary-treasurer shall receive as compensation for his services an annual salary to be determined by the Board, which salary and all other expenses of the Board necessary in carrying out the provisions of this chapter shall be paid from the funds in the custody of the secretary-treasurer for the use of the Board upon requisition signed by the secretary-treasurer and countersigned by the president of the Board; and on the 30th day of June of each year if any surplus remains, the members of the Board shall be paid such reasonable compensation out of the funds in the custody of the board as the Commissioners of the District of Columbia may determine: *Provided, however,* That said compensation and expenses shall not exceed the amount received by the Board under the provisions of this chapter. (May 28, 1924, 43 Stat. 179, ch. 202, § 7.)

§ 2–508 [20: 268]. Official seal—Records—Reports.

The District Board of Optometry shall have an official seal and shall keep a record of its proceedings, a record of registered optometrists and of licenses by it revoked. Its records shall be open to public inspection between the hours of nine and three o'clock of any business day, and it shall keep on file all examination papers for a period of one year after each examination. A transcript of an entry in such records, certified by the secretary-treasurer, under the seal of the board, shall be prima facie evidence of the facts therein stated. The Board shall on or before the 10th day of July in each year make a report to the Commissioners of the District of Columbia of its official acts during the preceding twelve months ending June 30, and of its receipts and disbursements, and a full and complete report of the conditions pertaining to optometry in the District of Columbia. (May 28, 1924, 43 Stat. 179, ch. 202, § 8.)

§ 2–509 [20: 269]. Examination to practice optometry required.

Every person desiring to practice optometry or, if in practice on May 28, 1924, to continue the practice thereof except as herein otherwise provided, shall take an examination as provided in this chapter and shall fulfill the other requirements as in this chapter provided. (May 28, 1924, 43 Stat. 179, ch. 202, § 9.)

§ 2–510 [20: 270]. Limited examination for those already practicing.

Any person who has been engaged in the practice of optometry for at least two full years (one of which must have been in the District of Columbia), immediately prior to May 28, 1924, who is more than twenty-one years of age and of good moral character, shall be entitled to take the limited examination covering the following only:

(a) The limitations of the sphere of optometry.

(b) The essential scientific instruments used in optometry.

(c) The form and power of lenses used in optometry.

(d) A correct method of measuring hypermetropia, myopia, astigmatism, and presbyopia.

(e) The writing of formulas or prescriptions for the adaptation of lenses in aid of vision.

Any person who has previously taken the limited examination and received certificate of the same as herein provided may also, if he so desires, take the standard examination at any time; any provisions in section 2–511 hereof to the contrary notwithstanding: *Provided, however,* That failure to pass the standard examination after having qualified under the limited examination as in this paragraph set forth shall not disqualify him as a lawful practitioner. (May 28, 1924, 43 Stat. 179, ch. 202, § 10.)

§ 2–511 [20: 271]. Standard examination — Qualifications of applicants.

Any person over the age of twenty-one years, of good moral character, who has had a preliminary education equivalent to a two years' course in a first-grade high-school (which shall be determined either by examination or by certificate acceptable to the Board as to work done in such approved institution), and who is a graduate of a school of optometry in good standing (as determined by the Board and which maintains a course in optometry of not less than one thousand hours), shall be entitled to take the standard examination. Such standard examination shall consist of tests in—

(a) Practical optics.

(b) Theoretic optometry.

(c) Anatomy and physiology and such pathology as may be applied to optometry.

(d) Practical optometry.

(e) Theoretic and physiologic optics. (May 28, 1924, 43 Stat. 180, ch. 202, § 11.)

§ 2–512 [20: 272]. Changes in educational standards authorized.

The Board, with the approval of the Commissioners of the District of Columbia, is authorized and em-

powered to alter, amend, and otherwise change the educational standards at any time, but in altering, amending, or changing said standards the board shall not be permitted to lower the same below the standards herein set forth. (May 28, 1924, 43 Stat. 180, ch. 202, § 12.)

§ 2–513 [20: 273]. Application for license—Examinations — Issuance — Re-examinations — Display of license.

Every person desiring to be licensed as in this chapter provided shall file with the secretary-treasurer of the Board upon appropriate blank to be furnished by said secretary-treasurer an application accompanied by the recommendation of two reputable citizens, verified by oath, setting forth the facts which entitle the applicant to examination and license under the provisions of this chapter. The said Board shall hold at least two examinations each year. In case of failure at any standard examination the applicant, after the expiration of six months and within two years, shall have the privilege of taking a second examination by the Board without the payment of an additional fee. In case of failure at the limited examination hereinbefore provided for the applicant shall, after the expiration of six months and within two years, have the privilege of taking a second examination without the payment of an additional fee.

Every applicant who shall pass the standard examination or the limited examination, as the case may be, and who shall otherwise comply with the provisions of this chapter, shall receive from the said Board under its seal a license entitling him to practice optometry in the District of Columbia, which license shall be duly registered in a record book to be properly kept by the secretary-treasurer of the Board for that purpose which shall be open to public inspection; and a duly certified copy of said record shall be recorded in the clerk's office of the District Court of the United States for the District of Columbia, and shall be admitted as prima facie evidence in all courts of the District of Columbia in the trial of any cause, and it shall be the duty of the clerk of the District Court of the United States for the District of Columbia to keep a special book for the purpose of recording said licenses, and shall, upon application and the payment of a fee of 50 cents, deliver to any person applying therefor a certificate that the license has been recorded in compliance with the provisions of this chapter. Each person to whom a certificate of license shall be issued by said Board shall keep same displayed in a conspicuous place in his principal office or place of business wherein said person shall practice optometry, and shall, whenever required, exhibit the said certificate to any member or agent of the Board. (May 28, 1924, 43 Stat. 180, ch. 202, § 13.)

§ 2–514 [20: 274]. Fees for examination, registration, and renewals—Revocation of license—Reinstatement—Effect of temporary retirement.

The said Board shall charge the following fees for examinations, registrations, and renewals of certificates: The sum of $25 for a standard or a limited examination. Every registered optometrist who desires to continue the practice of optometry shall annually, on or before the 10th day of January of each year, pay to the secretary-treasurer of the Board a renewal registration fee to be fixed annually by the board, not to exceed $10, for which he shall receive a renewal of his certificate. In case of neglect to pay the renewal registration fee as herein provided the Board shall have authority to revoke such license and the holder thereof may be reinstated by complying with the conditions specified in this section, but no license or permit may be revoked without giving sixty days' notice to the delinquent, but the Board shall only have the right to renew such license on the payment of the renewal fee with penalty of $5: *Provided,* That retirement from practice for a period of not exceeding five years shall not deprive the holder of said license of the right to renew the same upon the payment of the fee herein required. (May 28, 1924, 43 Stat. 181, ch. 202, § 14.)

CROSS REFERENCE

Refund of fees where license is refused, § 47–1018.

§ 2–515 [20: 275]. Board to have office in District of Columbia—Seal—Design of license.

The Board shall adopt a seal and license of suitable design and shall have an office in the District of Columbia where examinations shall be held and where all of the permanent records shall be kept. (May 28, 1924, 43 Stat. 181, ch. 202, § 15.)

§ 2–516 [20: 276]. Licenses—Cancelation, revocation, suspension, and refusal to grant—Causes.

The Board may in its discretion refuse to grant a license to any applicant and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons: The conviction of crime involving moral turpitude, habitual use of narcotics, or any other substance which impairs the intellect and judgment to such an extent as to incapacitate anyone for the duties of optometry, or for a conviction as provided in section 2–502. (May 28, 1924, 43 Stat. 181, ch. 202, § 16.)

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–517 [20: 277]. Notice to licensee—Hearing.

Any person who is the holder of a license or who is an applicant for a license against whom any charges are preferred shall be furnished by the Board with a copy of the complaint and shall have a hearing before the Board at which hearing he may be represented by counsel. At such hearing witnesses may be examined for and against the accused respecting such charges; the Board shall thereupon pass upon said charges. (May 28, 1924, 43 Stat. 181, ch. 202, § 17.)

§ 2–518 [20: 278]. Reciprocity with other States.

Any applicant for a license who has been examined by the Board of Optometry in any of the

states of the United States which through reciprocity similarly accredits the holder of a license issued by the Board of Optometry of the District of Columbia to the full privileges of practice within such state may on the payment of a fee of $25 to the said Board and on filing in the office of the board a true and attested copy of said license, certified by the president and secretary-treasurer of the said Board, showing the same and also showing that the standard of requirements adopted and enforced by said Board is equal to that provided by this chapter, shall without further examination receive the license: *Provided,* That such applicant has not previously failed at any examination held by the Board of Optometry of the District of Columbia. (May 28, 1924, 43 Stat. 181, ch. 202, § 18.)

§ 2–519 [20: 279]. Holder of license not entitled to use any title or degree by virtue of such license.

Nothing in this chapter shall be construed as conferring on the holder of any license issued by said board the right to use any title or any word or abbreviation indicating that he is engaged in the practice of medicine, surgery, or the treatment of the eye, of the diagnosis of diseases of or injuries to the human eye, or the writing or issuing of prescriptions for the obtaining of drugs or medicine in any form for the treatment or examination of the human eye. (May 28, 1924, 43 Stat. 182, ch. 202, § 19.)

§ 2–520 [20: 280]. Physicians, surgeons, persons selling spectacles or eyeglasses not to be governed by this chapter.

The provisions of this chapter shall not apply—

(a) To physicians and surgeons practicing under authority or license issued under the laws of the District of Columbia for the practice of medicine and surgery.

(b) To persons selling spectacles and (or) eyeglasses and who do not attempt either directly or indirectly to adapt them to the eye, and who do not practice or profess the practice of optometry. (May 28, 1924, 43 Stat. 182, ch. 202, § 20.)

§ 2–521 [20: 281]. Construction—Singular number to include plural—Masculine gender to include feminine.

Wherever in this chapter the singular number is used it shall be interpreted as meaning either singular or plural if compatible with the sense of the language used, and when in this chapter the masculine gender is used it shall be construed as meaning also the feminine gender if not inconsistent with such use. (May 28, 1924, 43 Stat. 182, ch. 202, § 21.)

§ 2–522 [20: 282]. Invalidity of any provision not to affect the remainder.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder thereof, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (May 28, 1924, 43 Stat. 182, ch. 202, § 22.)

Chapter 6.—PHARMACY

Sec.

2–601. Pharmacy regulations—Sale of drugs restricted—Licensed pharmacists in drug stores—Physicians, dentists, and veterinarians exempt—Sale of poisons—Permits to sell—Sales by minors—Sale of household drugs—Patent medicine.
2–602. Application for licenses—Sworn statement of qualifications—Examination—Minimum age and experience—College graduation—Recognition of any school of pharmacy.
2–603. Issuance of license.
2–604. Registered pharmacists from other jurisdictions.
2–605. Revocation of license—Grounds—Procedure.
2–606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in Court of Appeals—Public display of license.
2–607. Board of pharmacy — Creation — Appointment — Tenure — Removal — Oath — Meetings — Seal — Bond of treasurer—Duty to examine applicants.
2–608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art—Accounting—Records—Reports.
2–609. Fees—Expenses—Compensation of board.
2–610. Sale of cocaine, morphine, opium, chloral hydrate, or compounds thereof, restricted—Prescription—Filling and refilling prescription—Exceptions—Wholesale trade.
2–611. Physicians, dentists, and veterinarians restricted in prescribing cocaine, morphine, opium, chloral hydrate, or compounds thereof.
2–612. Restrictions on sale or delivery of poisonous compounds — Records of sales — Use of "poison labels"—"Poison bottles"—Exceptions.
2–613. Fraudulent representations to procure drugs.
2–614. Preservation of prescriptions — Copies — Inspection—Directions for use on label.
2–615. Peddling, or leaving on streets or property, of drugs, prohibited.
2–616. Use of title of pharmacists or description of like import permitted to licensed persons only.
2–617. Penalties—Enforcement.

§ 2–601 [20: 191]. Pharmacy regulations — Sale of drugs restricted—Licensed pharmacists in drug stores—Physicians, dentists, and veterinarians exempt—Sale of poisons—Permits to sell—Sales by minors—Sale of household drugs—Patent medicine.

It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale, at retail, any drugs, chemicals, or poisons, except as hereinafter provided; or, except as hereinafter provided, for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense, or sell, at retail, any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to and under the proper supervision of a pharmacist licensed under this chapter. And it shall be unlawful for any owner or manager of a pharmacy, drug store, or other place of business to cause or permit any person other than a licensed pharmacist to compound, dispense, or sell, at retail, any drug, medicine, or poison, except as an aid to and

under the proper supervision of a licensed pharmacist: *Provided,* That nothing in this section shall be construed to interfere with any legally registered practitioner of medicine, dentistry, or veterinary surgery in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper; nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is so licensed, except as hereinafter provided; nor with the sale by others than pharmacists of poisonous substances sold exclusively for use in the arts, or as insecticides, when such substances are sold in unbroken packages bearing labels having plainly printed upon them the name of the contents, the word "poison," when practicable the name of at least one suitable antidote, and the name and address of the vendor: *Provided further,* That such person, firm, or corporation has obtained a permit from the Board of Pharmacy, which grants the right and privilege to make such sales, such permit to be issued for a period of three years, and that each sale of such substance be registered as required of a licensed pharmacist, and it shall be unlawful for any person under the age of twenty-one years to sell such substances, and in no case shall the sale be made to a person under eighteen years of age except upon the written order of a person known or believed to be an adult: *And provided further,* That persons other than registered pharmacists may sell household ammonia and concentrated lye, in sealed containers plainly labeled, so as to indicate the nature of the contents with the word "poison," and with a statement of two or more antidotes to be used in case of poisoning, and may sell bicarbonate of soda, borax, cream of tartar, olive oil, sal ammoniac, and sal soda; and persons other than registered pharmacists may, furthermore sell in original sealed containers, properly labeled, such compounds as are commonly known as "patent" or "proprietary" medicines, except those the sale of which is regulated by the provisions of sections 2–610 and 2–612. (May 7, 1906, 34 Stat. 175, ch. 2084, § 1.)

CROSS REFERENCES

Business licenses required, §§ 47–2301 to 47–2350.

Exempted from operation of Healing Arts Practice Act, § 2–101.

Uniform Narcotic Drug Act, § 33–401 et seq.

§ 2–602 [20: 193]. Application for licenses — Sworn statement of qualifications—Examination—Minimum age and experience—College graduation—Recognition of any school of pharmacy.

Every person not registered under an act to regulate the practice of pharmacy in the District of Columbia, approved June 15, 1878 (20 Stat. 137), who shall desire to be licensed as a pharmacist shall file with the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the experience which the applicant has had in compounding physicians' prescriptions under the direction of a licensed pharmacist, and the name and location of the school or college of pharmacy of which he is a graduate and shall submit evidence sufficient to show to the satisfaction of said board that he is of good moral character and not addicted to the use of alcoholic liquors or narcotic drugs so as to render him unfit to practice pharmacy; and said applicant shall appear at a time and place designated by the Board of Pharmacy aforesaid and submit to an examination as to his qualifications for license as a pharmacist: *Provided,* That applicants shall be not less than twenty-one years of age, and in order to be entitled to an examination for the determination of his fitness to be licensed as a pharmacist in the District of Columbia, must have had not less than three years' experience in the practice of pharmacy under the instruction of a regular licensed pharmacist; and must be a graduate of an accredited school or college of pharmacy: *Provided, however,* That the Board of Pharmacy, in its discretion, may establish, by general rules, conditions upon compliance with which by any school or college of pharmacy, and under the submission by said school or college of evidence sufficient to prove such compliance to the satisfaction of said Board, applicants who have been graduated by such school or college during any specified year or years may be allowed credit for experience in the practice of pharmacy by reason of attendance at and graduation by said school or college. (May 7, 1906, 34 Stat. 176, ch. 2084, § 3; Feb. 27, 1907, 34 Stat. 1006, ch. 2085, § 3; Mar. 4, 1927, 44 Stat. 1413, ch. 497, § 2.)

COMPILER'S NOTE

Section 2 of the act of May 7, 1906, ch. 2084 (D. C. 1929, title 20, § 192) is omitted as obsolete. It provided as follows: "Every person registered on May 7, 1906, as a pharmacist in the District of Columbia, under an Act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight (20 Stat. 137), shall be entitled to be licensed under this Act without examination or payment of fee, provided that he make application therefor on or before the thirty-first day of December, 1906. Any person registered as aforesaid shall, until said date, by virtue of such registration be entitled to all the rights, privileges, and immunities to which pharmacists licensed under this Act are entitled, and be subject to all the obligations and duties of such licentiates."

AMENDMENTS

The 1907 amendment changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy," deleted the last proviso of the section of the 1906 act which provided for licensing of pharmacists intending to limit their practice to compounding and dispensing homeopathic remedies and prescriptions, and added the last proviso of the present section.

The first proviso is from the 1927 amendment.

§ 2–603 [20: 194]. Issuance of license.

If the applicant for license as a pharmacist has complied with the requirements of either of the two preceding sections, the Board of Pharmacy shall issue to him a license which shall entitle him to practice pharmacy in the District of Columbia, subject to the provision of this chapter. (May 7, 1906, 34 Stat. 176, ch. 2084, § 4; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1.)

COMPILER'S NOTE

The words "two preceding sections" in the third line refer to §§ 2 and 3 of the 1906 act, cited to the text, and are contained in this code as follows: § 2 appears in the Compiler's Note to § 2–602; § 3, as now amended, appears as § 2–602.

AMENDMENT

Section 1 of the act of 1907, cited to the text, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy." The section as originally enacted reads as follows: "That the Board of Pharmaceutical Examiners of the District of Columbia, created under the provisions of an act to regulate the practice of pharmacy and the sale of poisons, and for other purposes, approved May 7, 1906, be, and is hereby, vested with each and every power, right, duty, and function with respect to the issue of licenses to practice pharmacy and to the revocation of such licenses and with respect to the issue of permits for the sale of poisons as are by said Act now vested in the Board of Supervisors in Medicine and Pharmacy of said District; and the name and title of said Board of Pharmaceutical Examiners is hereby changed to the Board of Pharmacy of the District of Columbia, and the Board of Supervisors aforesaid is hereby divested of every power, right, duty, and function aforesaid, and the name and title of said board is hereby changed to the Board of Medical Supervisors of the District of Columbia. From and after the taking effect of this act, the membership of the president of the Board of Pharmaceutical Examiners on the Board of Supervisors aforesaid shall cease and determine."

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 2–604 [20: 195]. Registered pharmacists from other jurisdictions.

The Board of Pharmacy shall issue licenses to practice pharmacy in the District of Columbia without examination, or after limited examination, as said board may determine, to such persons as have been legally registered or licensed as pharmacists in states, territories, or foreign countries: *Provided,* That the applicant for such license present satisfactory evidence of qualifications equal to those required of licentiates examined under this chapter, and that he was registered or licensed after examination in such state, territory, or foreign country not less than one year prior to the date of application; that the standard of competence required in such state, territory, or foreign country is not lower than that required in the District of Columbia, and that such state, territory, or foreign country accords similar recognition to licentiates of the District of Columbia, all of which shall be determinable by the Board of Pharmacy aforesaid. Applicants for license under this section shall forward with their application a fee of ten dollars. (May 7, 1906, 34 Stat. 177, ch. 2084, § 5; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1.)

AMENDMENT

For change of name to Board of Pharmacy, see amendment and compiler's note to § 2–603.

§ 2–605 [20: 196]. Revocation of license — Grounds — Procedure.

The license of any person to practice pharmacy in the District of Columbia may be revoked if such person be found to have obtained such license by fraud; or to be addicted to the use of any narcotic or stimulant, or to be suffering from physical or mental disease, in such manner and to such an extent as to render it expedient that in the interests of the public his license be canceled; or to be of an immoral character; or if such person be convicted in any court of competent jurisdiction of any offense involving moral turpitude. It shall be the duty of the major and superintendent of police of said District to investigate any case in which it is discovered by him, or made to appear to his satisfaction, that any license issued under the provision of this chapter is revocable and to report the result of such investigation to the Board of Pharmacy, which board shall, after full hearing, if in their judgment the facts warrant it, revoke such license. (May 7, 1906, 34 Stat. 177, ch. 2084, § 6; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 3.)

AMENDMENT

For change of name to Board of Pharmacy, see amendment and compiler's note to § 2–603.

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Act, § 33–418.

§ 2–606 [20: 197]. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in Court of Appeals—Public display of license.

In the month of November of each year every licensed pharmacist and every licensed dealer in poisons for use in the arts or as insecticides, whose license or permit has been issued not less than three years prior to the first day of such month, shall apply to the Board of Pharmacy for the renewal of such license or permit. And said Board is hereby authorized, upon the payment of such fees as are hereinafter provided, to renew such license or permit in the month of November for a period of three years from the 31st day of October immediately preceding the date thereof. And every license or permit not renewed within the month of November as aforesaid shall be void and of no effect unless and until renewed. Any license, permit, or renewal obtained through fraud or by any false or fraudulent representation shall be void and of no effect. No person shall make any false or fraudulent representation for the purpose of procuring a license, permit, or renewal thereof either for himself or for another.

In the event the board shall fail or refuse to renew any license or permit within the month of November, for which application has been made, it shall make written record of the reasons for such nonrenewal. Upon request of the person seeking renewal of his license or permit, the Board shall grant a hearing, and the applicant shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce documents when duly directed by said Board, the board shall have power to refer the said matter to any justice of the District Court of the United States for the District of Columbia, who may order the attendance of such witness or

the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

The Board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the Board's finding shall be adverse to the person seeking reissuance of his license or permit, such license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of such report, unless within said period of thirty days a writ of error shall be issued as hereinafter provided, in which event said license or permit shall stand suspended until the final determination of the Court of Appeals upon such writ of error. If an exception is taken to any ruling of the Board on matter of law, the exception shall be reduced to writing and stated in the bill of exceptions with so much of the evidence as may be material to the question or questions raised, and such bill of exceptions shall be settled by the Board and signed by the secretary within such time as the rules of the board may prescribe.

Any party aggrieved by the decision of the said Board may seek a review thereof in the United States Court of Appeals for the District of Columbia, by petition under oath setting forth concisely, but clearly and distinctly, the nature of the proceeding before said Board, the trial and determination thereof, and the particular ruling upon matter of law to which exception has been taken, said petition to be presented to any justice of the Court of Appeals within thirty days after the filing of the report of said Board with the Commissioners, with such notice to the board as may be required by the rules of the Court of Appeals. If the justices shall be of the opinion that the action of the Board ought to be reviewed, a writ of error shall be issued from the Court of Appeals, within such time as may be prescribed by that court, a transcript of the record in the case sought to be reviewed, and the Court of Appeals shall review said record and affirm, reverse, or modify the judgment in accordance with law.

Every license to practice pharmacy and every permit to sell poisons for use in the arts or as insecticides and every current renewal of such permit shall be conspicuously displayed by the person to whom the same has been issued in the pharmacy, drug store, or place of business, if any, of which the said person is the owner or manager. (May 7, 1906, 34 Stat. 177, ch. 2084, § 7; Mar. 4, 1927, 44 Stat. 1414, ch. 497, § 3.)

AMENDMENT

The 1927 amendment added the second, third, fourth, and fifth paragraphs.

CROSS REFERENCE

Regulation of sale of narcotic drugs, Uniform Narcotic Drug Act, § 33–418.

§ 2–607 [20: 198]. Board of Pharmacy—Creation—Appointment—Tenure—Removal—Oath—Meetings—Seal—Bond of treasurer—Duty to examine applicants.

There shall be in and for the District of Columbia a Board of Pharmacy, consisting of five licensed pharmacists, appointed by the Commissioners of said District, each of whom shall have been for the five years immediately preceding, and shall be during the term of his appointment, actively engaged in the practice of pharmacy in said District. All appointments shall be made in such manner that the term of office of one member of the Board shall expire on the thirtieth day of June of each year, but every member shall hold office after the expiration of the term for which he has been formally appointed until his successor has been appointed and qualified. No appointee shall enter upon the discharge of his duties until he has taken oath fairly and impartially to perform the same. Said Commissioners may remove, after full hearing, any member of said Board for neglect of duty or other just cause.

Annually the Board shall organize by the election of a president, a secretary, and a treasurer who shall be members of said Board, who shall hold office for one year and until their successors shall have been elected and qualified. Said Board shall have a common seal; and said treasurer shall give such bond for the faithful performance of his duties as the Commissioners of the District of Columbia deem necessary. Said Board shall hold meetings for the examination of candidates and for the discharge of such other business as may come before it, commencing on the second Thursdays in January, April, July, and October of each year and at such other times as the Board of Pharmacy shall direct; and said Board of Pharmacy shall examine all applicants for license to practice pharmacy. (May 7, 1906, 34 Stat. 177, ch. 2084, § 8; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, §§ 1, 2.)

COMPILER'S NOTE

It is not clear that the statutes cited fix the term of the treasurer at one year.

AMENDMENT

The 1907 amendment changed the name of the "Board of Pharmaceutical Examiners" to "Board of Pharmacy" (see also note to § 2–603), added the words "and a treasurer" in the second line of the second paragraph and the second sentence of the second paragraph, and deleted words providing for procedure for reports to the prior-existing Board of Supervisors in Medicine and Pharmacy.

CROSS REFERENCE

Board, in connection with Federal authority, charged with duty of administering the Uniform Narcotic Drug Act (§ 33–401 to § 33–427), regulating and licensing the manufacture, distribution, and sale of narcotic drugs, § 33–405.

§ 2–608 [20: 199]. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art—Accounting—Records—Reports.

Said Board of Pharmacy shall have all such rights, powers, and duties with respect to the examination of applicants for license as pharmacists and with reference to the issue of licenses to practice pharmacy and of permits to sell poisons for use in the arts or

as insecticides as the said board (Commission on Licensure to Practice the Healing Arts in the District of Columbia) has with reference to the examination of applicants for license to practice medicine, surgery, and midwifery, and with reference to the issue of licenses to such persons, except in so far as may be inconsistent with the provisions of this chapter. The treasurer of said Board shall render to said commissioners accounts of his receipts and disbursements from time to time as said Commissioners shall direct. Said Board shall keep records of its proceedings, and such records shall be prima facie evidence of all matters contained therein in all courts in the District of Columbia. Said Board shall in the month of July of each year, make to the Commissioners of the District of Columbia a written report of its proceedings, of its receipts and disbursements, and of all licenses and permits issued. (May 7, 1906, 34 Stat. 178, ch. 2084, § 9; Feb. 27, 1907, 34 Stat. 1005, ch. 2085.)

COMPILER'S NOTE

The words "said board" which are followed by the words in parentheses are contained in the 1906 act, cited to the text, and, in that act, refer to the Board of Medical Supervisors as it existed prior to the said 1906 act. The act of June 3, 1896, 29 Stat. 198, ch. 313, created this Board and defined its powers, but, presumably, this Board has been superseded and its duties and powers transferred to the Commission on Licensure by the act of February 27, 1929, 45 Stat. 1329, ch. 352, § 12 (§ 2–109).

AMENDMENT

The 1907 amendment changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy" (see also note to § 2–603) and vested in the new Board all the powers, rights, duties, and functions with respect to the issuance and revocation of licenses to practice pharmacy and permits to sell poisons vested by the 1906 act in the Board of Supervisors in Medicine and Pharmacy. Provisions concerning the election of a secretary and a treasurer and the treasurer's bond were superseded by the 1907 amendment and similar provisions are now contained in § 2–607.

CROSS REFERENCES

Administration of Uniform Narcotic Drug Act, see note to § 2–607.

Commission on Licensure to Practice the Healing Art in the District of Columbia, § 2–101 et seq.

§ 2–609 [20: 200]. Fees—Expenses—Compensation of Board.

Applicants for license to practice pharmacy and for permits to sell poisons for use in the arts or as insecticides shall pay the following fee: For examination for license as pharmacist, $15, and for each renewal thereof $3; for a permit for the sale of poisons for use in the arts or as insecticides, $1, and for each renewal thereof, 50 cents.

All fees for licenses to practice pharmacy and all fees aforesaid shall be paid to the treasurer of the Board of Pharmacy of the District of Columbia before any applicant may be admitted to examination and before any license or permit, or any renewal thereof, may be issued by the said Board. And all expenses of said Board incident to the execution of the provisions of this chapter shall be paid from the fees collected by the Board of Pharmacy aforesaid. If any balance remains on hand on the 30th day of June of any year the members of said board appointed as such shall be paid therefrom such reasonable amounts as the Commissioners of the District of Columbia may determine. (May 7, 1906, 34 Stat. 179, ch. 2084, § 10; Feb. 27, 1907, 34 Stat. 1005, ch. 2085; Mar. 4, 1927, 44 Stat. 1415, ch. 497, § 4.)

AMENDMENTS

The 1907 amendment changed the name of the Board. (See § 2–603.)

The 1927 amendment raised the application fee for examination for license from $10 to $15, deleted parts concerning the former Board of Supervisors in Medicine and Pharmacy (now abolished, see § 2–603), and deleted the last sentence of the section of the 1906 act which provided for the disposition of any balance of funds.

CROSS REFERENCE

Refund of fees where license is refused, § 47–1018.

§ 2–610 [20: 201]. Sale of cocaine, morphine, opium, chloral hydrate, or compounds thereof, restricted—Prescription—Filling and refilling prescription—Exceptions—Wholesale trade.

It shall be unlawful for any person, by himself, or by his servant or agent, or as the servant or agent of any other person, or of any firm or corporation, to sell, furnish, or give away any cocaine, salts of cocaine, or preparation containing cocaine or salts of cocaine; morphine, salts of morphine, or preparation containing morphine or salts of morphine; or any opium, or preparation containing opium; or any chloral hydrate, or preparation containing chloral hydrate, except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered, and shall be signed by the person giving the order or prescription. Such order or prescription shall be, for a period of three years, retained on file by the person, firm, or corporation who compounds or dispenses the article ordered or prescribed, and it shall not be compounded or dispensed after the first time, except upon the written order of the original prescriber: *Provided,* That the above provisions shall not apply to preparations containing not more than two grains of opium, or not more than one-quarter grain of morphine, or not more than one-quarter grain of cocaine, or not more than two grains of chloral hydrate in the fluid ounce, or, if a solid preparation, in one avoirdupois ounce. The above provisions shall not apply to preparations sold in good faith for diarrhea and cholera, each bottle or package of which is accompanied by specific directions for use and caution against habitual use, nor to liniments or ointments sold in good faith as such when plainly labeled, "for external use only," nor to powder of ipecac and opium, commonly known as Dover's powder, when sold in quantities not exceeding twenty grains: *Provided further,* That the above provisions shall not apply to sales at wholesale by jobbers, manufacturers, and retail druggists to retail druggists, hospitals, colleges, and scientific or public institutions. (May 7, 1906, 34 Stat. 179, ch. 2084, § 11.)

CROSS REFERENCE

Uniform Narcotic Drug Act, §§ 33–401 to 33–427.

§ 2–611 [20: 202]. Physicians, dentists, and veterinarians restricted in prescribing cocaine, morphine, opium, chloral hydrate, or compounds thereof.

No physician in the District of Columbia, knowing or when he might by reasonable inquiry know, that any person is addicted to the use of cocaine, morphine, opium, or chloral hydrate, shall furnish to or for the use of such person, or prescribe for such person, the drug aforesaid, to the use of which such person is addicted, or any compound thereof, or any preparation containing the same, except as it may be necessary to furnish or prescribe such drug, compound, or preparation aforesaid for the cure of drug addiction aforesaid, or for the treatment of disease, injury, or deformity: *Provided,* That no physician shall be convicted under the provisions of this section who shows to the satisfaction of the court before which he is tried that, having exercised due diligence and acting in good faith, he furnished or prescribed such drug, compound, or preparation aforesaid believing the same to be necessary for the cure of drug addiction aforesaid, or for the treatment of disease, injury, or deformity, and for no other purpose whatsoever. No dentist shall furnish or prescribe any drug, compound, or preparation aforesaid to, or for the use of, any person not under his treatment in the regular course of his professional work, nor in any case otherwise than may be required by such work. No practitioner of veterinary medicine shall furnish or prescribe any drug, compound, or preparation aforesaid for the use of any human being, or when he has reasonable ground for believing that the drug, compound, or preparation aforesaid is desired or intended for the use of any human being: *Provided further,* That nothing in this section contained shall be construed to give to dentists or to practitioners of veterinary medicine the right to furnish or prescribe any drug, compound, or preparation whatsoever otherwise than as is usual and customary in the practice of dentistry and veterinary medicine, respectively. (May 7, 1906, 34 Stat. 180, ch. 2084, § 12.)

CROSS REFERENCE

Uniform Narcotic Drug Act, §§ 33–401 to 33–427.

§ 2–612 [20: 203]. Restrictions on sale or delivery of poisonous compounds—Records of sales—Use of "poison labels"—"Poison bottles"—Exceptions.

It shall be unlawful for any person to sell or deliver to any other person any of the following described substances, or any poisonous compound, combination, or preparation thereof, to wit: The compounds of and salts of antimony, arsenic, barium, chromium, copper, gold, lead, mercury, silver, and zinc; the caustic hydrates of sodium and potassium, solution or water of ammonia, methyl alcohol, paregoric, the concentrated mineral acids, oxalic and hydrocyanic acids and their salts, yellow phosphorus, Paris green, carbolic acid, the essential oils of almonds, pennyroyal, tansy, rue, and savin; croton oil, creosote, chloroform, cantharides, or aconite, belladonna, bitter almonds, colchicum, cotton root, cocculus indicus, conium, cannabis indica, digitalis, ergot, hyoscyamus, ignatia, lobelia, nux vomica, physostigma, phytolacca, strophanthus, stramonium, veratrum viride, or any of the poisonous alkaloids or alkaloidal salts derived from the foregoing, or any other poisonous alkaloids or their salts, or any other virulent poison, except in the manner following, and, moreover, if the applicant be less than eighteen years of age, except upon the written order of a person known or believed to be an adult.

It shall first be learned, by due inquiry, that the person to whom delivery is about to be made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled with the name of the substance, the word "poison," the name of at least one suitable antidote when practicable, and the name and address of the person, firm, or corporation dispensing the substance. And before delivery be made of any of the foregoing substances, excepting solution or water of ammonia, and sulphate of copper, there shall be recorded in a book kept for that purpose the name of the article, the quantity delivered, the purpose for which it is to be used, the date of delivery, the name and address of the person for whom it is procured, and the name of the individual personally dispensing the same; and said book shall be preserved by the owner thereof for at least three years after the date of the last entry therein. The foregoing provisions shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine, dentistry, or veterinary surgery: *Provided,* That when a physician writes upon his prescription a request that it be marked or labeled "poison," the pharmacist shall, in the case of liquids, place the same in a colored glass, roughened bottle, of the kind commonly known in trade as a "poison bottle," and, in the case of dry substances, he shall place a poison label upon the container. The record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale to licensed pharmacists, but the box, bottle, or other package containing such substance, when sold at wholesale, shall be properly labeled with the name of the substance, the word "poison," and the name and address of the manufacturer or wholesaler: *Provided further,* That it shall not be necessary, in sales either at wholesale or at retail, to place a poison label upon, nor to record the delivery of, the sulphide of antimony, or the oxide or carbonate of zinc, or of colors ground in oil and intended for use as paints, or calomel, or of paregoric when sold in quantities not over two fluid ounces; nor, in the case of preparations containing any of the substances named in this section, when a single box, bottle, or other package, or when the bulk of one-half fluid ounce, or the weight of one-half avoirdupois ounce, does not contain more than an adult medicinal dose of such substance; nor in the case of liniments or ointments, sold in good faith as such, when plainly labeled "for external use only;" nor in the case of preparations put up and sold in the form of pills,

tablets, or lozenges, containing any of the substances enumerated in this section and intended for internal use, when the dose recommended does not contain more than one-fourth of an adult medicinal dose of such substance.

For the purpose of this and of every other section of this chapter no box, bottle, or other package shall be regarded as having been labeled "poison" unless the word "poison" appears conspicuously thereon, printed in plain, uncondensed gothic letters in red ink. (May 7, 1906, 34 Stat. 180, ch. 2084, § 13.)

CROSS REFERENCE

Uniform Narcotic Drug Act, §§ 33–401 to 33–427.

§ 2–613 [20:204]. Fraudulent representations to procure drugs.

No person seeking to procure in the District of Columbia any substance the sale of which is regulated by the provisions of this chapter shall make any fraudulent representations so as to evade or defeat the restrictions herein imposed. (May 7, 1906, 34 Stat. 181, ch. 2084, § 14.)

§ 2–614 [20: 205]. Preservation of prescriptions—Copies—Inspection—Directions for use on label.

Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved, for a period of not less than three years, the original of every prescription compounded or dispensed at such store or pharmacy, or a copy of such prescription, except when the preservation of the original is required by section 2–610. Upon request, the proprietor or manager of such store shall furnish to the prescribing physician, or to the person for whom such prescription was compounded or dispensed, a true and correct copy thereof. Any prescription required by section 2–610, and any prescription for, or register of sales of substances mentioned in section 2–612 shall at all times be open to inspection by duly authorized officers of the law. No person shall, in the District of Columbia, compound or dispense any drug or drugs, or deliver the same to any other person, without marking on the container thereof the name of the drug or drugs contained therein, or directions for using the same. (May 7, 1906, 34 Stat. 181, ch. 2084, § 15.)

CROSS REFERENCE

Uniform Narcotic Drug Act, §§ 33–401 to 33–427.

§ 2–615 [20: 206]. Peddling or leaving on streets or property of drugs, prohibited.

It shall be unlawful for any person to sell or offer for sale by peddling, or to offer for sale from house to house, or to offer for sale by public outcry, or by vending in the street, any drug, medicine, or chemical, or any compound or combination thereof, or any implement, appliance, or other agency for the treatment of disease, injury, or deformity. That except as may be otherwise authorized by law, no person shall throw, cast, deposit, drop, scatter, or leave, or cause to be thrown, cast, deposited, dropped, scattered, or left, any drug, medicine, or chemical, or any compound or combination thereof, upon any public highway or place, or, without the consent of the owner or occupant thereof, upon any premise in the District of Columbia. (May 7, 1906, 34 Sta 181, ch. 2084, § 16.)

CROSS REFERENCE

Uniform Narcotic Drug Act, §§ 33–401 to 33–427.

§ 2–616 [20: 207]. Use of title of pharmacists or description of like import permitted to licensed persons only.

It shall be unlawful for any person not legall licensed as a pharmacist to take, use, or exhibit th title of pharmacist, or licensed or registered pha macist, or the title of druggist or apothecary, or an other title or description of like import. (May 1906, 34 Stat. 182, ch. 2084, § 17.)

COMPILER'S NOTE

The 1906 act, the basic act for this chapter and cite to the text throughout, contained the following sectio repealed by the 1907 act, cited to the text: "That all pe sons licensed under this Act as pharmacists, and active engaged in the practice of their profession, shall be exem from jury duty in all courts of the District of Columbia

§ 2–617 [20: 208]. Penalties—Enforcement.

Any person violating any of the provisions of th chapter shall be deemed guilty of a misdemeano and, upon conviction thereof, shall be punished b a fine not exceeding two hundred dollars or b imprisonment not exceeding six months, or by bot such fine and imprisonment, in the discretion o the court, and if the offense be continuing i its character, each week or part of a week du ing which it continues shall constitute a sep arate and distinct offense. And it shall be the dut of the major and superintendent of police of th District of Columbia and of the Corporation Coun sel of said District to enforce the provisions of thi chapter. (May 7, 1906, 34 Stat. 182, ch. 2084, § 19.

Chapter 7.—PODIATRY

Sec.

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§ 2–701 [20: 995]. Board of Podiatry Examiners—Appointment—Term of office—Eligibility—Qualifications.

There is hereby established a Board of Podiatry Examiners, which shall consist of the health officer of the District of Columbia ex officio and three members, to be appointed by the Board of Commissioners of the District of Columbia.

Said members shall be appointed within thirty days after this chapter has taken effect, and they shall be so classified by the Board of Commissioners that the term of one member shall expire in one year, one in two years, and one in three years from the date of appointment, and annually thereafter the Board of Commissioners shall appoint one member who shall serve for a period of three years, or until his successor is appointed and qualified. Vacancies in said board shall be filled by the Board of Commissioners for the unexpired term.

No person shall be eligible for appointment upon the Board who is not a citizen of the United States and who has not been for five years next preceding his appointment a resident of and in the active and reputable practice of podiatry in the District of Columbia. Appointments shall be made from a list of three to five eligibles submitted by the Podiatry Society of the District of Columbia. In case of failure of said Podiatry Society to submit said list, the Board of Commissioners shall appoint members in good standing of said Podiatry Society without restriction, who are qualified as aforesaid. (May 23, 1918, 40 Stat. 560, ch. 82; June 29, 1940, 54 Stat. 696, ch. 457, § 1.)

COMPILER'S NOTE

The 1918 act, cited to the text, provided that it should be unlawful to practice podiatry for compensation without having passed an examination, provided that a fee of $10 should be paid by applicant for examination, defined podiatry (or chiropody) and provided penalties for violations.

CROSS REFERENCES

Definitions, § 2–718.
Exempted from operation of Healing Arts Practice Act, § 2–101.
Persons exempted from act, § 2–712.

§ 2–702. Officers—Bond—Rules and regulations for admission to practice—Seal—Record of proceedings—Register of credentials and of licenses issued or revoked—Certified copy as evidence—Quorum—Annual report of finances and official acts.

The Board of Podiatry Examiners shall organize by electing from its members a president, and a secretary-treasurer who shall give bond to the United States in the sum of $1,000. The Board shall adopt such rules and regulations not inconsistent herewith as it deems necessary respecting the eligibility of candidates, and the scope of examinations. The Board shall adopt an official seal, and shall keep a record of its proceedings, a complete record of the credentials of each licensee, and a register of persons licensed as podiatrists and of licenses revoked. A transcript of an entry in such records, certified by the secretary-treasurer under seal of the Board, shall be evidence of the facts therein stated. A quorum of the Board shall consist of not less than two members. The Board shall make annual reports to the District commissioners, containing a statement of moneys received and disbursed and a summary of its official acts during the preceding year. (June 29, 1940, 54 Stat. 697, ch. 457, § 2.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.
Promulgation, publication, and notice of rules and regulations, § 2–719.
Rules and regulations in general, § 1–226 and notes.

§ 2–703. Attendance of witnesses — Production of books and papers.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The president and secretary-treasurer shall have power to issue subpenas and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce books and papers when duly directed by the said Board, the Board shall have power to refer the said matter to any justice of the District Court of the United States for the District of Columbia, who may order the attendance of such witness, or the production of such books and papers, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. (June 29, 1940, 54 Stat. 697, ch. 457, § 3.)

§ 2–704. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.

It shall be the duty of the secretary-treasurer of the Board to enforce the provisions of all laws relating to the practice of podiatry in the District of Columbia, and all violations of said laws shall be prosecuted in the police court of the District of Columbia by the Corporation Counsel or one of his assistants; and the Corporation Counsel and his assistants shall render such other legal services as may from time to time be required by the Board.

The major and superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigation and prosecutions incident to the enforcement of this chapter. The board is

authorized to employ such other persons as it deems necessary to assist in the investigation and prosecutions incident to the enforcement of this chapter. (June 29, 1940, 54 Stat. 697, ch. 457, § 4.)

§ 2–705. Application for license—Form and requirements—Citizenship—Verification—F e e s—Scope of examination—Application for license without examination—Reciprocity with States or Territories.

Any person who desires to begin the practice of podiatry within the District of Columbia shall file with the secretary-treasurer of the Board a written application for a license, and furnish satisfactory proof that he is a citizen of the United States or has duly declared his intention to become a citizen of the United States, not less than twenty-one years of age, of good moral character, and is a graduate of a podiatry college recognized by the National Association of Chiropodists and approved by the Board. Any license issued to a person who is a citizen of a foreign country and who has duly declared his intention to become a citizen of the United States shall automatically terminate and the registration of the candidate be annulled in the event such candidate shall fail to submit to the Board satisfactory evidence within six years from the date of such license that he has become a citizen of the United States. Such application must be upon the form prescribed by the Board, verified by oath, and accompanied by the required fee and a recent unmounted autographed photograph of the applicant. The Board shall hold in January and July of each year, in such place as it may designate, examinations to determine the fitness of applicants for licenses under this chapter.

(a) If such application be for a license after examination, the applicant shall appear before the Board at its first meeting after the filing of his application, and pass a satisfactory examination, consisting of practical demonstrations and written and oral test, in the following subjects as the same shall be taught in the recognized podiatry colleges: Anatomy, physiology, pathology, bacteriology, chemistry, materia medica, surgery, therapeutics, diagnosis and treatment, clinical and orthopedic podiatry, and any other of such subjects as the Board may determine.

(b) If such application be for a license without examination by virtue of a license issued by a state, territory, or other jurisdiction forming a part of the United States, or by a foreign country, the applicant shall furnish proof satisfactory to the Board that he holds a valid license from a similar podiatry board, with requirements equal to those of the District of Columbia, and that he has been in the lawful and reputable practice of podiatry in the state or territory or foreign country from which he applies for five consecutive years next prior to filing his application: *Provided,* That the laws of such state or territory or foreign country accord equal rights to a podiatrist of the District of Columbia who desires to practice his profession in such state or territory or foreign country. (June 29, 1940, 54 Stat. 697, ch. 457, § 5.)

§ 2–706. License—Form and execution—Registration with health officer—Duplicate—Fees.

If such applicant passes the examination, or furnishes the information required of applicants for license without examination, he shall receive a license from the Board, attested by its seal, signed by the members of the Board, which after being registered with the health officer shall be conclusive evidence of his right to practice podiatry in the District of Columbia. If the loss of a license is satisfactorily shown, a duplicate thereof shall be issued by the board upon payment of the required fee. (June 29, 1940, 54 Stat. 698, ch. 457, § 6.)

§ 2–707. Revocation or suspension of license—Jurisdiction of court—Grounds.

The District Court of the United States for the District of Columbia may revoke or suspend the license of any podiatrist in the District of Columbia upon proof satisfactory to said court—

(a) That said license or registration was procured through fraud or misrepresentation.

(b) That the holder thereof has been convicted of a felony.

(c) That the holder thereof is guilty of chronic or persistent inebriety, or addiction to drugs.

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of a large display, glaring light signs, or containing as a part thereof the representation of the human foot or leg or any part thereof; employing or making use of solicitors or free publicity press agents, directly or indirectly; or advertising any free podiatry work, or free examination; or advertising to guarantee podiatry service.

(e) That such holder is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice podiatry.

(f) That such holder is guilty of unprofessional conduct.

The following acts on the part of a podiatrist are hereby declared to constitute unprofessional conduct:

(1) Practicing while his license is suspended.

(2) Wilfully deceiving or attempting to deceive the board or their agents with reference to any matter under investigation by the board.

(3) Advertising by any medium other than the personal carrying of a modest professional card or the display of a modest window or street sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, and telephone connections of the licensee; except in the case of announcement of change of address or the starting of practice, when the usual size card of announcement may be used. The size of said cards or signs shall be designated by the board.

(4) Practicing podiatry under a false or assumed name or corporate name other than a partnership name containing the names of the partners, or any

name except his full proper name which shall be the name used in his license granted by the board.

(5) Violating this chapter or aiding any person to violate this chapter or to knowingly violate the podiatry act of any state or territory.

(6) Practicing in the employment of, or in association with, any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced, or as limiting or restricting the said court from holding that other or similar acts also constitute unprofessional conduct. (June 29, 1940, 54 Stat. 698, ch. 457, § 7.)

CROSS REFERENCES

General penalties, § 2–717.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–708. Revocation or suspension of license—Procedure—Petition—Appeal—Terms of suspension.

The District Court of the United States for the District of Columbia may suspend or revoke any license issued and any registration upon evidence showing to the satisfaction of the court that the licentiate or registrant, as the case may be, has been guilty of misconduct or is professionally incapacitated.

Proceedings looking toward the suspension or revocation of a license or registration shall be begun by petition filed in the District Court of the United States for the District of Columbia in the name of the Board of Podiatry Examiners and shall be verified by oath. Proceedings shall be conducted according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purposes and intent of this chapter; and said court is hereby authorized to make such supplementary rules. An appeal may be taken from the decision of the District Court of the United States for the District of Columbia to the United States Court of Appeals of said District. Any such appeal on behalf of the Board of Podiatry Examiners may be filed without bond. The District Court of the United States for the District of Columbia may determine whether a license or registration shall be suspended or revoked, and if such license is to be suspended said court may determine the duration of such suspension and the conditions under which such suspension shall terminate. (June 29, 1940, 54 Stat. 699, ch. 457, § 8.)

§ 2–709. Fees—Expenses of board—Compensation of members.

That in addition to the fees fixed herein each applicant for a license as podiatrist shall deposit with his application a fee of $25 if for a license after examination, and $50 if for a license by reciprocity; with each application for a duplicate license a fee of $5 shall be paid to said Board and for each certificate issued by said board a fee of $1 shall be paid. That out of the fees paid to said board, as provided by this chapter, there shall be defrayed all expenses incurred in carrying out the provisions of this chapter, including the detection and prosecution of violations thereof, together with a fee of $10 per diem for each member of said Board, other than the health officer of the District of Columbia, when actually engaging upon business pertaining to his official duties as such board member: *Provided*, That such expense shall in no event exceed the total of receipts. (June 29, 1940, 54 Stat. 699, ch. 457, § 9.)

CROSS REFERENCE

Refund of fees when license is refused, § 47–1018.

§ 2–710. Annual registration of podiatrist—Fees—Penalty for failure to register—Reinstatement—Copy of register to each podiatrist.

During the month of December of each year, every licensed podiatrist shall register with the secretary-treasurer of the Board his name and office address and such other information as the Board may deem necessary upon blanks obtainable from said secretary-treasurer, and thereupon pay a registration fee of $2. On or before the 1st day of November of each year it shall be the duty of the secretary-treasurer of the Board to mail to each podiatrist licensed in the District of Columbia, at his last-known address, a blank form for registration. In the event of failure to register on or before the 31st day of December a fine of $5 and the registration fee of $2 shall be imposed, and should the practitioner fail to register and pay the fine imposed and continues to practice his profession in the District of Columbia he shall at the end of ten days from said date be considered as practicing illegally and penalized as otherwise provided for in this chapter. If he suspends his practice he may, in the discretion of the board, upon furnishing satisfactory evidence as to his moral character and professional standing, be reinstated at any time upon registering and paying a prescribed fee of $25. On or before the 1st day of February, annually, said Board shall issue a printed register of the names and addresses so received, together with other information deemed interesting to the profession, a copy of which shall be mailed or otherwise sent to each registrant thereon. (June 29, 1940, 54 Stat. 700, ch. 457, § 10.)

§ 2–711. "Practice of podiatry" defined.

Any person shall be regarded as practicing podiatry who, gratuitously or for a salary, fee, money, or other compensation paid either himself or to any other person, directly or indirectly, furnishes or advertises to furnish, or performs or causes to be performed, by himself or by any other person, agent, or employee, podiatry service; or who uses the words "podiatrist," "chiropodist," or any letters or title in connection with his name which in any way represents him as being engaged in the practice of podiatry; or who is a manager, proprietor, operator, or conductor of a place where podiatry service is performed; or who shall state, advertise, or permit to be advertised by sign, card, circular, handbill, newspaper, radio, or otherwise that he can, or will attempt to, perform podiatry service or render a diagnosis in connection therewith; "podiatry" and "podiatry service," within the meaning of this section and this

chapter, are hereby defined to be the surgical, medical, or mechanical treatment of any ailment of the human foot, except the amputation of the foot or any of the toes; and, also, except the use of an anesthetic other than a local one. (June 29, 1940, 54 Stat. 700, ch. 457, § 11.)

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAW

One who has practiced osteopathy since 1909 was not guilty of violation of the prior act in treating a sprained foot by massage or manipulation, such treatment being a usual incident of the practice of osteopathy. *Howerton* v. *District of Columbia* (53 App. D. C. 230, 289 Fed. 628).

§ 2–712. Exemptions.

Nothing in this chapter shall apply to a bona fide student of podiatry in the clinic rooms of a reputable podiatry college; to a licensed and legally qualified practitioner of the healing arts; to a podiatrist of the United States Army, Navy, Public Health Service, or Veterans' Administration, in the discharge of his official duties, nor to a lawful practitioner of podiatry in another state or territory making a clinical demonstration before a bona fide society, convention, association of podiatrists, or podiatry college, or performing his duties in connection with a specific case on which he may have been called to the District of Columbia. (June 29, 1940, 54 Stat. 700, ch. 457, § 12.)

§ 2–713. Display of license and annual registration card—Penalty for violation.

Whoever engages in the practice of podiatry and fails to keep displayed in a conspicuous place in the operating room in which he practices, and in such manner as to be easily seen and read, the license and annual registration card granted him pursuant to the laws of the District of Columbia, shall be fined not more than $50. (June 29, 1940, 54 Stat. 700, ch. 457, § 13.)

§ 2–714. Sale of podiatry degree, certificate, or license—Alteration—Penalty.

Whoever sells or offers to sell a diploma conferring a podiatry degree or a certificate granted for postgraduate work, or a license granted pursuant to this chapter, or whoever procures such diploma, certificate, or license with intent to use the same as evidence of the right to practice podiatry as defined by law, by a person other than the one upon whom such diploma was conferred, or to whom such license was granted, or any person who with fraudulent intent alters such diploma, certificate, or license, or uses or attempts to use the same, shall be fined not more than $1,000. (June 29, 1940, 54 Stat. 701, ch. 457, § 14.)

§ 2–715. Practice of podiatry under false name—False representations concerning degree, application for license, or examination—Penalty.

Whoever practices podiatry under a false name, or assumes a title, or appends or prefixes to his name letters which falsely represent him as having a degree from a chartered podiatry college, or makes use of the words "podiatry college" or "school" or equivalent words when not lawfully authorized so to do, or impersonates another at an examination held by the board, or knowingly makes a false application or a false representation in connection with such examination, shall be fined not more than $1,000. (June 29, 1940, 54 Stat. 701, ch. 457, § 15.)

§ 2–716. Postgraduate classes in podiatry—Approval of board—Penalty for violation.

No person or persons, corporation, or educational institution shall conduct classes or a school for postgraduate podiatry in the District of Columbia unless with the approval of the Board, and whoever violates this provision shall, upon conviction, be fined not more than $500. (June 29, 1940, 54 Stat. 701, ch. 457, § 16.)

§ 2–717. Practicing without a license—Violations of law—Penalties.

Whoever engages in the practice of podiatry without a license so to do, or whoever violates any provision of law relating to the practice of podiatry, or the application for examination and licensing of podiatrists for which no specific penalty has been prescribed shall be fined not more than $1,000. (June 29, 1940, 54 Stat. 701, ch. 457, § 17.)

CROSS REFERENCES

Conducting postgraduate course in podiatry without approval of board, § 2–716.

Failure to display license or annual registration card, § 2–713.

Practicing under false name or false representations in application or examination, § 2–715.

Revocation or suspension of license, §§ 2–707, 2–708.

Sale of diploma, podiatry degree, or certificate or fraudulent use thereof, § 2–714.

§ 2–718. Definitions.

When used in sections 2–701 to 2–719—

(1) Personal pronouns include all genders.

(2) The term "Board" means the Board of Podiatry Examiners.

(3) Advertising shall be deemed to include those in public print, by radio, or any other form of public announcement. (June 29, 1940, 54 Stat. 701, ch. 457, § 18.)

§ 2–719. Rules and regulations—Promulgation—Notice.

Rules and regulations adopted by the board shall become effective thirty days after promulgation: *Provided,* That notice of such rules and regulations is published once a week for three consecutive weeks during that period in a newspaper of general circulation in the District of Columbia, and that notice be mailed to each registered podiatrist in the District of Columbia. (June 29, 1940, 54 Stat. 701, ch. 457, § 19.)

COMPILER'S NOTES

Section 20 of the act approved June 29, 1940, 54 Stat. 701, provides as follows: "Should any section or provision of this Act be decided by the courts to be unconstitutional or invalid, the validity of the Act as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. The right to alter, amend, or repeal this Act is hereby expressly reserved."

REPEAL

Section 21 of the act approved June 29, 1940, 54 Stat. 701, provided as follows: "All Acts or parts thereof heretofore

nacted into law and inconsistent herewith are hereby pealed."

Cross References

Power of board to make rules and regulations, § 2–702.
Promulgation of regulations by commissioners, § 47–345.

Chapter 8.—VETERINARIANS

ec.
801. Board of examiners in veterinary medicine—Creation—Appointment, tenure, and removal.
802. Election of officers—Rules and regulations—Register of applicants—Bond—Reports.
803. Applications for license—Qualifications—Fees—Expenses—Examinations—Applications preserved.
804. Reciprocal relations with similar boards.
805. Practitioners exempt from examination.
806. Appeal from board—Board of review—Fees and compensation.
807. Display of license—Inspection of place of business.
808. Persons regarded as practitioners.
809. Persons exempt.
810. Revocation of licenses—Causes—Procedure—Appeals—Costs.
811. Penalties.
812. Prosecutions by corporation counsel.

2–801 [20: 171]. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.

There is hereby created a Board of Examiners in eterinary Medicine, to be appointed by the Commissioners of the District of Columbia, which shall consist of five reputable practitioners of veterinary edicine, who shall have graduated from some college authorized by law to confer degrees, each of om shall have been a bona fide resident of said strict for three years last past before appointent, and each, during said period, shall have been ively engaged in the practice of his profession in d District. The appointments first made shall be e for one year, one for two years, one for three rs, one for four years, and one for five years, d thereafter appointments shall be for a period five years, except such as are occasioned by death, ignation, or removal, in which cases the appointnts shall be for the remainders of the unexpired ms: *Provided,* That the said Commissioners may, their judgment, remove any member of said board neglect of duty or other sufficient cause, after notice and hearing. (Feb. 1, 1907, 34 Stat. 870, 442, § 1.)

Cross References

xemption from provisions of Alcoholic Beverage Control Act, § 25–109.
ersons exempted from the act, § 2–809.

802 [20: 172]. Election of officers—Rules and regulations — Register of applicants — Bond — Reports.

he said Board of Examiners in Veterinary Medie shall elect a president, vice-president, secretary, such other officers as shall be necessary. The retary of said Board shall have power to admin- oaths or affirmations upon such matters as ain to the business of said Board, and any person ully making any false oath or affirmation shall deemed guilty of perjury; and said Board shall e, alter, or amend, subject to the approval of the missioners of the District of Columbia, such rules and regulations as may be necessary to carry into effect the provisions of this chapter, and shall hold such meetings as shall be necessary for the transaction of business, and shall issue all licenses to practice veterinary medicine in the District of Columbia. Said Board shall keep an official record of its meetings, and also an official register of all applicants for licenses, which register shall show the name, age, place, and duration of residence of each applicant, the time spent in the study of veterinary medicine, in and out of medical schools, and the names and locations of all medical schools which have granted said applicant any degree or certificate of attendance upon lectures, and it shall also show whether said applicant was rejected or licensed under this chapter, and said register shall be prima facie evidence of all matters contained therein. The Commissioners of the District of Columbia shall have power to require any or all officers of said Board to give bond to the District of Columbia in such form and penalty as they may deem proper. The said Board shall in the month of July in each year submit to said Commissioners a full report of its transactions during the twelve months immediately preceding. (Feb. 1, 1907, 34 Stat. 870, ch. 442, § 2.)

Cross References

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.
Rules and regulations in general, § 1–226 and notes.

§ 2–803 [20:173]. Applications for license—Qualifications—Fees—Expenses—Examinations—Applications preserved.

From and after February 1, 1907, all persons desiring to practice veterinary medicine or any branch thereof in the District of Columbia, or who shall desire to hold themselves out to the public as practicing veterinary medicine or any branch thereof in the District of Columbia, shall make application to said Board of Examiners in Veterinary Medicine for a license so to do. Application for this purpose shall be upon a form furnished by said Board, and shall be accompanied by satisfactory evidence of good moral character, and by a diploma from some veterinary college authorized by law to confer the same, which college shall require at least two sessions of study of veterinary medicine of not less than six months each prior to the issue of such diploma, and graduates of two-year colleges shall accompany their diplomas by satisfactory evidence that they have practiced veterinary medicine for five years last past subsequent to the issue of such diplomas, and by a fee of ten dollars, except as herein otherwise directed, and from the fund thus created, the Board shall pay such necessary expenses as it may incur. Such expenses shall not exceed in any one fiscal year the amount of fees collected during that period, but if any balance remain after paying all such expenses the Commissioners of said District shall authorize the payment therefrom to the members of said Board for their services of such amounts as said commissioners deem proper. Said Board shall, by means of examinations, ascertain the professional qualifications of all applicants for license

to practice veterinary medicine in said District, and shall issue such licenses to all who are found by such examinations to be, in the judgment of said Board, competent to so practice; and no such license shall be issued to any person who has not demonstrated his competence, except as hereinafter otherwise provided. Such examinations shall be held in January, April, July, and October of each year, and shall include all such subjects as are ordinarily included in the curricula of veterinary colleges in good standing, but examinations may be held at such other times and include such other subjects as said Board shall authorize and direct. Said Board shall number consecutively all applications received, note upon each the disposition made of it, and preserve the same for reference, and shall number consecutively all licenses issued. (Feb. 1, 1907, 34 Stat. 871, ch. 442, § 3.)

CROSS REFERENCE

Refund of fees when license is refused, § 47–1018.

§ 2–804 [20: 174]. Reciprocal relations with similar boards.

Said Board of Examiners, so far as may be possible, shall make arrangements with analogous boards of the several states and territories whereby due credit for state and territorial licenses will be allowed in the District of Columbia to such licentiates of said boards as desire to secure licenses to practice veterinary medicine in this District, and whereby licentiates of the Board of Examiners in Veterinary Medicine in the District of Columbia will secure due credit for licenses issued by said Board whenever such licentiates desire to secure licenses to practice veterinary medicine in any state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine in the District of Columbia, and no arrangement for the mutual recognition of licenses shall be valid until it has been approved by the Commissioners of the District of Columbia. (Feb. 1, 1907, 34 Stat. 871, ch. 442, § 4.)

§ 2–805 [20: 175]. Practitioners exempt from examination.

Any person who received a diploma from a veterinary college lawfully authorized to confer the same and who maintained an office for the practice of veterinary medicine in the District of Columbia on or before February 1, 1907, upon submission of proof of such facts to the Board of Examiners in Veterinary Medicine and the payment of a fee of one dollar, shall be licensed by said Board to practice veterinary medicine in the District of Columbia without examination. Any person, not a graduate of a college lawfully authorized to confer a degree in veterinary medicine, who was continuously engaged in the practice of veterinary medicine in the District of Columbia for five years previous to February 1, 1907, and maintained an office in said District for that purpose shall be permitted to present himself for examination before the Board of Veterinary Examiners without fee, and upon proof of satisfactory knowledge of veterinary medicine shall be registered and licensed as a practitioner of veterinary medicine. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 5.)

COMPILER'S NOTE

This section is probably temporary and obsolete. The words "shall be" are inaccurate as of the present time.

§ 2–806 [20: 176]. Appeal from board—Board of review—Fees and compensation.

Any person having been examined by said Board of Examiners in Veterinary Medicine and having been refused a license as the result of such examination may, within thirty days after formal notification of such refusal appeal from the decision of said board. Such appeal must be in writing, addressed to the Commissioners of the District, setting forth the ground upon which it is based, and accompanied by a deposit of thirty dollars. If, after examination of said appeal, said Commissioners deem it proper, they shall appoint a board of review, consisting of three practitioners of veterinary medicine having qualifications similar to those required of members of the regular Board of Examiners in Veterinary Medicine, which Board shall review the examination of appellant, and if they deem necessary re-examine him and report their finding to said Commissioners; and such finding shall be final and binding upon all parties concerned, and if favorable to the appellant the Board of Examiners in Veterinary Medicine shall issue to him a license to practice veterinary medicine in said District. Each member of said board of review shall be paid a fee of not more than ten dollars for each candidate examined, payment to be made from the deposit of the appellant if the finding is adverse to him, but otherwise from the funds of the Board of Examiners. If favorable the amount deposited shall be returned to the appellant. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 6.)

§ 2–807 [20: 177]. Display of license—Inspection of place of business.

Every person practicing veterinary medicine in the District of Columbia, or representing himself or permitting himself to be represented as so practicing, shall display or cause to be displayed conspicuously in his usual place of business his license to practice in said District. Said place of business shall, during all reasonable hours, be open to inspection by any representative of the police department or of the Board of Examiners in Veterinary Medicine of said District, so far as may be necessary to examine such licenses, and it shall be unlawful for any person to interfere with any inspection made or intended to be made for this purpose. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 7.)

§ 2–808 [20: 178]. Persons regarded as practitioners.

Any person shall be regarded as practicing veterinary medicine in the District of Columbia who shall, in said District, append or cause to be appended to his name the letters V. S., D. V. M., V. M. D., M. D. V., M. D. C., D. V. S., or M. R. C. V. S., or the words

"veterinary," "veterinarian," "veterinary surgeon," or "veterinary dentist," "veterinary farrier," "veterinary horseshoer," "horse dentist," or "horse doctor," or who shall prescribe, advise, or apply any drug or medicine or other agency, or who shall publicly profess to do any of these things, and shall charge or receive therefor money or other compensation, directly or indirectly: *Provided,* That any person may without compensation apply any medicine or remedy and perform any operation for the treatment, relief, or cure of any sick, diseased, or injured animal. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 8.)

Cross Reference

Veterinarian not to prescribe drugs or medicines for human beings, § 2–611.

§ 2–809 [20: 179]. Persons exempt.

This chapter shall not apply to veterinary surgeons in the Army or in the employ of the Agricultural Department who are graduates of regular veterinary colleges, nor to regularly licensed veterinarians in actual consultation from other states, nor to regularly licensed veterinarians actually called from other states to attend cases in the District of Columbia, but who do not open an office or appoint a place to do business within said District. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 9.)

§ 2–810 [20: 180]. Revocation of licenses—Causes—Procedure—Appeals—Costs.

The Board of Examiners in Veterinary Medicine may, by a vote of four members, revoke or suspend for a time certain the license of any person to practice veterinary medicine or any branch thereof in the District of Columbia after notice and hearing, for any of the following causes, namely: The employment of fraud or deception in passing the examinations or in obtaining a license, chronic inebriety, or conviction of crime involving moral turpitude. The method of complaint, form, and length of notice, and time of hearing charges against any licensee for any of the above causes shall be according to the rules and regulations to be made, subject to the approval of said Commissioners, as hereinbefore provided. Appeal from the decision of said board may be taken to the United States Court of Appeals for the District of Columbia, and the decision of said court shall be final: *Provided,* That the Commissioners of the District of Columbia, the said Board of review, and the Board of Examiners in Veterinary Medicine shall not, nor shall any of them, be required to pay costs, or give bond or security on appeal, or error or other proceeding in any court or courts of the District of Columbia growing out of any official duty or duties imposed on them, or any of them, by this chapter. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 10.)

Cross References

General penalties, § 2–811.
Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–811 [20: 181]. Penalties.

Any person who shall violate or aid or abet in violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $200, or by imprisonment in the workhouse of the District of Columbia for not more than six months, or by both such fine and imprisonment. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 11.)

Cross References

Display of license, § 2–807.
Revocation or suspension of license, § 2–810.

NOTES TO DECISIONS

Practicing Without License

One who practices veterinary medicine without a license is subject to the penalty imposed by this section even though the Veterinarian's Law does not expressly prohibit such practice. *District of Columbia* v. *Dewalt* (31 App. D. C. 326).

§ 2–812 [20: 182]. Prosecutions by corporation counsel.

It shall be the duty of the Corporation Counsel or one of his assistants to prosecute all violations of the provisions of this chapter. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 12.)

Chapter 9.—ACCOUNTANTS

Sec.

2–901. Certified Public Accountant—Persons receiving certificate from Board of Accountancy entitled to use "C. P. A."
2–902. Definition of "public accountant."
2–903. Board of Accountancy—Qualifications—Tenure—Removal.
2–904. Certified Public Accountant—Qualifications—Waiver of employment by practicing accountant.
2–905. Examinations—When conducted—Notice.
2–906. Certification without examination of certificate holders from other jurisdictions.
2–907. Revocation of certificate for cause—Hearing—Notice.
2–908. Examination fees—Compensation—Reports.
2–909. Penalty for practicing without certificate.

§ 2–901 [20: 291]. Certified Public Accountant—Persons receiving certificate from Board of Accountancy entitled to use "C. P. A."

Any person who has received from the Board of Accountancy, hereinafter created, a certificate of his qualifications to practice as a public accountant shall be known and styled as a "Certified Public Accountant," and no other person, and no partnership all of the members of which have not received such certificate, and no corporation shall assume such title or the title of "certified accountant" or the abbreviation "C. P. A." or any other words, letters, or abbreviations tending to indicate that the person, firm, or corporation so using the same is a Certified Public Accountant. (Feb. 17, 1923, 42 Stat. 1261, ch. 94, § 1.)

§ 2–902 [20: 292]. Definition of "public accountant."

For the purpose of this chapter a public accountant is hereby defined as a person skilled in the knowledge and science of accounting, who holds himself out to the public as a practicing accountant for compensation, and who maintains an office for the transaction of business as such, whose time during the regular business hours of the day is devoted to the practice of accounting as a professional public accountant. (Feb. 17, 1923, 42 Stat. 1261, ch. 94, § 2.)

NOTES TO DECISIONS

DUTIES AND OBLIGATIONS

Public accountants and auditors hold themselves out to be skilled and competent and are bound to perform such services in an accurate and skillful manner and occupy a relation of trust and confidence to employer.—*Cafritz* v. *Corporation Audit Co.* (D. C. D. C. 1945, 60 F. Supp. 627).

§ 2–903 [20: 293]. Board of Accountancy—Qualifications—Tenure—Removal.

There is hereby created a Board of Accountancy in and for the District of Columbia, to consist of three members, to be appointed by the Commissioners of the District of Columbia, and who shall be holders of certificates issued under the provisions of this chapter. The members of the Board first to be appointed shall be skilled in the knowledge, science, and practice of accounting, and shall have been actively engaged as professional public accountants within the District of Columbia for a period of at least three years, and shall hold office, one for one year, one for two years, and one for three years, and until their successors are appointed and qualified. The term of each member is to be designated by the Commissioners in each appointment. Their successors shall be appointed for terms of three years from the dates as aforesaid and until their successors are appointed and qualified. The Commissioners may, after full hearing, remove any member of the Board for neglect of duty or other just cause. The Board shall organize by the election of a president and a secretary and a treasurer, and may make all rules and regulations necessary to carry into effect the purposes of this chapter. Any two members acting as a board shall constitute a quorum for the transaction of business. (Feb. 17, 1923, 42 Stat. 1261, ch. 94, § 3.)

CROSS REFERENCE

Rules and regulations in general, § 1–226 and notes.

§ 2–904 [20: 294]. Certified Public Accountant—Qualifications—Waiver of employment by practicing accountant.

The Board of Accountancy shall not grant a certificate as a Certified Public Accountant to any person other than (a) a citizen of the United States, or one who has duly declared his or her intention of becoming such citizen, who is over the age of twenty-one years, and (b) of good moral character, (c) who is a graduate of a high school with a four years' course or has had an equivalent education, or who, in the opinion of the board, has had sufficient commercial experience in accounting, and (d) who has received a diploma from some recognized school of accountancy, and has had one year's experience in the employment of a practicing Certified Public Accountant, or has had three years' experience in the employ of a practicing Certified Public Accountant, and (e) except under the provisions of section 2–906, who shall have successfully passed examinations in the theory and practice of general accounting, in commercial law as affecting accountancy, and in such other related subjects as the Board may deem advisable: *Provided,* That the Board of Accountancy may waive the provision for accounting experience as set forth in clause (d) above, and in lieu thereof may hold in abeyance a certificate to any person who shall otherwise have qualified until such time as the applicant can prove to have served two years in the employ of a practicing Certified Public Accountant: *Provided further,* That the Board may waive the requirement for service in the employ of a practicing Certified Public Accountant, as set forth in clause (d) above, in the case of any person who has had not less than five years' actual and continuous experience in auditing the books and accounts of other persons in three or more distinct lines of commercial business, but nothing contained in this chapter shall be construed as granting any power to waive any provision of this chapter other than as set forth herein, nor shall any such waiver be granted except by the unanimous vote of the members of the Board. (Feb. 17, 1923, 42 Stat. 1261, ch. 94, § 4.)

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 2–905 [20: 295]. Examinations—When conducted—Notice.

All examinations provided for herein shall be conducted by the Board. The examination shall take place as often as may be necessary in the opinion of the Board, but not less frequently than once each year. The time and place of holding examinations shall be duly advertised for not less than three days in one daily newspaper published in the District of Columbia, beginning not less than thirty days prior to the date of each examination. (Feb. 17, 1923, 42 Stat. 1262, ch. 94, § 5.)

§ 2–906 [20: 296]. Certification without examination of certificate holders from other jurisdictions.

The Board of Accountancy may, in its discretion, waive the examination and issue a certificate as Certified Public Accountant to any person possessing the qualifications mentioned in section 2–904 who is the holder of a certificate as Certified Public Accountant issued under the laws of any state or territory which extends similar privilege to Certified Public Accountants of the District of Columbia, provided the requirements for such certificate in the state or territory which has granted it to the applicant are, in the opinion of the Board, equivalent to those herein required; or who is the holder of a certificate as Certified Public Accountant, or the equivalent thereof issued in any foreign country, provided the requirements for such certificates are, in the opinion of the Board, equivalent to those herein required. (Feb. 17, 1923, 42 Stat. 1262, ch. 94, § 6.)

NOTES TO DECISIONS

HEARING

An applicant for registration as Certified Public Accountant is entitled, prior to final ruling upon his application, to be informed as to everything to be considered by the Board in his case, with full opportunity to present any relevant evidence he may wish to offer. *Goldsmith* v. *Clabaugh* (55 App. D. C. 346, 6 Fed. (2d) 94. Cert. den. 269 U. S. 554, 70 L. Ed. 408, 46 Sup. Ct. 18).

"Similar Privilege"

General Business Law, N. Y., § 80, does not extend "similar privilege." *Goldsmith* v. *Clabaugh* (55 App. D. C. 346, 6 Fed. (2d) 94. Cert. den. 269 U. S. 554, 70 L. Ed. 408, 46 Sup. Ct. 18).

§ 2–907 [20: 297]. Revocation of certificate for cause—Hearing—Notice.

The Board of Accountancy may revoke any certificate issued under this chapter for unprofessional conduct or other sufficient cause: *Provided,* That notice of the cause for such contemplated action and the date of the hearing thereon by the Board shall have been mailed to the holder of such certificate at his or her registered address at least twenty days before such hearing. No certificate issued under this chapter shall be revoked until the Board shall have held such hearing, but the nonappearance of the holder of any certificate, after notice as herein provided, shall not prevent such hearing. At all such hearings the Corporation Counsel of the District of Columbia or one of his assistants designated by him shall appear and represent the interests of the public. (Feb. 17, 1923, 42 Stat. 1262, ch. 94, § 7.)

Cross Reference

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–908 [20: 298]. Examination fees—Compensation—Reports.

The Board of Accountancy shall charge for the examinations, together with certificates to successful applicants, provided for in this chapter, a fee of $25. This fee shall be payable by the applicant at the time of making his or her initial application. Should the applicant fail to pass the required examination subsequent examinations will be given the same applicant for an additional fee of $10 for each examination. From the fees collected under this chapter the Board shall pay all expenses incident to the examinations, the expenses of issuing certificates, and traveling expenses of the members of the Board while performing their duties under this chapter; and if any surplus remain on the 30th day of June of each year the members of the Board shall be paid therefrom such reasonable compensation for the actual time employed as the commissioners of the District of Columbia may determine; and the remaining surplus, if any, shall be covered into the treasury of the United States to the credit of the District of Columbia: *Provided,* That no expense incurred under this chapter shall be a charge against the funds of the United States nor the District of Columbia. The Board shall annually report the number of certificates issued and the receipts and expenses under this chapter during each fiscal year to the Commissioners of the District of Columbia. (Feb. 17, 1923. 42 Stat. 1263, ch. 94, § 8.)

Cross Reference

Refund of fees when license is refused, § 47–1018.

§ 2–909 [20: 299]. Penalty for practicing without certificate.

If any person shall represent himself or herself to the public as having received a certificate as provided for in this chapter, or shall assume to practice as a certified public accountant without having received such certificate, or if any person having received such certificate, shall hereafter lose the same by revocation, as provided for in this chapter, and shall continue to practice as Certified Public Accountant, or use such title or any other title mentioned in section 2–901, or if any person shall violate any of the provisions of this chapter, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $500, or by imprisonment not exceeding six months, or by both fine and imprisonment, in the discretion of the court. (Feb. 17, 1923, 42 Stat. 1263, ch. 94, § 9.)

Chapter 10.—ARCHITECTS

Sec.
2–1001. Board of examiners—Creation.
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§ 2–1001 [20: 301]. Board of examiners—Creation.

There is hereby created a Board of Examiners and Registrars of Architects, the members of which and their successors shall be appointed by the Commissioners of the District of Columbia, and said Board, subject to the approval of said Commissioners, shall make rules for the examination and registration of applicants for the certificates provided for by this chapter. (Dec. 13, 1924, 43 Stat. 713, ch. 9, § 1.)

Cross References

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Other provisions concerning rules and regulations, § 2–1006.

Rules and regulations in general, § 1–226 and notes.

§ 2–1002 [20: 302]. Appointment—Qualifications.

The Board shall be composed of five architects who have been in active practice in the District of Columbia for not less than ten years previous to their appointment. (Dec. 13, 1924, 43 Stat. 713, ch. 9, § 2.)

§ 2–1003 [20: 303]. Tenure—Filling vacancies.

All appointments shall be for a period of five years. In case a successor is not appointed at the expiration of the term of any member, such member shall hold office until the successor has been duly appointed and has qualified. In the event of any vacancy occurring in the membership of said Board in any manner other than by expiration of time, the said Commissioners shall fill said vacancy by an appointment for the unexpired term. (Dec. 13, 1924, 43 Stat. 713, ch. 9, § 3.)

§ 2–1004 [20: 304]. Oath of office.

The members of said Board of Examiners shall, before entering upon the discharge of their duties, subscribe to and file with the secretary of the Board of Commissioners of the District of Columbia the constitutional oath of office. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 4.)

§ 2–1005 [20: 305]. First meeting and election of officers.

The Board of Examiners and Registrars of Architects shall meet and elect from its membership a president, secretary, and a treasurer. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 5.)

§ 2–1006 [20: 306]. Organization—Meetings.

The said Board shall adopt all necessary rules, regulations, and by-laws, not inconsistent with this chapter, to govern its times and places of meeting for organization and reorganization and the holding of examinations, the length of the terms of its officers and all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its business under the provisions of this chapter. At least two meetings shall be held each year for the purpose of examination for registration. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 6.)

CROSS REFERENCE

Approval of rules and regulations by Commissioners, § 2–1001.

§ 2–1007 [20: 307]. Quorum—Votes.

Three members of the said Board shall constitute a quorum, but no action at the meeting can be taken without at least three votes in accord. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 7.)

§ 2–1008 [20: 308]. Minutes—Clerical assistance.

The secretary of the said Board shall keep a true record of all proceedings of the said Board and may employ such clerical assistance as the said Board may deem necessary. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 8.)

§ 2–1009 [20: 309]. Duty to enforce law—Payment of expenses.

The said Board shall be charged with the duty of enforcing the provisions of this chapter and may incur such expenses as shall be necessary, all of which expenses shall be paid only out of the revenue arising from this chapter in the manner hereinafter mentioned and provided. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 9.)

§ 2–1010 [20: 310]. Roster of architects—Report.

A roster showing the names and places of business and residences of all architects shall be prepared by the secretary of the Board during the month of June of each year; such roster shall be printed out of the funds of the Board as provided in section 2–1011. On or before the 1st day of August each year the Board shall submit to the Commissioners of the District of Columbia a report of its transactions for the preceding fiscal year, together with a complete statement of the receipts and expenditures of the Board, certified by the chairman and the secretary, and a copy of the said roster of architects. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 10; Sept. 7, 1950, 64 Stat. 780, ch. 908, § 1.)

AMENDMENT

Act of 1950 struck out the word "registered" preceding "architects" in the first and second sentences.

EFFECTIVE DATE

Effective date of amendments. See note following § 2–1031.

§ 2–1011 [20: 311]. Fees to be paid to treasurer—Payment of expenses.

All fees provided for by this chapter shall be paid to and receipted for by the treasurer of the Board of Examiners and Registrars of Architects for the District of Columbia and shall not be used for any purpose other than the purposes of this chapter. The expenses of said Board, subject to the approval of said Board, shall be paid by him upon written order and warrant of the president and secretary of said Board. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 11.)

§ 2–1012 [20: 312]. Compensation of members.

Each member of the said Board shall be entitled to such reasonable compensation for his services as may be approved by said Board: *Provided,* That said compensation shall not exceed $10 per diem: *And provided,* That the total amount of such compensation shall not exceed the unobligated balance remaining with the treasurer of the Board on the 30th of June of each year. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 12.)

§ 2–1013 [20: 313]. Reimbursement for expenses.

The members of the said Board shall be reimbursed the amount of actual expenses incurred in the performance of their duties under this chapter, subject to the approval of said Board. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 13.)

§ 2–1014 [20: 314]. Practice of architecture limited—Practice of architecture and architect defined.

(a) Except as otherwise provided in this chapter, no person shall practice architecture in the District of Columbia or use the title "architect" or "registered architect", or any words, letters, figures, or other

device indicating or intending to imply that he or she is an architect, without having qualified as required by this chapter.

(b) The practice of architecture within the meaning and intent of this chapter consists of rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of any building or addition or structural alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(c) An architect within the meaning of this chapter is an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 14; May 29, 1928, 45 Stat. 950, ch. 861; Sept. 7, 1950, 64 Stat. 780, ch. 908, § 2.)

AMENDMENT

Act of 1950 amended the section generally. Section previously read: "Except as otherwise provided in this chapter, any person wishing to practice architecture in the District of Columbia under the title of architect shall, before being entitled to be or be known as an architect, secure from such Board a certificate of qualifications to practice under the title of architect, as provided in this chapter."

EFFECTIVE DATE

Effective date of 1950 amendments. See note following § 2–1031.

COMPILER'S NOTE

Act of December 13, 1924, in 43 Stat. 715 and the act of May 29, 1928, in 45 Stat. 950 are identical.

CROSS REFERENCE

Persons exempted from the act, § 2–1026.

§ 2–1015 [20: 315]. Holder of certificate may use title of architect.

Any person having a certificate pursuant to the requirements of this chapter may be styled or known as an architect or registered architect. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 15.)

§ 2–1016 [20: 316]. Registration as architect limited to individuals.

No firm, company, partnership, association, corporation or other similar organization shall be registered as an architect. Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title "architects" or "registered architects." (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 16; May 29, 1928, 45 Stat. 950, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

Act of 1950 amended the section generally. Section previously read: "No person who was engaged in the practice of architecture in the District of Columbia on December 13, 1924, shall use or assume any title indicating that he or she is an architect, or any words, letters, or figures to indicate that the person using them is an architect, unless he or she shall have qualified and obtained a certificate of registration as an architect, or unless he or she has, within six months after May 29, 1928, filed with said Board an affidavit establishing to the satisfaction of said Board the fact that he or she was in practice as an architect in said District on and prior to December 13, 1924. Nothing herein contained shall be construed to prevent any person who was engaged in the practice of architecture in said District on and prior to December 13, 1924, from applying to said Board at any time for examination under this chapter. No firm shall be entitled to the style or designation 'architect' or 'registered architect' unless and until every member thereof shall be entitled to such designation. A corporation whose principal business, as shown by its charter, is the practice of architecture, may apply for and obtain a certificate of registration, provided all its executive officers and directors are registered architects. The same exemptions shall apply to partnerships and corporations as apply to individuals under this chapter."

Act of 1924 read as follows: "That no person presumed to have the right to secure such certificate because of his or her use of the title architect prior to the time this Act goes into effect shall assume any title indicating that he or she is an architect, or any words, letters, or figures to indicate that the person using them is an architect, unless he or she shall have qualified and obtained a certificate of registration as an architect, or unless he or she shall have filed an affidavit establishing the fact that he or she was in practice as an architect previous to the passage of this act and has a legal right to practice without a certificate. Each member of a firm or corporation practicing architecture shall be registered before being entitled to be known as or to style themselves architects or registered architects."

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1017 [20: 317]. Employees of architects entitled to practice under supervision—Exceptions.

Nothing contained in this chapter shall prevent the draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto. Nor shall anything contained in this chapter be construed to apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health; nor to prevent the preparation of details and shop drawings by persons, other than architects, for use in connection with the execution of their work; nor to prevent the preparation of drawings or details for fixtures, cabinet work, furniture, or other interior appliances or equipment, or for any work necessary to provide for their installation unless the same involves public health or safety; nor apply to the construction or alteration of a building that does not cover over one thousand square feet of ground area, and does not have a height of over twenty feet to the uppermost ceiling, or two habitable floors above a basement. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 17; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

Act of 1950 amended the section generally. Section previously read:

"Nothing contained in this chapter shall prevent the draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as registered architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or alteration of buildings or any appurtenance thereto, or prevent such superintendent from acting under the immediate personal supervision of the registered architect by whom

the plans and specifications of any such buildings, enlargement, or alteration were prepared. Nor shall anything contained in this chapter prevent persons, engineers, mechanics, or builders from making plans, specifications for, or supervising the erection, enlargement, or alteration of buildings or any appurtenance thereto: *Provided,* That the plans and specifications for such construction are signed by the authors thereof with their true appellation, without the use in any form of the title 'architect' or 'architects.'"

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1018 [20: 318]. "Building" defined—Drawings and specifications to be signed.

A building, for the purposes of this chapter, is any structure consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, with or without other parts or appurtenances. All drawings and specifications prepared for such structures, or enlargements or structural alterations to such structures, in accordance with this chapter, shall be signed by the architect responsible for their production. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 17; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

Act of 1950 added the last sentence.

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1019 [20: 319]. Registration without examination.

(a) Nothing in this chapter shall prevent any person who actually engaged in the practice of architecture under the title of architect prior to December 13, 1924, from continuing the practice of architecture without a certificate of registration if such person has filed with the Board of Examiners and Registrars of Architects an affidavit establishing to the satisfaction of said Board the fact that he or she was in practice as an architect in the District of Columbia on and prior to December 13, 1924: *Provided,* That registration shall not be granted under this subsection unless the application therefor is filed with the Board of Examiners and Registrars of Architects within one year after December 7, 1950.

(b) Any properly qualified person may be granted registration without examination who submits an affidavit establishing to the satisfaction of the Board of Examiners and Registrars of Architects that he or she was regularly engaged in the practice of architecture in the District of Columbia for five years immediately preceding December 7, 1950: *Provided,* That registration shall not be granted under this subsection unless the application therefor is filed with the Board of Examiners and Registrars of Architects within one year after December 7, 1950.

(c) Any properly qualified person who was on active duty in the Armed Forces of the United States at any time after October 16, 1940, may be granted registration without examination who submits an affidavit establishing to the satisfaction of the Board of Examiners and Registrars of Architects that prior to December 7, 1950 he or she was for an aggregate period of five years regularly engaged in the practice of architecture in the District of Columbia: *Provided,* That registration shall not be granted under this subsection unless the application therefor is filed with the Board of Examiners and Registrars of Architects within one year after December 7, 1950. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 19; May 29, 1928, 24 Stat. 950, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, §§ 3, 7, 8.)

AMENDMENTS

Act of 1950 amended the section generally. Section previously read:

"Any properly qualified person who shall have been actually engaged in the practice of architecture in the District of Columbia on December 13, 1924, may be granted a certificate of registration without examination on condition that the applicant shall submit satisfactory evidence to the said board that he is qualified to practice architecture and by payment to the board of the fee required for certificate of registration as prescribed in section 2–1023: *Provided,* That nothing in this chapter shall prevent any person who was actually engaged in the practice of architecture under the title of architect prior to December 13, 1924, from continuing the practice of said profession without a certificate of registration and without the use in any form of the title 'registered architect' upon filing the affidavit required by section 2–1016."

Act of December 13, 1924, in 43 Stat. 715, read as follows: "That any properly qualified person who shall have been actually engaged in the practice of architecture in the District of Columbia at the time this Act takes effect may be granted a certificate of registration without examination on condition that the applicant shall submit satisfactory evidence to the said board that he is qualified to practice architecture and by payment to the board of fee for certificate of registration as prescribed in section 24 of this Act: *Provided,* That nothing in this Act shall prevent any person who was actually engaged in the practice of architecture under the title of architect prior to the time this Act takes effect from continuing the practice of said profession without a certificate of registration and without the use in any form of the title 'registered architect'."

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1020 [20: 320]. Qualifications of applicants.

Any citizen of the United States or any person who has declared his (or her) intention of becoming a citizen, being at least twenty-one years of age, of good moral character, and who has had at least three years of practical architectural experience in offices engaged in the practice of architecture as defined by this chapter, may apply for registration or for such examination as shall be requisite for registration under this chapter. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 20; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

Act of 1950 raised minimum age of applicants from twenty to twenty-one years, and added further qualification of "at least three years of practical architectural experience in offices engaged in the practice of architecture as defined by this chapter."

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1021 [20: 321]. Examination of applicants—Registration in another jurisdiction.

The applicant shall satisfactorily pass an examination in such technical and professional subjects as

shall be prescribed by the said Board. The Board may in lieu of examination accept registration or certification as an architect in another State, Territory, or country where the qualifications prescribed at the time of such registration or certification were equal to those prescribed in the District of Columbia at the date of application; and where such State, Territory, or country accepts in like manner the registration of architects of the District of Columbia. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 21; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

Act of 1950 amended section generally. Section previously read:

"The applicant shall satisfactorily pass an examination in such technical and professional subjects as shall be prescribed by the Board of Examiners and Registrars of Architects. The Board may, in lieu of examination, accept satisfactory evidence of any one of the qualifications set forth under subdivisions (a) and (b) of this section.

"(a) A diploma of graduation or satisfactory certificate from an architectural college or school that he or she has completed a technical course approved by the board, together with and subsequent thereto of at least three (3) years satisfactory experience in the office or offices of a reputable architect or architects.

"The Board may require applicants under this subdivision to furnish satisfactory evidence of knowledge of professional practice.

"(b) Registration or certification as an architect in another state or country, where the qualifications prescribed at the time of such registration or certification were equal to those prescribed in this District at date of application, and where such state, territory, or foreign country accepts in like manner the registration of architects in the District of Columbia."

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1022 [20: 322]. Practical examination only required of those with ten years' experience.

An architect who has lawfully practiced architecture for a period of more than ten years outside of the District of Columbia shall, except as otherwise provided in section 2–1021, be required to take only a practical examination, the nature of which shall be prescribed by the Board of Examiners and Registrars of Architects. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 22; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

Act of 1950, cited to text, eliminated reference to "subdivision (b)" of § 2–1021.

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

COMPILER'S NOTE

Act of 1924 and act of 1928 are identical.

§ 2–1023 [20: 323]. Fees.

(a) The fees to be paid to the treasurer of the Board of Examiners and Registrars of Architects shall be fixed by said Board from time to time and shall not exceed in amount the several fees provided for in this section.

(b) The fee to be paid by an applicant for registration as an architect shall be $25.

(c) The fee to be paid by an applicant who has been granted a certificate of registration as an architect by the Board shall be not in excess of $12, such fee to be prorated on a monthly basis from time of granting of application to the 30th day of the following April.

(d) The fee to be paid upon renewal of a certificate of registration shall be not in excess of $15.

(e) The fee to be paid for the restoration of an expired certificate of registration shall be not in excess of $20. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 23; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

Act of 1950 inserted the paragraph designations and increased the fee now specified in paragraph (b) from $10 to $25.

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

CROSS REFERENCE

Refund of fees where license is refused, § 47–1018.

§ 2–1024 [20: 324]. Examination papers and other evidence of qualification to be filed with board—Record.

(a) All examination papers and other evidences of qualification submitted by each applicant shall be filed with the Board of Examiners and Registrars of Architects, and said Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration.

(b) The record shall also contain the name, known place of business and residence, and the date and number of the certificate of registration of every architect entitled to practice his profession in the District of Columbia. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 24; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7,1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

Act of 1950 inserted the paragraph designations and struck out the word "registered" preceding "architect" in paragraph (b).

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

COMPILER'S NOTE

Act of 1924 and act of 1928 are identical.

§ 2–1025 [20: 325]. Certificate—Annual renewal.

(a) Every architect registered in the District of Columbia shall annually, during the month of May, renew his certificate of registration and pay the renewal fee required by section 2–1023. It shall be unlawful for any architect who fails to renew his or her registration to continue the practice of architecture, subject to restoration upon paying the fee therefor prescribed in accordance with section 2–1023.

(b) A person who fails to renew his certificate of registration during the month of May in each year may not thereafter renew his certificate except upon payment of the fee required by section 2–1023 for the restoration of an expired certificate of registration.

(c) Every renewal certificate shall expire on the 30th day of April following the issuance. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 25; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

The amendatory act of Sept. 7, 1950, inserted the paragraph designations, and amended paragraph (a) by striking out "registered" before "architects"; by inserting "registered" after "architect"; and by substituting the present language of the second sentence in place of the following: "Any such architect who fails to pay the said renewal fee shall cease to be a registered architect, subject to restoration upon paying the fee therefor prescribed in accordance with section 2–1023."

The amendatory act of May 29, 1928, changed the section number referred to by the act of December 13, 1924, from § 24 to § 23 and added the second sentence to the first paragraph.

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1026 [20: 326]. Exemptions.

Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) Consultants, officers, and employees of the United States or of the District of Columbia Governments while engaged solely in the practice of architecture for said Governments.

(b) Landscape architects, landscape engineers, city and regional planners from the preparation of drawings for, and the supervision of, planting, grading, walks, paving, and such minor structural features as fences, steps, walls, pools, and garden structures, normally included as a part of their work, where such features could not constitute a possible menace to life, health, or public welfare.

(c) Professional structural engineers, heating engineers, plumbing engineers, air conditioning and ventilation engineers, electrical engineers, elevator engineers and civil engineers from performing architectural services which are purely incidental to their engineering practice. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 26; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

Act of 1950 amended the section generally. Section previously read:

"The following shall be exempted from the requirements of this chapter: (1) Any person practicing or desiring to practice architecture in the District of Columbia who shall have made application to the Board of Registration as an architect and who shall have paid the fee provided for in section 2–1023, such exemption to continue only until the board shall have denied such application; (2) any officer or employee of the United States or the District of Columbia practicing architecture in that capacity alone."

Section 26 of act of 1924 cited to text read as follows: "That the following shall be exempted from the provisions of this act:

"(1) Practice as an architect in the District of Columbia by any person not a resident of and having no established place of business in the District of Columbia, but whose arrival in the District of Columbia is recent: *Provided, however,* That such person shall have filed an application for registration as an architect and shall have paid the fee provided for in section 24 of this act. Such exemption shall continue for only such reasonable time as the Board requires in which to consider and grant or deny the said application for registration.

"(2) Engaging in architectural work as an employee of a registered architect, or as an employee of an architect, or an engineer authorized by paragraphs 1 and 2 of this section: *Provided,* That said work may not include responsible charge of design or supervision.

"(3) Practice of architecture by any person not a resident of and having no established place of business in the District of Columbia as a consulting associate of an architect registered under the provisions of this act: *Provided,* That the nonresident is qualified for such professional service in his own state or country.

"(4) Practice of architecture solely as an employee of the United States.

"(5) Practice of architecture solely as an officer or as an employee of the District of Columbia at the time this act becomes effective and thereafter only until the expiration of the then existing term of office of such employee."

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1027 [20: 327]. Revocation of certificate—Notice—Causes.

The Board of Examiners and Registrars of Architects may revoke any certificate after thirty days' notice with grant of hearings to the holder thereof if proof satisfactory to the board be presented in the following cases:

(a) In case it is shown that the certificate was obtained through fraud or misrepresentation.

(b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice.

(c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 27; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

Act of 1950 struck out paragraph (d) which provided: "In case a corporation holding a certificate of registration shall have as one of its executive officers or directors a person not a registered architect."

Act of 1928 added paragraph (d).

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

CROSS REFERENCE

Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, § 33–418.

§ 2–1028 [20: 328]. Procedure for revocation—Appeal.

The proceedings for the annulment of registration (that is, the revocation of a certificate) shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty calendar days in advance of such hearing, which shall be postponed if neces-

sary to give the requisite notice. Where personal service can not be made within the District of Columbia, service may be made by publication or personal service in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 13–108, 13–109, 13–111. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths. The Board shall make a written report of its findings, which report, with a transcript of the entire record of the proceedings shall be filed with the Commissioners of the District of Columbia, and, if the Board's finding shall be adverse to the accused, his or her certificate of registration shall stand revoked and annulled, at the expiration of thirty days from the filing of such report, unless within said period of thirty days a writ of error shall be issued as hereinafter provided, in which event said certificate shall stand suspended until the final determination of the Court of Appeals upon such writ of error. If an exception is taken to any ruling of the Board on matter of law, the exception shall be reduced to writing and stated in the bill of exceptions with so much of the evidence as may be material to the question or questions raised, and such bill of exceptions shall be settled by the board and signed by the secretary within such time as the rules of the Board may prescribe. Any party aggrieved by the decision of the said board may seek a review thereof in the United States Court of Appeals for the District of Columbia by petition under oath setting forth concisely but clearly and distinctly the nature of the proceeding before said Board, the trial and determination thereof, and the particular ruling upon matter of law to which exception has been taken, said petition to be presented to any justice of the Court of Appeals within thirty days after the filing of the report of said Board with the Commissioners, with such notice to the Board as may be required by the rules of the Court of Appeals. If the justices shall be of the opinion that the action of the Board ought to be reviewed, a writ of error shall be issued from the Court of Appeals, within such time as may be prescribed by that court, a transcript of the record in the case sought to be reviewed, and the Court of Appeals shall review said record and affirm, reverse, or modify the judgment in accordance with law. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 28; May 29, 1928, 45 Stat. 951, ch. 861.)

AMENDMENT

Act of 1924 reads as follows: "That proceedings for the annullment of registration (that is, the revocation of a certificate) shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects. A time and place for the hearing of the charges shall be fixed by the Board. Where personal service or services through counsel cannot be effected, service may be made by publication. At the hearing the accused shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths and the Board shall make a written report of its findings, which report shall be filed with the Commissioners of the District of Columbia, and which shall be conclusive."

§ 2–1029 [20: 329]. Attendance of witnesses and production of documents.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpœnas, and upon the failure of any person to attend as a witness when duly subpœnaed or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any justice of the District Court of the United States for the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpœna issued or to testify in a case pending before said court. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 29; May 29, 1928, 45 Stat. 952, ch. 861.)

COMPILER'S NOTE

The act of 1928 repealed § 29 of the act of 1924 and substituted in lieu thereof the above.

§ 2–1030 [20: 330]. Penalty for illegal practice or misuse of title.

Any person who shall practice or offer to practice architecture or who shall use the title "architect" or "registered architect" or any other words, letters, figures, or other device indicating or intending to imply that the person using the same is an architect, without having complied with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $200, or by imprisonment for not more than one year, or both, prosecution therefor to be made in the name of the District of Columbia by the corporation counsel. (Dec. 13, 1924, 43 Stat. 718, ch. 9, § 30; May 29, 1928, 45 Stat. 953, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

The only material change made by the amendatory act of Sept. 7, 1950, cited to text, was to insert the words "practice or offer to practice architecture or who shall" after the words "Any person who shall"; and the words "or other device" after the word "figures."

AMENDMENT

The only material change made by the amendatory act of May 29, 1928, cited to text, was to add the provision that "prosecution therefore to be made in the name of the District of Columbia by the corporation counsel."

EFFECTIVE DATE

Effective date of 1950 amendments, see note following § 2–1031.

§ 2–1031 [20: 331]. Construction—Validity of actions of Board prior to December 7, 1950—Short title.

Nothing contained in sections 2–1014, 2–1016 to 2–1030 shall be construed to affect the force and validity of any act of the Board of Examiners and Registrars of Architects performed prior to December 7, 1950. This chapter may be cited and known as

the Architects' Registration Act. (May 29, 1928, 45 Stat. 953, ch. 861, § 2; Sept. 7, 1950, 64 Stat. 784, ch. 908, §§ 5, 6.)

AMENDMENTS

Act of 1950 amended sections 31 and 32 of the act of 1924, as amended by the act of 1928, to read, respectively, as follows:

"Sec. 31. Saving Clause.—If any section or sections, clause or clauses, of this Act, or any regulations promulgated thereunder, be declared unconstitutional or invalid, that shall not invalidate any other sections or clauses of this Act, or any other regulations promulgated thereunder.

"Sec. 32. Repeal of Conflicting Legislation.—All laws or parts of laws and regulations promulgated thereunder in conflict with the provisions of this Act shall be, and the same are hereby, repealed."

EFFECTIVE DATE

The 1950 act, cited to text, amended sections 2–1010, 2–1014, 2–1016 to 2–1027, 2–1030, and 2–1031. Section 8 of the act approved Sept. 7, 1950, provided: "This Act shall take effect ninety days after its enactment."

Chapter 11.—BARBERS

Sec.

2–1101. Regulation of barbers—Short title.
2–1102. Definitions.
2–1103. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.
2–1104. Certificates of registration—Prerequisites.
2–1105. Registered apprentices—Prerequisites.
2–1106. Examinations.
2–1107. Exceptions to examination requirements.
2–1108. Certificates to be displayed.
2–1109. Renewal of certificates.
2–1110. Refusal to issue, renew, or restore certificate—Revocation—Appeal.
2–1111. Fees—Refunds.
2–1112. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.
2–1113. Requirements for certificate of registration of barber school or college.
2–1114. Unlawful practice—Penalty.
2–1115. Exemptions.
2–1116. Separability provisions.
2–1117. Repeal of inconsistent laws.
2–1118. Purpose of chapter.

§ 2–1101 [20: 447]. Regulation of barbers—Short title.

This chapter may be cited as the District of Columbia Barber Act. (June 7, 1938, 52 Stat. 620, ch. 322, § 1.)

§ 2–1102 [20: 447a]. Definitions.

When used in this chapter—

(a) The term "Board" means the Board of Barber Examiners for the District of Columbia.

(b) The term "certificate" means a certificate of registration issued by the Board.

(c) The term "Commissioners" means the Commissioners of the District of Columbia.

(d) The term "barber instructor" means the teaching of the barber profession as provided for in this chapter.

(e) The term "barbering" means any one of any combination of the following practices when done upon the head and neck for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally constitutes the practice of barbering within the meaning of this chapter.

To shave, trim the beard, cut or bob the hair of any person of either sex for compensation or other reward, received by the person performing such service or any other person, to give facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances; to singe, shampoo the hair, or apply hair tonics; or to apply cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck. (June 7, 1938, 52 Stat. 620, ch. 321, § 2.)

CROSS REFERENCES

Exempted from operation of law governing cosmetologists, § 2–1324.

Persons exempted from operation of the act, § 2–1115.

§ 2–1103 [20: 447b]. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.

There is hereby created a Board of Barber Examiners for the District of Columbia. The Board shall consist of three members, two of whom shall be practical barbers who have followed the practice of barbering in the District of Columbia for at least five years immediately prior to his appointment. One of said members shall be recommended by the Journeymen Barbers' Union, one of said members be recommended by the Associated Master Barbers of the District of Columbia. The members of the Board shall be appointed by the Commissioners of the District of Columbia, one for the term of one year, one for the term of two years, and one for the term of three years. Thereafter one member of said Board shall be appointed each year for the term of three years and shall hold office until his successor is appointed and qualified.

The Commissioners of the District of Columbia shall have the power to remove any member of said Board for incompetency, gross immorality, disability, for any abuse of his official power, or for other good cause, and shall fill any vacancy thus occasioned by appointment within thirty days after such vacancy occurs. Members appointed to fill vacancies caused by death, resignation, or removal shall serve only for the unexpired term of their predecessors. The Commissioners shall appoint a president, a vice-president, and a secretary-treasurer from the members of the Board.

The secretary of the Board shall keep a record of its proceedings, a register showing the name and business and residence addresses of persons to whom it has issued certificates, and the number and date of the certificate of each such person. Subject to the approval of the Commissioners, the Board shall adopt such rules and sanitary regulations as prescribed by the health department of the District of Columbia and as are necessary to carry out the provisions of this chapter. The Board shall report annually to the Commissioners all of its official acts during the preceding year and shall make such recommendations as it deems expedient. (June 7, 1938, 52 Stat. 620, ch. 322, § 3.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Health and sanitary regulations not affected, § 2–1117.

Rules and regulations in general, § 1–226 and notes.

§ 2–1104 [20: 447c]. Certificates of registration—Prerequisites.

The Board shall issue a certificate of registration as a registered barber to any person of good moral character and temperate habits who has practiced as a registered barber apprentice for two years under the immediate personal supervision of a registered barber, and who passes an examination, conducted by the Board to determine his fitness to practice barbering, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath. (June 7, 1938, 52 Stat. 621, ch. 322, § 4.)

§ 2–1105 [20: 447d]. Registered apprentices—Prerequisites.

The Board shall issue a certificate of registration as a registered barber apprentice to any person who is at least sixteen years of age and is of good moral character and temperate habits who passes an examination conducted by the Board to determine his fitness to practice as a barber apprentice, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath. (June 7, 1938, 52 Stat. 621, ch. 322, § 5.)

§ 2–1106 [20: 447e]. Examinations.

The Board shall conduct examinations of applicants for certificates of registration as registered barbers or registered barber apprentices on the third Tuesdays in January, April, July, and October, at such hours as the Board shall prescribe. Such examinations shall include both a practical demonstration and a written examination. (June 7, 1938, 52 Stat. 621, ch. 322, § 6.)

§ 2–1107 [20: 447f]. Exceptions to examination requirements.

Any person who has engaged in the practice of barbering in the District of Columbia for one year immediately preceding June 7, 1938 shall be granted a certificate as a registered barber without practical examination by making application, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath, and paying the required fee within ninety days of June 7, 1938; failing to do so, he must take an examination according to the law; and any other person engaged in the practice of barbering in the District of Columbia on June 7, 1938 shall be granted a certificate as a registered barber apprentice without examination by making application and paying the required fee, and the time spent engaged in the practice of barbering shall be credited to him as a part of the time required to be spent as a registered barber apprentice for the purpose of qualifying as a registered barber, but must be accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath. (June 7, 1938, 52 Stat. 621, ch. 322, § 7.)

§ 2–1108 [20: 447g]. Certificates to be displayed.

The certificate of a registered barber or a registered barber apprentice shall be displayed in a conspicuous place near the work chair of the holder when he is engaged in the practice of barbering. (June 7, 1938, 52 Stat. 622, ch. 322, § 8.)

§ 2–1109 [20: 447h]. Renewal of certificates.

Certificates issued by the Board shall be renewed annually upon application to the Board by the holder of the certificate. The Board shall renew or restore certificates which have expired upon application and payment of the required fee, accompanied by a health certificate annually, showing that applicant is free he is engaged in the practice of barbering. (June 7, 1938, 52 Stat. 622, ch. 322, § 9.)

§ 2–1110 [20: 447i]. Refusal to issue, renew, or restore certificate—Revocation—Appeal.

The Board may refuse to issue, renew, restore, or may revoke a certificate for habitual drunkenness or habitual addiction to the use of morphine, cocaine, or any other habit-forming drug or for the violation of any of the provisions of this chapter, but such action may be taken by the Board only after notice, and an opportunity for a full hearing is given to the person affected thereby.

An appeal may be taken from any action of the board to the District Court of the United States for the District of Columbia. The judgment of such court shall be final, subject to review by the United States Court of Appeals for the District of Columbia. (June 7, 1938, 52 Stat. 622, ch. 322, § 10.)

CROSS REFERENCE

Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, § 33–418.

§ 2–1111 [20: 447j]. Fees—Refunds.

All fees and charges payable under the provisions of this section shall be paid to the secretary-treasurer of the Board. The Board is hereby authorized to collect the following fees and charges and to refund any such fee or charge or portion thereof erroneously paid or collected under this section:

(a) For the examination of an applicant for a certificate as a registered barber, $20.

(b) For the issuance of a certificate as a registered barber, $5.

(c) For the issuance of a renewal of a certificate as a registered barber, $10.

(d) For the restoration of an expired certificate as a registered barber, $15.

(e) For the examination of an applicant for a certificate as a registered barber apprentice, $15.

(f) For the issuance of a certificate as a registered barber apprentice, $5.

(g) For the issuance of a renewal of a certificate as a registered barber apprentice, $5.

(h) For the restoration of an expired certificate as a registered barber apprentice, $10.

(i) For registration of a private barber school or college, $50.

(j) For annual renewal of registration of a private barber school or college, $25.

(k) All students in a private barber school or college shall register with the Board and shall pay a fee of $2 for a certificate of registration as a student.

(l) Any registered barber or apprentice whose certificate has been lost or destroyed shall, upon satisfying the Board of such loss or destruction and upon payment of a fee of $2, be given a duplicate certificate. (June 7, 1938, 52 Stat. 622, ch. 322, § 11; June 28, 1948, 62 Stat. 1067, ch. 692, § 1.)

AMENDMENTS

The act of June 28, 1948, established increased rates now shown by subsections (a), (c), (d), (e), and (h) and added new provisions covered by subsections (k) and (l).

EFFECTIVE DATE

Section 2 of act June 28, 1948, cited to text, provided: "This Act [section 2–1111] shall take effect thirty days after the date of its enactment."

CROSS REFERENCE

Refund of fees when license is refused, § 47–1018.

§ 2–1112 [20: 447k]. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.

The Commissioners are authorized and directed to provide suitable quarters for examinations and equipment to the Board and for the compensation of the members of the Board at the rate of $9 per day for the time actually and necessarily spent in their duties as such members and for the payment of expenses necessarily incurred by the Board in carrying out the provisions of this chapter and are also authorized and directed to appoint a clerk and three inspectors at such salary as the Commissioners may authorize to assist the Board in carrying out the provisions of this chapter; said inspectors shall be qualified barbers, each of whom shall have been engaged in the practice of barbering in the District of Columbia for a period of five years immediately prior to their appointment, and shall be appointed after a competitive examination held for said positions by the board officer of the District of Columbia: *Provided,* That payments under this section shall not exceed the amount received from the fees provided for in this chapter; and if at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided,* That no expense incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia. (June 7, 1938, 52 Stat. 622, ch. 322, § 12.)

§ 2–1113 [20: 447*l*]. Requirements for certificate of registration of barber school or college.

No barber school or college shall be granted a certificate of registration unless it shall attach to its staff, as a consultant, a person licensed by the District of Columbia to practice medicine, and employ and maintain a sufficient number of competent barber instructors registered as such, and shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum, shall keep a daily record of the attendance of each student, shall maintain regular class and instruction hours, shall establish grades and hold examinations before issuance of diplomas, and shall require a school term of training of not less than one thousand hours within a period of not more than eight hours a working day, two years as apprentice for a complete course of barbering, comprising all or a majority of the practices of cosmetology, as provided by this chapter, and to include sanitation, sterilization, and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to barbering or any practice thereof. In no case shall there be less than one registered barber instructor to every ten students. All barber school instructors must be qualified registered barbers, excepting licensed physicians. (June 7, 1938, 52 Stat. 622, ch. 322, § 13.)

§ 2–1114 [20: 447m]. Unlawful practice—Penalty.

(a) It shall be unlawful—

(1) To engage in the practice of barbering in the District of Columbia without a valid certificate as a registered barber, except that a registered barber apprentice may engage in the practice of barbering under the immediate personal supervision of a registered barber.

(2) To engage in the practice of barbering while knowingly afflicted with an infectious or communicable disease.

(3) To employ any person to engage in the practice of barbering except registered barbers and apprentices.

(4) To operate a barber shop unless it is at all times under the personal supervision of a registered barber.

(5) To obtain or attempt to obtain a certificate from the board for money other than the required fee, or for any other thing of value or by fraudulent misrepresentations. Certificates are not transferable to another person.

(6) After June 7, 1938 in the District of Columbia it shall be unlawful for a person to maintain seven days consecutively any establishment wherein the occupation or trade of barbering, hair dressing, or beauty culture is pursued. All such establishments shall be required to remain closed one day in every seven beginning at midnight or at sunset and no person shall maintain his establishment open to serve the public on the day he has selected it to be closed and has so registered the closing day at the health department.

(7) To own, manage, operate, or control any barber school or college, part or portion thereof, whether connected therewith or in a separate building, wherein the practice of barbering, as hereinbefore defined, is engaged in or carried on unless all entrances to the place wherein the practice of barbering is so engaged in or carried on shall display a sign indicating that the work therein is done by students exclusively.

(b) Any person violating any of the provisions of this chapter shall upon conviction be fined not less than $25. (June 7, 1938, 52 Stat. 623, ch. 322, § 14.)

COMPILER'S NOTE

Act of June 7, 1938, 52 Stat. 623, ch. 322, § 15 provided, "This subchapter shall take effect ninety days after the date of its enactment."

CROSS REFERENCE

Business license, §§ 47–2301 to 47–2350.

§ 2–1115 [20: 447*o*]. Exemptions.

The provisions of this chapter shall not be construed to apply to—

(a) Persons authorized by law of the District of Columbia to practice medicine and surgery, osteopathy, or chiropractic, or persons holding a drugless-practitioner certificate under the law of the District of Columbia;

(b) Commissioned medical or surgical officers of the United States Army, Navy, or Marine hospital service;

(c) Registered nurses;

(d) Persons employed in beauty parlors; however, the provisions of this section shall not be construed to authorize any of the persons exempted to shave or trim the beard, or cut the hair of any person for cosmetic purposes, except that person included in the subdivision (d) hereof shall be allowed to cut the hair; or

(e) Undertakers and embalmers.

(f) Persons engaged in the practice of physiotherapy or massaging, stimulating, or exercising of the head, neck, arms, bust, or upper part of the body, when done for purposes of health and hygiene. (June 7, 1938, 52 Stat. 623, ch. 322, § 16.)

COMPILER'S NOTE

Name of Marine Hospital Service changed to Public Health Service (U. S. C., title 42, § 1). This last-mentioned service was transferred from the Treasury Department to the Federal Security Agency by Reorganization Plan No. I, § 201. Under § 205 thereof the Surgeon General of the Public Health Service was to administer the Public Health Service under the supervision and direction of the Federal Security Administrator.

§ 2–1116 [20: 447p]. Separability provisions.

Each section, subsection, sentence, clause, and phrase of this chapter is declared to be an independent section, subsection, sentence, clause, and phrase; and the finding or holding of any section, subsection, sentence, phrase, or clause to be unconstitutional, void, or ineffective for any cause shall not affect any other section, subsection, sentence, or part thereof. (June 7, 1938, 52 Stat. 624, ch. 322, § 17.)

§ 2–1117 [20: 447q]. Repeal of inconsistent laws.

The Act of Congress of December 19, 1932 (47 Stat. 754, ch. 6), and all laws or portions of laws inconsistent with this chapter are hereby repealed: *Provided,* That nothing in this chapter contained shall be construed to limit or repeal any existing rules, regulations, or laws relating to health or sanitation. (June 7, 1938, 52 Stat. 624, ch. 322, § 18.)

STATUTORY REFERENCE

The act of 1932, referred to in text, was set forth in D. C. Code, Sup. IV, title 19, sec. 201.

§ 2–1118 [20: 447r]. Purpose of chapter.

The purpose of this chapter shall be to prevent the spreading of diseases and promote the general health of the public by promoting sanitary conditions in barber shops and barber schools or colleges in the practice of barbering. (June 7, 1938, 52 Stat. 624, ch. 322, § 19.)

Chapter 12.—BOXING COMMISSION

Sec.

2–1201—2–1209. Repealed.
2–1210. Abolition of Boxing Commission—Creation of District Boxing Commission—Composition—Eligibility requirements—Compensation and term of office—Removal—Annual report to Commissioners.
2–1211. Employment of secretary, clerical and administrative personnel, inspectors and physicians—Compensation—Payment of salaries and expenses from trust fund.
2–1212. Powers and duties—Supervision and regulation of professional boxing—Cooperation in promotion of amateur and collegiate boxing—Donation of equipment—Definitions.
2–1213. Permit—Duration, revocation—Examination of accounts and records.
2–1214. License—Duration, revocation.
2–1215. Conformity to rules governing contests.
2–1216. Fees for licenses and renewals and permits.
2–1217. Application for license—Fee payable in advance—Posting of bond—Recovery on bond.
2–1218. Advance notice to Commission of contests—Amount and payment of gate tax—Report to Commission—Contents of admission tickets.
2–1219. Covering of receipts into trust fund—Payment of salaries and expenses from fund—Limitation—Disposition of excess moneys—Advances for expenses and compensation.
2–1220. Quarterly audit of accounts.
2–1221. Administration of oaths—Examination of witnesses—Issuance of subpenas—False swearing and disobedience to subpena punishable.
2–1222. Personal liability of Boxing Commissioners.
2–1223. Penalties for violations.
2–1224. Prosecution on information.
2–1225. Definition of "person".
2–1226. Compensation of Commissioners not affected by other income.

§§ 2–1201 to 2–1209. Repealed. Dec. 20, 1944, 58 Stat. 826, ch. 612, § 17.

§§ 2–1201 to 2–1208, Act of Apr. 24, 1934, 48 Stat. 608, ch. 161, related to former Boxing Commission.

§ 2–1201 related to eligibility, appointment, term and service of members.

§ 2–1202 related to powers and duties.

§ 2–1203 related to permits for boxing exhibitions.

§ 2–1204 related to licenses.

§ 2–1205 related to regulations governing boxing exhibitions.

§ 2–1206 related to fees for permits and licenses.

§ 2–1207 related to penalties for violations.

§ 2–1208 related to definition of "person".

§ 2–1209, Act June 15, 1938, 52 Stat. 691, ch. 395, related to application of provisions to schools.

§ 2–1210. Abolition of Boxing Commission—Creation of District Boxing Commission—Composition—Eligibility requirements—Compensation and term of office—Removal—Annual report to Commissioners.

The Boxing Commission for the District of Columbia created by the Act of April 24, 1934 (48 Stat. 608), is hereby abolished and there is hereby created for the District of Columbia the District Boxing Commission, hereinafter referred to as the Commission, to be composed of three members (one of whom shall be a member of the Metropolitan Police Force of the District of Columbia) appointed by the Commissioners of the District of Columbia. No person

shall be eligible for appointment to membership on the Commission unless such person at the time of appointment is, and for at least three years prior thereto has been, a resident of the District of Columbia: *Provided,* That one member may, at the time of appointment, be a resident of the metropolitan area of the city of Washington, comprised within the areas of Maryland and Virginia adjacent to the District of Columbia. The Commission first taking office under the terms of this chapter shall be composed of the same members who immediately prior to December 20, 1944, constituted the Boxing Commission and who shall hold office as and constitute the Commission created by this chapter for the unexpired terms of their respective appointments as members of the Boxing Commission. A successor to a member of the Commission shall be appointed for a term of office expiring three years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Commissioners may remove any member for cause appointed pursuant to this chapter. The members of the Commission shall be paid compensation at the rate of $2,400 each per annum effective July 1, 1944. Section 58, title 5, United States Code, shall apply to members and employees of the Commission. The Commissioners of the District of Columbia shall furnish to the Commission such office space as may be necessary. The property, books, and records of the Boxing Commission shall be transferred to and become the property, books, and records of the Commission created by this chapter. The rules, regulations, and orders of the Boxing Commission not in conflict with this chapter heretofore promulgated shall remain in force and effect as the rules, regulations, and orders of the Commission, unless and until the same shall be repealed or modified in accordance with the provisions of this chapter. The Commission shall report annually to the Commissioners of the District of Columbia its official acts during the preceding year and shall make such recommendations as it deems expedient. (Dec. 20, 1944, 58 Stat. 823, ch. 612, § 1; Aug. 19, 1950, 64 Stat. 466, ch. 762, § 1.)

AMENDMENTS

The 1950 act added the proviso at the end of the second sentence.

REFERENCES IN TEXT

Act of April 24, 1934 (48 Stat. 608) referred to in text was formerly classified to §§ 2–1201 to 2–1208, and was repealed by section 17 of act of Dec. 20, 1944, cited to text.

§ 2–1211. Employment of secretary, clerical administrative personnel, inspectors and physicians—Compensation—Payment of salaries and expenses from trust fund.

Subject to the approval of the Commissioners of the District of Columbia, the Commission may appoint a secretary and may employ such clerical and administrative personnel, in accordance with rates fixed by the Classification Act of 1923, as amended [5 U. S. C. §§ 661–663, 664–673, and 674], and such inspectors, examining physicians, and other personnel, whose compensation shall be fixed by the Commission, as may be necessary to administer this chapter. Compensation of members of the Commission and its employees and all expenses of the Commission shall be paid from the trust fund created by section 2–1219. (Dec. 20, 1944, 58 Stat. 823, ch. 612, § 2.)

§ 2–1212. Powers and duties—Supervision and regulation of professional boxing—Cooperation in promotion of amateur and collegiate boxing—Donation of equipment—Definitions.

The Commission shall have power (1) to supervise and regulate boxing contests and training exhibitions in connection therewith, for prizes or purses, or where an admission fee is charged or received, within the District of Columbia; (2) subject to approval of the Commissioners of the District of Columbia, to make and amend such rules and regulations as may be necessary to carry out the purposes of this chapter; and (3) to cooperate with organizations engaged in the promotion and control of amateur and collegiate boxing. The said funds shall be available to pay for boxing equipment, such as gloves, head guards, mouthpieces, trunks, boxing shoes, boxing rings and mats therefor, timekeepers' bells and hammers, and trophies for members of organizations engaged in the promotion and control of amateur and collegiate boxing; and when deemed necessary by the Commission, it may furnish personnel to conduct instruction and boxing contests for such organizations, and pay for same from such funds. In the event that the authorities in charge shall notify the Commission that they do not desire its supervision, then the provisions of this chapter shall not apply in any way to any amateur boxing contest conducted by or participated in exclusively by any school, college, or university, as defined in this chapter, or by any association or organization composed exclusively of such schools, colleges, or universities when each contestant in any such contest is a student regularly enrolled for not less than one-half time in a school, college, or university as herein defined. As used in this chapter, "school, college, or university" includes every school, college, or university supported in whole or in part from public funds and every other school, college, or university supported in whole or in part by a religious, charitable, scientific, literary, educational or fraternal organization which is not operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. (Dec. 20, 1944, 58 Stat. 823, ch. 612, § 3.)

§ 2–1213. Permit—Duration, revocation—Examination of accounts and records.

No person shall hold or conduct a boxing contest or training exhibition in connection therewith in the District of Columbia without a permit from the Commission. Each such permit shall be limited to a period of one day, except that in case of any interscholastic or intercollegiate meet a permit may be issued for the duration of such meet, and for training exhibitions in connection with boxing contests where an admission fee is charged or received, a permit may be issued for the duration of the training

period. No permit as described in this section shall be issued to any person unless such person agrees to accord to the Commission the right to examine the books of accounts and other records of such person relating to the boxing contest or exhibition for which such permit is issued, and such permit shall so state on its face. A permit may be revoked at any time in the discretion of the Commission. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 4.)

§ 2–1214. License—Duration, revocation.

No person shall participate as contestant, second, manager or professional contestant, matchmaker, promoter, referee, judge, timekeeper, or announcer, in any boxing contest, or training exhibition in connection therewith, in the District of Columbia without a license from the Commission. Such license shall entitle the licensee to participate or engage in boxing contests, or training exhibitions in connection therewith, in the District of Columbia in the capacity named in the license for the period specified therein, and the Commission may suspend or revoke any such license at any time for violation by the licensee of any order, rule, or regulation of the Commission, or for other cause. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 5.)

§ 2–1215. Conformity to rules governing contests.

Any permit or license issued by the Commission shall not be valid for the purpose of holding or engaging in any boxing contest, or training exhibition in connection therewith, which does not conform to the rules established by the Commission. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 6.)

§ 2–1216. Fees for licenses and renewals and permits.

The Commission is authorized to issue licenses and renewals thereof and permits, and to fix and collect fees therefor, as follows:

For professional contestants and seconds, not to exceed $5 per annum.

For managers of professional contestants, not to exceed $15 per annum.

For promoters, not to exceed $25 per annum, and, in addition, not to exceed $10 for each show.

For amateur contestants, not to exceed $1 per annum.

For referees, not to exceed $10 per annum, and for such other occupations as the Commission may by regulation prescribe, not to exceed $10 per annum. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 7.)

§ 2–1217. Application for license—Fee payable in advance—Posting of bond—Recovery on bond.

Applications for licenses shall be accompanied by the required license fee, payable in advance, and shall be made on such forms and contain such information as may be required by the Commission. Licenses shall expire one year from date of issue unless sooner revoked and may be renewed annually. Before a license shall be granted to a promoter, he shall execute and file with the Commission a bond in the sum of $2,000 or 10 per centum of the estimated receipts, whichever is the larger, to be approved as to form and sufficiency of sureties by the Commissioners of the District of Columbia, or by such official as they may designate, or in lieu thereof cash or certified check in equal amount, conditioned for the faithful performance by said promoter of the provisions of this chapter and the rules and regulations promulgated thereunder, the fulfillment of his contracts with contestants or their managers, and the payment of license and permit fees and taxes on gross receipts. In case of default in such performance, recovery may be had on such bond in the same manner as other penalties are recovered by law. (Dec. 20, 1944, 58 Stat. 825, ch. 612, § 8.)

§ 2–1218. Advance notice to Commission of contests—Amount and payment of gate tax—Report to Commission—Contents of admission tickets.

Every person holding or conducting any boxing contest, for which an admission fee is charged or received, shall notify the Commission not less than five days in advance of the holding of such contest, and after the holding of such contest shall pay forthwith to the Commission a sum, hereby designated as a "gate tax", which shall be an amount equal to 10 per centum of the gross receipts, exclusive of any Federal taxes thereon. Payments of money required by this section shall be accompanied by reports in such form as shall be prescribed by the Commission. All tickets of admission to any such boxing contest shall bear clearly upon the face thereof the purchase price of same. (Dec. 20, 1944, 58 Stat. 825, ch. 612, § 9.)

§ 2–1219. Covering of receipts into trust fund—Payment of salaries and expenses from fund—Limitation—Disposition of excess moneys—Advances for expenses and compensation.

All funds, whether in cash or other form derived from license fees, permit fees, taxes on gross receipts, penalties, and receipts of whatever nature collected or due under the Act of April 24, 1934, remaining unexpended or unobligated on December 20, 1944, or provided for by this chapter shall be paid to the Collector of Taxes of the District of Columbia and deposited into the Treasury of the United States to the credit of the account "Miscellaneous trust-fund deposits, District of Columbia Boxing Commission", and shall be disbursed in the same manner as other trust funds are disbursed by the District of Columbia. The said trust fund shall be available to pay compensation of members and employees of the Commission and reasonable and necessary expenses, including office supplies, furniture and fixtures, postage, official badges, ring equipment, trophies, and actual and necessary traveling expenses of members of the Commission or employees thereof incurred in the performance of their official duties. The said fund shall not be available to pay compensation to members of the Commission unless the same is sufficient to pay the secretary and other employees of the Commission their accrued compensation. If, on the last day of any fiscal year—that is to say, June 30—after the payment, or provision made for payment, of all lawful obligations and of all then accrued compensation of members and employees of the Commission, the said trust fund shall exceed the sum of $15,000, such excess shall be deposited to the credit of the District of

Columbia as miscellaneous revenues. The disbursing officer of the District of Columbia is authorized to advance to the Commission, upon requisitions previously approved by the auditor of the District of Columbia, sums of money not to exceed $500 at any one time, to be used for office and sundry expenses of the Commission and for payment of compensation of inspectors, referees, judges, timekeepers, and examining physicians. (Dec. 20, 1944, 58 Stat. 825, ch. 612, § 10.)

REFERENCES IN TEXT

Act of April 24, 1934, referred to in text was formerly classified to §§ 2–1201 to 2–1208, and was repealed by section 17 of Act of Dec. 20, 1944, cited to text.

§ 2–1220. Quarterly audit of accounts.

It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Commission quarterly and make reports thereof to the Commissioners of the District of Columbia. The auditor shall have free access to all books of accounts, records, and papers of the said Commission. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 11.)

§ 2–1221. Administration of oaths—Examination of witnesses—Issuance of subpenas—False swearing and disobedience to subpena punishable.

Each member of the Commission shall have the power to administer oaths and affirmations and examine witnesses concerning any matters within the jurisdiction of the Commission. The Commission shall be vested with the same powers to issue subpenas as to matters within its jurisdiction as are vested in trial boards of the Metropolitan Police and Fire Departments; false swearing on the part of any witness before said Commission shall be punishable in the same manner as false swearing before said trial boards, and obedience to any subpena issued by the Commission may be compelled in the same manner as obedience is compelled to subpenas issued by said trial boards, as set forth in sections 4–601 to 4–604. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 12.)

§ 2–1222. Personal liability of Boxing Commissioners.

The members of the Boxing Commission of the District of Columbia shall not be personally liable in damages or for court costs for any official action of the said Commission performed in good faith in which the said members participate. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 13.)

§ 2–1223. Penalties for violations.

Any person who (1) holds any boxing contest in the District of Columbia without a permit valid and effective at the time, or (2) engages or participates in any boxing contest in the District of Columbia without a license valid and effective at the time, or (3) violates any lawful order, rule, or regulation of the Commission shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 14.)

§ 2–1224. Prosecution on information.

Prosecutions for violations of the provisions of this chapter, or of any rule or regulation made under the authority thereof, shall be on information in the municipal court for the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 15.)

§ 2–1225. Definition of "person".

The term "person", as used in this chapter, includes individuals, partnerships, corporations, and associations. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 16.)

§ 2–1226. Compensation of Commissioners not affected by other income.

Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of the Commission may receive the compensation authorized by this chapter to be paid to such member, as well as any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia governments. (Aug. 19, 1950, 64 Stat. 466, ch. 762, § 2.)

Chapter 13.—COSMETOLOGISTS

Sec.

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§ 2–1301 [20: 445]. Examination and licensing of those engaged in cosmetology—Definitions.

The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) The word "cosmetology," as used in this chapter, shall be defined and construed to mean any one or any combination of practices generally

and usually, heretofore and hereafter, performed by, and known as the occupation of, beauty culturists, or cosmeticians, or cosmetologists, or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of said sections and in and upon whatever place or premises; and in particular "cosmetology" shall be defined and shall include, but otherwise not be limited thereby, the following or any one or a combination of practices, to wit: Arranging, dressing, styling, curling, waving, cleansing, cutting, removing, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means, and with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, massaging, cleansing, stimulating, exercising, beautifying, or similar work, the scalp, face, neck, arms, bust, or upper part of the body, or manicuring the nails of any person, exclusive of such of the foregoing practices as come within the scope of sections 2–101 to 2–140 in force in the District of Columbia at the time of the passage of said sections.

(b) Any place or premises, or part thereof, wherein or whereupon cosmetology or any of its practices are followed or taught, or any person therein or thereabouts practicing cosmetology, whether such place is known or designated as a cosmetician, cosmetological or beauty shop, establishment, or school or whether the person is known or holds him or herself out as a cosmetician, cosmetologist, or beauty culturist, or by any other name or designation indicating that cosmetology is practiced or taught, shall be subject to the provision and within the meaning of said sections. For the purpose of said sections such place shall hereinafter be considered and referred to as a beauty shop or school of cosmetology, as the case may be, and the person practicing cosmetology therein, as a cosmetologist: *Provided, however,* That any appropriate name herein mentioned may be used, but shall be displayed upon or over the entrance door or doors of such place designating it as a beauty shop or school of cosmetology within the meaning of said sections.

(c) A person who is engaged in learning or acquiring any or all practices of cosmetology, and while so learning, performs or assists in any of the practices of cosmetology, under the immediate supervision of a registered or licensed practitioner or instructor of cosmetology, shall be known as an apprentice or student of cosmetology and hereinafter referred to as a student.

(d) Any person, not an apprentice or a student, following or practicing cosmetology, not owning or managing a beauty shop or school of cosmetology, shall be known as an operator cosmetologist and hereinafter referred to as an operator.

(e) Any person, being an operator, and managing, conducting, or owning a beauty shop or school of cosmetology, shall be known as a manager or managing cosmetologist and hereinafter referred to as a manager.

(f) Any person being an operator and teaching cosmetology or any practices thereof in a school of cosmetology shall be known as an instructor of cosmetology and hereinafter referred to as an instructor.

(g) Any person who engages only in the practice of manicuring the nails of any person shall be known as and hereinafter referred to as a manicurist.

(h) The agent or employee of any manufacturer of beauty shop and cosmetological products and equipment employed by the said manufacturer for the purpose of conducting sales demonstrations, lectures, or expositions shall be known as a demonstrator and hereinafter referred to as such.

(i) Whenever the word "board" shall appear or be used, it shall mean and refer to the Board of Cosmetology as hereinafter provided. (June 7, 1938, 52 Stat. 611, ch. 321, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

Exempted from operation of law regulating barbers, § 2–1115.

General penalties, § 2–1326.

Persons exempted from operation of the act, § 2–1324.

§ 2–1302 [20: 445a]. Board of Cosmetology—Qualifications—Tenure—Removal—Officers—Compensation, bond—Meetings—Quorum—Records.

(a) There is hereby created the District of Columbia Board of Cosmetology, consisting of three members to be appointed by the Commissioners of the District of Columbia within thirty days after this chapter becomes effective. Each member of the Board shall be at least twenty-five years of age, shall have had at least five years' practical experience in the practices of cosmetology, shall be a citizen of the United States, and a resident of the District of Columbia. No member of the Board shall be a member of nor affiliated with any school of cosmetology while in office, nor shall any two members of said board be graduates of the same school.

(b) Each member of the board shall serve a term of three years, and until his or her successor is appointed and qualified, except in the case of the first board whose members shall serve one, two, and three years, respectively. The members of the Board shall take the oath provided for public officers. Vacancies shall be filled by the Commissioners of the District of Columbia for the unexpired portion of the term of a member caused by death, resignation, or otherwise. The said Commissioners are hereby empowered to remove, after full hearing, any member of the board for neglect of duty or any other just cause.

(c) The members of the Board shall, annually, elect from among their number a president and also a treasurer, and shall annually appoint a secretary, who shall not be a member of the Board. The compensation of the secretary, to be fixed by the Board, shall not exceed the sum of $3,000 per year, and shall be paid out of the funds received by it, and no part of such compensation shall be paid otherwise by the District of Columbia. Said Board shall have a common seal, and the said treasurer shall give such bond for the faithful performance of his duties as the Commissioners of the District of Co-

lumbia may deem necessary. Two members of the Board shall constitute a quorum.

(d) The Board shall meet in the District of Columbia not less than four times during the year and at such other times as the Board may deem advisable.

(e) The Board shall keep a record of its proceedings. It shall keep a register of applicants for certificates or licenses showing the name of the applicant, the name and location of his place of occupation or business, and whether the applicant was granted or refused a certificate or license. The books and records of the Board shall be prima-facie evidence of matters therein contained, shall constitute public records, and shall at all reasonable times be open for public inspection. (June 7, 1938, 52 Stat. 612, ch. 321, § 2.)

Cross Reference

Hearings by single member, § 2–1322.

§ 2–1303 [20: 445b]. Regulations by the board.

The Board is hereby empowered to make and enforce such rules and regulations, subject to the approval of the Commissioners of the District of Columbia, as it deems necessary to carry out the provisions of this chapter. (June 7, 1938, 52 Stat. 613, ch. 321, § 3.)

Cross References

Rules and regulations in general, § 1–226 and note.
Sanitary regulations by Health Department, § 2–1321.

§ 2–1304 [20: 445c]. Powers and duties of the board—Suspension, revocation of license—Procedure.

The Board shall have the power to refuse, revoke, or suspend licenses or certificates, after full hearing, on proof of violation of any provisions of this chapter or the rules and regulations established by the Board under this chapter, and shall have the power to require the production of such books, records, and papers as it may desire. Before any certificate shall be suspended or revoked for any of the reasons contained in this section, the holder thereof shall have notice, in writing, of the charge or charges against him or her, and shall, at a day specified in said notice, which shall be at least five days after the service thereof, be given a public hearing with a full opportunity to produce testimony in his or her behalf. Any person whose certificate of registration has been so suspended or revoked may, after the expiration of ninety days, on application to the Board have the same reissued to him or her upon satisfactory proof that the disqualification has ceased. (June 7, 1938, 52 Stat. 613, ch. 321, § 4.)

Cross References

General penalties, § 2–1326.
Hearings by single member, § 2–1322.
Suspension or revocation of licenses for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–1305 [20: 445d]. Appeal from action of the board.

An appeal may be taken from any action of the Board to the Commissioners of the District of Columbia and the decision of the said Commissioners shall be final. (June 7, 1938, 52 Stat. 613, ch. 321, § 5.)

§ 2–1306 [20: 445e]. Practice of cosmetology without registration prohibited.

It shall be unlawful for any person in the District of Columbia to practice or teach cosmetology or manage a beauty shop, or to use or maintain any place for the practice or teaching of cosmetology for compensation, unless he or she shall have first obtained from the Board a certificate of registration as provided in this chapter. Nothing contained in this chapter, however, shall apply to or affect any person who is now actually engaged in any such occupation, except as hereinafter provided. (June 7, 1938, 52 Stat. 613, ch. 321, § 6.)

Cross References

General penalties, § 2–1326.
Persons exempted from operation of act, § 2–1324.

§ 2–1307 [20: 445f]. Requirements to practice.

Before any person may practice or teach cosmetology or manage a beauty shop, such person shall file with the Board a written application for registration, accompanied by a health certificate issued by a registered licensed physician of the District of Columbia, under oath, on a form which shall be prescribed and supplied by the Board, and such applicant shall submit satisfactory proof of the required age, educational qualifications, and be of good moral character, shall deposit with the said Board the registration fee, and pass an examination as to fitness to practice or teach cosmetology or manage a beauty shop, as hereinafter provided in this chapter. (June 7, 1938, 52 Stat. 614, ch. 321, § 7.)

§ 2–1308 [20: 445g]. Eligibility requirements for examination—Permit on proof of service.

No person shall be permitted by the Board to take an examination to receive a certificate as an operator unless such person shall be at least sixteen years of age, of good moral character, has received an education equivalent to the completion of the eighth grade of elementary school, and either has been registered as a student and has had training, as hereinafter provided in this chapter, in a school of cosmetology duly registered by the Board or has been registered and served as an apprentice at least eight months as hereinafter provided in this chapter: *Provided, however,* That the Board may permit a person to take an examination without the prior studentship or apprenticeship herein required if such person shall establish, to the satisfaction of the Board, that he or she has been an operator in the active practice of cosmetology for at least twenty-four months within the five years next preceding the effective date of this chapter. No person shall be permitted to take an examination for a certificate to teach cosmetology or act as manager of a beauty shop unless such person shall be at least eighteen years of age, of good moral character, has received an education equivalent to the completion of the eighth grade of elementary school, and either has had at least three years' experience as an operator in a beauty shop or has served as such operator in a registered beauty shop for a period of not less than six

months and shall have a training in a registered school of cosmetology of not less than two thousand hours, including the hours of study necessary to become an operator. The sufficiency of the qualifications of applicants for admission to the examination or for registration shall be determined by the Board, but the Board may delegate the authority to determine the sufficiency of such requirements to the secretary of the board, subject to such provisions as the Board shall make for appeal to the Board. (June 7, 1938, 52 Stat. 614, ch. 321, § 8.)

§ 2–1309 [20: 445h]. Limited certificates.

A limited certificate of registration to manicure the nails only may be applied for and granted under all of the terms and conditions of this chapter except that the examination therefor may be limited to such practice only and the required schooling shall be not less than one hundred hours. A limited certificate of registration for any one or a combination of practices as license is applied for may be granted under all of the terms and conditions of this chapter, except that the examination therefor shall be limited to the subjects in question, and a proportionate number of hours of training as determined by the Board shall be required. (June 7, 1938, 52 Stat. 614, ch. 321, § 9.)

§ 2–1310 [20: 445i]. Requirements of a school of cosmetology.

No school of cosmetology shall be granted a certificate of registration unless it shall attach to its staff as a consultant a person licensed by the District of Columbia to practice medicine and surgery or osteopathy and surgery and employ and maintain a sufficient number of competent instructors, registered as such, and shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum which shall be as prescribed by the Board; shall keep a daily record of the attendance of each student, maintain regular class and instruction hours, establish grades, and hold examinations before issuance of diplomas; and shall require a school term of training of not less than one thousand five hundred hours within a period of not less than eight months for a complete course comprising all or the majority of the practices of cosmetology as provided in this chapter; and to include practical demonstrations and theoretical studies and study in sanitation, sterilization, and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology or any practice thereof, as provided in this chapter. In no case shall there be less than one instructor to each twenty-five pupils. Any person, firm, or corporation teaching any or all practices of cosmetology shall be required to comply with all provisions applying to schools of cosmetology within the meaning of this chapter. (June 7, 1938, 52 Stat. 614, ch. 321, § 10.)

CROSS REFERENCE

General penalties, § 2–1326.

§ 2–1311 [20: 445j]. Student practice upon the public for pay prohibited.

It shall be unlawful for any school of cosmetology to permit its students to practice cosmetology upon the public under any circumstances except by way of clinical work upon persons willing to submit themselves to such practice after having first been properly informed that operator is a student. No school of cosmetology shall, directly or indirectly, charge any money whatsoever for treatment by its students or for materials used in such treatment, until such student shall have at least five hundred hours of training. (June 7, 1938, 52 Stat. 615, ch. 321, § 11.)

CROSS REFERENCE

General penalties, § 2–1326.

§ 2–1312 [20: 445k]. Practice in beauty shops only.

It shall be unlawful for any person to practice cosmetology for pay in any place other than a registered beauty shop: *Provided,* That a registered operator may in an emergency furnish cosmetological treatments to persons in the permanent or temporary residences of such persons by appointment. Every beauty shop shall have a manager, who shall have immediate charge and supervision over the operators practicing cosmetology. (June 7, 1938, 52 Stat. 615, ch. 321, § 12.)

CROSS REFERENCE

General penalties, § 2–1326.

§ 2–1313 [20: 445*l*]. Exceptions to examination requirements—Health certificate—Temporary permits.

The Board may issue the certificate of registration required by this chapter without an examination or compliance with the other requirements as to age or education to any person who has practiced or taught cosmetology or acted as a manager of a beauty shop or school of cosmetology in the District of Columbia for at least six months immediately prior to the passage of this chapter: *Provided,* That such person shall make application to the board for a certificate of registration within ninety days after June 7, 1938. Such application shall be accompanied by an affidavit of a registered licensed physician that the applicant was examined and is free from all contagious and infectious diseases and the registration fee required by this chapter. Any person studying cosmetology in a school of cosmetology or as an apprentice in a beauty shop in the District of Columbia at any time this chapter goes into effect shall receive credit for such time and studies without complying with the requirements of this chapter as to age and preliminary education: *Provided,* That such person shall make application to the Board for registration as a student or apprentice within three months after this chapter goes into effect. Students, upon graduating from registered schools of cosmetology, may apply for and receive from the board a temporary permit to practice as an operator until the next regular examination held by the board under the provisions of this chapter. (June 7, 1938, 52 Stat. 615, ch. 321, § 13.)

§ 2–1314 [20: 445m]. Apprentices in beauty shops.

Any cosmetologist who is a beauty-shop owner and who is a holder of a teacher's certificate may instruct apprentices: *Provided,* That there shall be no less than three licensed operators for each apprentice in any shop and there shall be no more than two apprentices in any shop and provided such shop is not held out as a school of cosmetology. Such apprentices may apply for examination at the end of their apprenticeship at the next regular examination held by the Board and, if successful therein, shall be registered as operators. Registered apprentices, upon completion of their required term of apprenticeship, may apply for and receive from the board a temporary permit to practice as an operator until the next regular examination. (June 7, 1938, 52 Stat. 616, ch. 321, § 14.)

§ 2–1315 [20: 445n]. Demonstrators.

The agents or employees of manufacturers of beauty-shop and cosmetological products and equipment employed by the said manufacturers for the purpose of conducting sales demonstrations, lectures, or expositions shall be required to register with the Board within three days after such employment. The Board shall issue permits to such agents or employees for the purpose of permitting such persons to conduct sales demonstrations, lectures, and expositions of beauty-shop and cosmetological products and equipment upon the payment of the required fee: *Provided, however,* That no charge of any kind, whether for materials used or services rendered, shall be made by the manufacturer, his agent or employee, for said services rendered or said materials used in connection with or incidental to the conduct of such sales demonstration, lecture, or exposition. In the event of the termination of the employment of such agent or employee referred to in this section, the said employer herein referred to shall immediately report such fact to the Board, and the permit of such person shall thereupon be canceled and voided. No person canvassing the residents of the District of Columbia, in connection with the advertisement or sale or both of cosmetological products or equipment, shall be permitted to give practical demonstration of such products or equipment unless each such person or his agent shall first have procured from the Board a certificate of registration and a license so to demonstrate upon the payment of the required fee as hereinafter provided. (June 7, 1938, 52 Stat. 616, ch. 321, § 15.)

§ 2–1316 [20: 445o]. Reciprocity.

The Board may dispense with examinations of applicants as provided in this chapter and may grant a certificate of registration as provided in this chapter in all cases where such applicants have complied with the requirements of another state, territory or foreign country, state, or province, wherein the requirements for registration are substantially equal to those in force in the District of Columbia at the time of filing application for such certificate, or upon due proof that such applicant has continuously engaged in the practices or occupation for which a license is applied for at least five years immediately prior to such application and upon the payment of the required fee. (June 7, 1938, 52 Stat. 616, ch. 321, § 16.)

§ 2–1317 [20: 445p]. Certificates or licenses—Requirements—Display.

If an applicant for examination to practice cosmetology passes such examination to the satisfaction of the Board, and has paid the required fee, and otherwise complies with the requirements provided in this chapter, or an applicant otherwise for registration, has paid the required fee and complies with the requirements for registration as provided in this chapter, the Board shall issue a certificate or license, as the case may be, to that effect, signed by the president and secretary of the Board and attested by its seal. Such certificate or license shall be evidence that the person to whom it is issued is entitled to follow the practices, occupation, or occupations as an operator, manager, or instructor, or own and maintain a beauty shop or school of cosmetology as stipulated therein and as prescribed in this chapter. Such certificate or license shall be conspicuously displayed in his or her principal office, place of business, or employment. (June 7, 1938, 52 Stat. 617, ch. 321, § 17.)

CROSS REFERENCE

Business license, § 47–2301 to § 47–2350.

§ 2–1318 [20: 445q]. Examinations.

The examination of applicants for a license to practice under this chapter shall be conducted under the rules prescribed by the Board, and shall include both practical demonstrations and written or oral tests in reference to the practices for which a license is applied for and such related studies or subjects as the Board may determine necessary for the proper and efficient performance of such practices; and shall not be confined to any specific system or method; and such examination shall be consistent with a prescribed curriculum for a beauty school or school of cosmetology and the practical and theoretical requirements of the occupation of cosmetology as provided by this chapter. The Board shall hold public examinations on the second Tuesdays in January, April, July, and October in the District of Columbia, at such hours as the Board shall prescribe. The Commissioners of the District of Columbia are hereby authorized and directed to provide suitable quarters for such examinations. (June 7, 1938, 52 Stat. 617, ch. 321, § 18.)

§ 2–1319 [20: 445r]. Fees—Disposition of surplus.

The initial registration fee for the issuance of a license, with or without examination, shall be as follows: $10.00 for owners, managers, and instructors; $5.00 for operators; $3.00 for manicurists; and $100.00 for schools of cosmetology. Annual renewal fees shall be $5.00 for owners, managers, and instructors; $3.00 for operators; $2.00 for manicurists; and $50.00 for schools of cosmetology. The fee for a temporary certificate for a student or an apprentice shall be $2.00. For the issuance of a certificate to a sales demonstrator or lecturer or to an itinerant

demonstrator, canvassing the residents of the District of Columbia, the fee shall be $5.00. For the issuance of a certificate without examination to operators or instructors licensed in jurisdictions meeting the requirements of the District of Columbia, or to those who furnish satisfactory proof that they have been engaged elsewhere in the occupation of cosmetology for a period of five years, the initial fee for a certificate of registration shall be $15.00. On failure to pass an examination the fees shall not be returned to the applicant but within the year after such failure he or she may present himself or herself and be again examined without the payment of an additional fee. Out of the fees paid the Board there shall be defrayed all expenses incurred in carrying out the provisions of this chapter, together with a fee of $10.00 per day for each member of the Board and the actual and necessary expenses incurred for each day he may be actually engaged upon business pertaining to his official duties as such Board member: *Provided,* That such expenses shall in no event exceed the total of receipts: *Provided further,* That at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the treasury of the United States to the credit of the District of Columbia. (June 7, 1938, 52 Stat. 617, ch. 321, § 19.)

CROSS REFERENCE

Refund of fees when license is refused, § 47–1018.

§ 2–1320 [20: 445s]. Persons called to aid of board—Qualifications—Compensation—Expenses.

The Board may call to its aid any person or persons of established reputation and known ability in the practices as provided in this chapter for the purpose of conducting examinations, inspections, and investigations of any or all persons, firms, or corporations affected by this chapter. Such aid or aids shall not be connected with any school teaching cosmetology. Any person called by the Board to its aid as provided herein shall receive for his or her services not more than $10.00 for each day employed in the actual discharge of his or her official duties, and his or her actual and necessary expenses incurred, to be paid in the same manner as herein provided for the payment of compensation and expenses of members of the Board. (June 7, 1938, 52 Stat. 618, ch. 321, § 20.)

§ 2–1321 [20: 445t]. Sanitary rules.

The sanitary regulations for the control of beauty shops and manicuring establishments in the District of Columbia shall be such as are now in force or which may from time to time be promulgated by the Health Department of the District of Columbia, which said department shall have full and complete charge of the enforcement of said sanitary regulations. It shall be unlawful for the owner or manager of any beauty shop or school of cosmetology to permit any person to sleep in or use for residential purposes any room used wholly or in part as a beauty shop or school of cosmetology. It shall be unlawful for any person, firm, or corporation to practice cosmetology except in a bona-fide established beauty shop or school of cosmetology, wherein the requirements of the Board as to proper, sanitary, and exclusive practices of cosmetology are complied with: *Provided, however,* That a person may practice outside of such establishment under the direction and control of an owner or manager thereof under such regulations as the Board may provide: *Provided further,* That nothing in this chapter contained shall be construed to limit or repeal any existing rules, regulations, or laws relating to health or sanitation. (June 7, 1938, 52 Stat. 618, ch. 321, § 21.)

CROSS REFERENCE

Rules and regulations by cosmetology board, § 2–1303.

§ 2–1322 [20: 445u]. Hearing may be held by any member.

Any investigation, inquiry, or hearing which the Board is empowered by law to hold or undertake may be held or undertaken by or before any member or members of said Board and shall be deemed to be the finding or order of said Board when approved and confirmed by it. (June 7, 1938, 52 Stat. 618, ch. 321, § 22.)

§ 2–1323 [20: 445v]. Temporary licenses.

The Board may issue a temporary license to any person who otherwise is subject to examination, as provided in this chapter, upon documentary or other satisfactory evidence that the applicant therefor has the necessary qualifications to practice any one or any combination of practices of cosmetology for which a temporary license is applied for: *Provided, however,* That such application for a temporary license is accompanied by an application for an examination as provided in this chapter and the necessary fee therefor and a fee of $2.00 for such temporary license. Such temporary license shall remain in force until the next regular meeting of the Board at which examinations are held and no longer. Two such temporary licenses may not be issued to the same person. Each temporary license shall state the date of expiration and the temporary license shall after such date be void and of no effect. (June 7, 1938, 52 Stat. 618, ch. 321, § 23.)

§ 2–1324 [20: 445w]. Exemptions from provisions.

Nothing in this chapter shall prohibit service in case of emergency, or domestic administration, without compensation, nor services by persons authorized under the laws of the District of Columbia to practice medicine, surgery, dentistry, chiropody, osteopathy, or chiropractic, nor services by barbers, insofar as their usual and ordinary vocation and profession is concerned, when engaged in any of the following practices, namely: Arranging, cleansing, cutting, or singeing the hair of any person; nor in massaging, cleansing, stimulating, exercising, or similar work, the scalp, face, or neck of any person, with the hands, or with mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; nor shall anything in this chapter apply to the practice of physiotherapy or massaging, stimulating or exercising of the head, neck, arms,

bust or upper part of the body, when done for purposes of health and hygiene rather than for cosmetic purposes. (June 7, 1938, 52 Stat. 619, ch. 321, § 24.)

§ 2–1325 [20: 445x]. Termination and renewal of certificates.

The certificates of registration issued in the year in which this chapter goes into effect shall expire as of April 15, 1938. Thereafter certificates shall be issued for no longer than one year. All certificates shall expire on the 15th day of April next succeeding unless renewed for the next year. Certificates may be renewed by application made prior to the 15th day of April of each year accompanied by a health certificate in the manner prescribed in section 2–1307 and the payment of the renewal fees provided in this chapter. The holder of an expired certificate or license may have within three years of the date of expiration the certificate restored upon the payment of the required renewal fee and satisfactory proof of his or her qualifications to assume practice or occupation. (June 7, 1938, 52 Stat. 619, ch. 321, § 25.)

§ 2–1326 [20: 445y]. Penalties.

(a) Any person who shall violate or aid or abet in violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or imprisonment in the workhouse of the District of Columbia for not more than six months, or by both such fine and imprisonment.

(b) Any operator, manager, instructor, student, or apprentice who shall practice the occupation of cosmetology while knowingly suffering from contagious or infectious disease, or who shall knowingly serve any person afflicted with such disease, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $300 or imprisonment in the workhouse of the District of Columbia for not more than six months, or by both such fine and imprisonment. (June 7, 1938, 52 Stat. 619, ch. 321, § 26.)

CROSS REFERENCES

Operation of school without certificate, § 2–1310.
Practice outside of shop, § 2–1312.
Practice without registration, § 2–1306.
Revocation or suspension of licenses, § 2–1304.
Student practicing on public, § 2–1311.

§ 2–1327 [20: 445z]. Prosecution by corporation counsel.

It shall be the duty of the Corporation Counsel, or one of his assistants, to prosecute in the name of the District of Columbia all violations of the provisions of this chapter. (June 7, 1938, 52 Stat. 619, ch. 321, § 27.)

§ 2–1328 [20: 445aa]. Separability provisions.

Each section of this chapter, and every part of each section, is hereby declared to be independent of every other, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or part thereof. (June 7, 1938, 52 Stat. 620, ch. 321, § 28.)

REPEAL

Section 29 of act of June 7, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent with this subchapter are hereby repealed."

Chapter 14.—PLUMBERS

Sec.
2–1401. Plumbing board—Appointment.
2–1402. Licenses—Examination of applicants—Issuance.
2–1403. Applicants—Qualifications.
2–1404. Bond.
2–1405. License—Renewal, fee, revocation.
2–1406. License required.
2–1407. Employment of unlicensed plumber by owner or lessee prohibited.
2–1408. Penalties.

§ 2–1401 [20: 341]. Plumbing board—Appointment.

The Commissioners of the District of Columbia are authorized to appoint a plumbing board to be composed of one master plumber, one journeyman plumber competent to be licensed as master plumber, and one employee of the District of Columbia having a knowledge of plumbing and gasfitting and sanitary work. A majority of the board shall be deemed competent for action. (June 18, 1898, 30 Stat. 477, ch. 467, § 1; June 27, 1906, 34 Stat. 483, ch. 3553.)

COMPILER'S NOTE

This chapter probably supersedes that part of § 1–725 which authorizes the Commissioners to regulate the examination, registration, and licensing of plumbers.

AMENDMENT

The act of June 27, 1906, ch. 3553, appropriated a salary of $2,000 for the inspector of plumbing and for seven assistant inspectors, one at $1,200 and six at $1,000 each.

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

CROSS REFERENCE

Plumbing inspection, § 1–724 to § 1–727.

§ 2–1402 [20: 342]. Licenses—Examination of applicants—Issuance.

In addition to such advisory duties as said Commissioners shall assign them, it shall be the duty of said plumbing board to examine all applicants for license as master plumbers or gas fitters, and to report to said Commissioners, who, if satisfied from such report that the applicant is a fit person to engage in the business of plumbing or gas fitting, shall issue a license to such person to engage in such business. (June 18, 1898, 30 Stat. 477, ch. 467, § 2.)

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 2–1403 [20: 343]. Applicants—Qualifications.

Applicants for licenses as master plumbers and gas fitters or master gas fitters, who are citizens of the United States, must be twenty-one years of age, must make application in their own handwriting, and must accompany such application with a certificate as to good character signed by at least three reputable residents of the District of Columbia, two of whom shall certify that the applicants have had at least four years' experience in the plumb-

ing and gas-fitting business. (June 18, 1898, 30 Stat. 477, ch. 467, § 3; July 14, 1932, 47 Stat. 659, ch. 476, § 3.)

AMENDMENT

The amendment extended this section to apply to master gas fitters, required that all applicants be citizens of the United States, and added the new clause following the words "District of Columbia."

§ 2–1404 [20: 344]. Bond.

The said Commissioners and their successors are authorized and empowered to require every person licensed to practice the business of plumbing and gas fitting in the District of Columbia, before engaging in the said business, to file a bond in such amount not exceeding the sum of two thousand dollars and with such number of sureties as the said commissioners shall determine, conditioned upon the faithful performance of all work in compliance with the plumbing regulations, and that the District of Columbia shall be kept harmless from the consequence of any and all acts of the said licensee during the period covered by the said bond. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 2; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

AMENDMENT

The act of March 3, 1893, extended the provisions and penalties of the Act of April 23, 1892, "to include the practice of the business of gas fitting in the District of Columbia."

§ 2–1405 [20: 345]. License—Renewal, fee, revocation.

All renewals of existing licenses and all new licenses as a master plumber and gas fitter or master gas fitter shall be for a period of not more than one year and the fee for such license shall be not less than $10.00 nor more than $25.00 per annum, to be fixed by the commissioners of the District of Columbia, for a license year beginning January 1 and ending December 31. Such special license fee shall be separate from, or in addition to any contractors' or business license tax, hereafter fixed for this and similar occupations by the Commissioners of the District of Columbia according to law. Licenses issued at any time after the beginning of the year shall date from the first day of the month in which the license is issued and end on the last day of the license year, and payment shall be made of a proportional amount of the annual license fee. Any licensee may apply for and receive a license for or on behalf of any firm, copartnership, or corporation that he is a bona fide member of, or a substantial stockholder in, but all plumbing or gas fitting done pursuant to such license shall be done under the immediate personal supervision of the licensed man.

The Commissioners of the District of Columbia or their duly authorized agent shall have the power to suspend or revoke any plumber's or gas fitter's license for a violation of the plumbing or gas-fitting regulations after a public hearing granted the licensee or after conviction in court for such violation or for conduct involving moral turpitude. (June 18, 1898, 30 Stat. 477, ch. 467, § 4; July 14, 1932, 47 Stat. 659, ch. 476, § 4.)

AMENDMENT

The act of 1898, ch. 467, § 4 provided only that: "The fee for a license as master plumber or gas fitter shall be three dollars."

CROSS REFERENCES

Other provisions concerning penalties for violation of regulations, § 1–725.

Refund of fees when license is refused, § 47–1018.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–1406 [20: 346]. License required.

It shall be unlawful for any person to engage in the work of plumbing or gas-fitting in the District of Columbia unless he is licensed as provided in this chapter, or is an employee of a licensed master plumber. (June 18, 1898, 30 Stat. 477, ch. 467, § 5.)

§ 2–1407 [20: 347]. Employment of unlicensed plumber by owner or lessee prohibited.

It shall be unlawful for the owner or lessee of any building in the District of Columbia, or the agent or representative of such owner or lessee, to knowingly employ an unlicensed person to do plumbing or gas fitting in or about such building. (June 18, 1898, 30 Stat. 477, ch. 467, § 6.)

§ 2–1408 [20: 348]. Penalties.

Any person violating any of the provisions of this chapter shall, on conviction thereof in the police court, be punished by a fine of not less than $5.00 nor more than $100; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions under this chapter shall be in the police court of said District, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8.)

CROSS REFERENCE

Other provisions concerning penalties for violation of regulations, § 1–725.

Chapter 15.—STEAM AND OTHER OPERATING ENGINEERS

Sec.

2–1501. Steam and other operating engineers—License required.
2–1502. Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.
2–1503. Qualification of applicants.
2–1504. License fee.
2–1505. Revocation of license for intoxication.
2–1506. Penalty for employing unlicensed operator—Boilers exempt.
2–1507. Engineers employed by United States Government or licensed by States exempt.

§ 2–1501 [20: 361]. Steam and other operating engineers—License required.

It shall be unlawful for any person to act as steam or other operating engineer in the District of Columbia who shall not have been regularly licensed to do so by the Commissioners thereof. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 1; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

COMPILER'S NOTE

The Boiler Inspection Act of the District of Columbia, §§ 1–701 to 1–718, does not affect this chapter. § 1–716

provides, in part, as follows: "That no provision of said sections shall be deemed to amend, alter or repeal sections 361–367 of this title (§§ 2–1501 to 2–1507), being an act to regulate steam engineering in the District of Columbia."

AMENDMENT

The act of March 4, 1925, inserted the words "or other operating" after the word "steam."

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

§ 2–1502 [20: 362]. Board of examiners — Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.

That all persons applying for such license shall be examined by a board of examiners composed as follows: Two practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, to be appointed by the commissioners of the District of Columbia, and the boiler inspector for the District of Columbia. Each appointed member shall receive compensation at the rate of $10 per day when actually engaged in the work of the board, such compensation not to exceed $300 per annum. One of the appointed engineers shall be appointed for a term of one year and the others for a term of two years. On the expiration of such appointments, all appointments shall be made for the term of two years except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioners only for the unexpired terms. Members shall be eligible for reappointment. The Commissioners of the District of Columbia may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Said examination shall be conducted in all respects under such rules and regulations as the Commissioners of the District of Columbia shall from time to time provide; and all engines and steam boilers shall be subjected to such tests as the said Commissioners may prescribe. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 2; Mar. 4, 1925, 43 Stat. 1284, ch. 545; June 29, 1940, 54 Stat. 702, ch. 458.)

AMENDMENTS

The act of March 4, 1925, transposed the words "and engines" to precede the words "steam boilers."

The act of June 29, 1940, added the clause "neither of whom shall be in the employ of the United States or the District of Columbia" in the first sentence, and added the remaining part of the section except the last sentence.

CROSS REFERENCE

Rules and regulations in general, § 1–226 and note.

§ 2–1503 [20: 363]. Qualification of applicants.

Applicants for license as steam or other operating engineers must be twenty-one years of age and of temperate habits; must make application in writing, to which application must be attached a certificate as to character and moral habits signed by at least three citizens of the District of Columbia, themselves of moral standing. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 3; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

The act of March 4, 1925, inserted the words "or other operating" after the word "steam."

§ 2–1504 [20: 364]. License fee.

The fee for a license as steam or other operating engineer shall be $3.00. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 4; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

The act of March 4, 1925, inserted the words "or other operating" after the word "steam."

CROSS REFERENCE

Refund of fees when license is refused, § 47–1018.

§ 2–1505 [20: 365]. Revocation of license for intoxication.

Any person employed as a licensed steam or other operating engineer in the District of Columbia who is found under the influence of intoxicating liquor while on duty, shall, for the first offense, have his license revoked for six months; for the second offense, twelve months; and for the third offense, shall have his license revoked and be debarred from following the occupation of licensed steam or other operating engineer in the District of Columbia for the period of five years. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 5; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

The act of March 4, 1925, inserted the words "or other operating" after the word "steam."

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33–418.

§ 2–1506 [20: 366]. Penalty for employing unlicensed operator—Boilers exempt.

Any owner or lessee of any engine or steam boiler, or the secretary of any corporation, who shall employ a steam or other operating engineer as such who has not been regularly licensed to act as such, or any person operating without a license or in violation of the provisions of this chapter, shall, on conviction thereof by the police court of the District of Columbia, be fined $40.00: *Provided,* That boilers used for steamheating, where the water returns to the boiler by gravity without the use of a pump and injector or inspirator, shall be exempt from the provisions of this section. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 6; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

The act of 1925 omitted the words "steam boiler or engine" and inserted in lieu thereof the words "any engine or steam boiler," and struck out the word "knowingly" where it appeared between the words "shall" and "employ" in second line.

§ 2–1507 [20: 367]. Engineers employed by United States Government or licensed by States exempt.

The foregoing sections shall not apply to engineers employed by the United States government or licensed by the laws of any state having reciprocity with the District of Columbia. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 7; Mar. 4, 1925, 43 Stat. 1284, ch. 545; July 31, 1939, 53 Stat. 1143, ch. 398.)

AMENDMENTS

The act of 1925 added the words "having reciprocity with the District of Columbia" at the end of the section.

The act of 1939 inserted the word "employed" in lieu of the word "licensed."

Chapter 16.—WASHINGTON NATIONAL AIRPORT

This chapter now appears in Title 7, as chapter 13.

Chapter 17.—ARMORY BOARD

Sec.

2–1701. Declaration of policy.
2–1702. Membership of board—term—appointment of alternates—delegation of authority—compensation—election of chairman.
2–1703. Control and jurisdiction over District of Columbia National Guard Armory—maintenance and repair.
2–1704. Motor vehicle parking areas—provision for.
2–1705. Use of armory by the militia of the District of Columbia.
2–1706. Secondary purposes—authorization.
2–1707. Canteen—authorization for—proceeds.
2–1708. Provision for working capital as revolving fund—transfer of rental revenues to revolving fund—expenditures—revenues—deficiency appropriations.
2–1709. Employment of manager and personnel—compensation—managerial powers.
2–1710. Yearly financial statement and report of activities—recommendations.

§ 2–1701. Declaration of policy.

It is hereby declared to be the policy of the Congress that the District of Columbia National Guard Armory shall be maintained and operated primarily to provide facilities for the quartering and training of the Militia of the District of Columbia, and, secondarily, to provide suitable facilities for major athletic events, conventions, concerts, and such other activities as may be in the interest of the District of Columbia, and that such armory shall be operated as nearly as practicable on a self-supporting basis. (June 4, 1948, 62 Stat. 339, ch. 418, § 1.)

§ 2–1702. Membership of board—Term—Appointment of alternates—Delegation of authority—Compensation—Election of chairman.

There is hereby established an Armory Board, to be composed of the President of the Board of Commissioners of the District of Columbia, the Commanding General of the District of Columbia Militia, and a third person not employed by the Federal or District Governments who shall be appointed by the Chairmen of the District of Columbia Committees of the United States Senate and the United States House of Representatives for a term of three years. Each member of the Armory Board is authorized to appoint, and in his discretion to withdraw the appointment of, an alternate and to delegate to such alternate authority to act in his place and stead in respect of the powers granted by this chapter. The members of said Board and their alternates shall serve without additional compensation. Said Armory Board shall elect a chairman from among its members. (June 4, 1948, 62 Stat. 339, ch. 418, § 2.)

§ 2–1703. Control and jurisdiction over District of Columbia National Guard Armory—Maintenance and repair.

For the purposes of this chapter, said Armory Board is vested with the control of and jurisdiction over the District of Columbia National Guard Armory. For the purposes of maintenance and repair the armory shall be under the control and jurisdiction of the Commissioners of the District of Columbia. (June 4, 1948, 62 Stat. 339, ch. 418, § 3.)

§ 2–1704. Motor vehicle parking areas—Provision for.

Upon the request of the Armory Board the Secretary of the Interior shall provide for the use of said Board, under such arrangements for improvement, lighting and maintenance as may be agreed upon between the Secretary of the Interior and said Board, such areas of land adjacent to the Armory and under the control of the Secretary of the Interior as said Board deems adequate for motor vehicle parking purposes. (June 4, 1948, 62 Stat. 339, ch. 418, § 4.)

§ 2–1705. Use of armory by the militia of the District of Columbia.

The Armory Board shall set aside for the exclusive use of the militia of the District of Columbia such parts of the headquarters and regimental buildings and basement of the drill hall, and such of the storage rooms contiguous to the drill hall as shown upon drawing A–3, first-floor plan, approved by the Commissioners April 19, 1940, as said Armory Board may from time to time find are necessary for the use of the militia. The parts of the armory so set aside for the use of the militia shall be under the control and jurisdiction of the commanding general of the militia for all purposes except maintenance and repair of the armory. The drill hall and those parts of the armory not set aside for the exclusive use of the militia shall be available to the militia under schedules for joint use made by the Armory Board so as to carry out the purposes and intent of this chapter. (June 4, 1948, 62 Stat. 339, ch. 418, § 5.)

§ 2–1706. Secondary purposes—Authorization.

In order to carry out the secondary purposes of this chapter the Armory Board is hereby authorized, without regard to any other provisions of law—

(a) to determine all questions concerning the use of said armory for the secondary purposes of this chapter;

(b) to enter into contracts and agreements with District of Columbia and Federal departments, bureaus, establishments, and offices and the provisions of the Act of March 4, 1915, as amended (U. S. C., 1940 edition, Supp. V, title 31, sec. 686), are hereby made applicable to such contracts;

(c) to acquire by purchase or lease equipment, appliances, facilities, and property of any kind necessary or desirable to carry out the secondary purposes of this chapter, and to sell or dispose of any such property so acquired by said Board when in its judgment it shall be advantageous to do so: *Provided,* That no contract for more than $3,000 shall be entered into for this purpose without competitive bidding;

(d) to erect structures or installations in all of such parts of the armory as are not required exclusively for military purposes, and to make such struc-

tural and other changes in any such structures as it may deem necessary or desirable for carrying out the secondary purposes of this chapter: *Provided,* That nothing in this chapter shall authorize or permit the erection of any structure which in the opinion of the Commanding General of the District of Columbia Militia will lessen the availability of the armory for military purposes;

(e) to prepare, maintain, light, and operate motor-vehicle parking lots on such land as is provided for that purpose by the Secretary of the Interior under the terms of section 2–1704;

(f) to operate or contract for the operation of, such concessions, including the checking of clothing and the sale of nonalcoholic beverages and food, as the said Board may deem appropriate to the purposes for which the armory may be leased: *Provided,* That the said Board may at its discretion, and with the approval of the Commanding General of the District of Columbia Militia, grant the concession for nonalcoholic beverages and food to the canteen of the District of Columbia Militia, whenever in the opinion of said Board such action shall be for the public interest;

(g) to furnish such services to renters, lessees, and other occupants of the armory as in its judgment are necessary or suitable for carrying out the secondary purposes of this chapter;

(h) to rent or lease from time to time, for any of the secondary purposes of this chapter, all or any part or parts of the armory not set aside for the exclusive use of the Militia of the District of Columbia in compliance with section 2–1705, including any or all structures, equipment, or facilities of the armory, at such rental values as the Armory Board shall determine to be fair with respect to the interests of the District of Columbia, and for such periods of time as the Armory Board may determine, subject to cancellation when the public interest requires: *Provided,* That every lease or rental agreement which includes therein any period of time not covered by the schedules furnished under the provisions of section 2–1705 shall be binding and effective only when the Commanding General of the District of Columbia Militia has endorsed his approval thereon in writing;

(i) to carry public-liability insurance protecting the interests of the District of Columbia, the Commissioners of the District of Columbia, the District of Columbia Militia, the Commanding General of the District of Columbia Militia, the Armory Board, and the members, officers, and employees thereof; and to require tenants or lessees of the armory to carry public-liability insurance protecting the interests of such tenants or lessees;

(j) to incur obligations not in excess of $50,000 at any one time in furtherance of the secondary purposes of this chapter, and not in excess of $10,000 above the unobligated excess in the Armory Board Working Capital Fund; and

(k) to accept the gratis services of such persons as may volunteer to aid in the conduct of its activities. (June 4, 1948, 62 Stat. 340, ch. 418, § 6.)

§ 2–1707. Canteen—Authorization for—Proceeds.

Nothing contained in this chapter shall be construed as a limitation upon the operation of a canteen in the said armory for the use and benefit of the District of Columbia Militia, and any funds derived from the operation of such canteen shall inure to the benefit of the said District of Columbia Militia. (June 4, 1948, 62 Stat. 341, ch. 418, § 7.)

§ 2–1708. Provision for working capital as revolving fund—Transfer of rental revenues to revolving fund — Expenditures — Revenues — Deficiency appropriations.

There is hereby created an Armory Board working capital fund in the amount of $50,000, and there shall be deposited in the Treasury of the United States to the credit of the said Armory Board working capital fund all receipts derived from the exercise by the Armory Board of the powers granted by this chapter. Said Armory Board working capital fund, including all receipts credited thereto, shall be used as a permanent revolving fund for all expenses incurred by the Armory Board in the exercise of the powers granted by this chapter, including personal services. There shall also be transferred to said Armory Board working capital fund all revenues derived from rentals of the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, except revenues resulting from the operation of concessions, and the Secretary of the Treasury is authorized to transfer to the credit of the Armory Board working capital fund authorized by this chapter funds resulting from rental of the District of Columbia National Guard Armory received by him and held in escrow pending enactment of legislation. As soon as practicable after the close of each fiscal year, after provision has been made for payment of all lawful obligations then incurred, all sums in excess of $50,000 in said Armory Board working capital fund shall be transferred to the general revenues of the District of Columbia. Expenditures from such fund may be made only upon vouchers which have been certified by said Armory Board and which have been approved before payment by the Auditor of the District of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed: *Provided,* That the Disbursing Officer of the District of Columbia is authorized to advance to the Armory Board, upon requisitions previously approved by the Auditor of the District of Columbia sums of money not to exceed $1,000 at any one time, to be used for office and sundry expenses of the Armory Board. There is hereby authorized to be appropriated annually such sum as may be required to supply any deficiency in the Armory Board working capital fund. Revenues resulting from the operation of concessions within the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, which have been held by the District of Columbia National Guard pending enactment of legislation are hereby transferred to the canteen fund of the District of Columbia

National Guard. (June 4, 1948, 62 Stat. 341, ch. 418, § 8.)

§ 2–1709. Employment of manager and personnel—Compensation—Managerial powers.

The Armory Board is authorized to employ and fix the compensation and term of a manager and such personnel as may be necessary in connection with the operation of the armory for the secondary purposes of this chapter without regard to the provisions of the civil-service laws and Classification Act of 1923, as amended, and without regard to any prohibition against double salaries contained in any other law. Under the direction of the Board and with written authorization signed by the members thereof, said manager may exercise such of the powers vested in the Board by section 2–1706 as the Board shall determine. (June 4, 1948, 60 Stat. 342, ch. 418, § 9.)

§ 2–1710. Yearly financial statement and report of activities—Recommendations.

The Armory Board shall file with the Congress in January of each year a financial statement certified as to accuracy by the Auditor of the District of Columbia, a report of the activities and business at the armory during the preceding fiscal year, and recommendations to the Congress as to the future control and use of the armory. (June 4, 1948, 62 Stat. 342, ch. 418, § 10.)

Chapter 18.—PROFESSIONAL ENGINEERS

Sec.

2–1801. Short title.
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§ 2–1801. Short title.

This chapter shall be known and may be cited as the Professional Engineers' Registration Act. (Sept. 19, 1950, 64 Stat. 854, ch. 953, § 1.)

COMPILER'S NOTE

The entire chapter was added by the 1950 act, which was approved September 19, 1950. Sec. 19 of said act provided: "This Act shall take effect upon the expiration of the ninetieth day after the date of its enactment."

§ 2–1802. Definitions.

As used in this chapter—

(a) The term "practice of engineering" shall mean the performance of any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, works, or utilities, or any combinations or aggregations thereof employed in or devoted to public or private enterprise or uses. The term "practice of engineering" comprehends the practice of those branches of engineering, the pursuit of any of which affects the safety of life, health or property, or the public welfare. Said practice includes the doing of such architectural work as is incidental to the practice of engineering.

(b) The term "professional engineer" shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, customarily acquired by a prolonged course of specialized intellectual instruction and study and practical experience, is qualified to engage in the practice of engineering as attested by his certificate of registration as a professional engineer.

(c) The term "engineer-in-training" shall mean a candidate for registration as a professional engineer who has been granted a certificate as an engineer-in-training after successfully passing the first stage of the prescribed examination in fundamental engineering subjects, and who, upon completion of the requisite years of training and experience in engineering under the supervision of a professional engineer or similarly qualified engineer and satisfactory to the Board, shall be eligible for the second stage of the prescribed examination for registration as a professional engineer.

(d) The term "responsible charge" shall mean such degree of competence and accountability gained by education, training, and experience in engineering of a grade and character sufficient to qualify an individual to engage personally and independently in and be entrusted with the work involved in the practice of engineering.

(e) The term "institution" shall mean a school, college, university, department of a university, or other educational institution granting baccalaureate degrees in engineering, reputable, and in good standing in accordance with the rules prescribed by the Board.

(f) The term "board" shall mean the District of Columbia Board of Registration for Professional Engineers.

(g) The term "Commissioners" shall mean the Board of Commissioners of the District of Columbia. (Sept. 19, 1950, 64 Stat. 854, ch. 953, § 2.)

§ 2–1803. Practice of engineering declared to be subject to regulation.

In order to safeguard life, health, and property and promote the public welfare, the practice of engi-

neering in the District of Columbia is hereby declared to be subject to regulation in the public interest. It is further declared to be a matter of public interest and concern that the profession of engineering merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of engineering. All provisions of this chapter relating to the practice of engineering shall be construed in accordance with this declaration of policy. (Sept. 19, 1950, 64 Stat. 855, ch. 953, § 3.)

§ 2–1804. Practice of engineering without registration prohibited.

Any person engaged in or offering to engage in the practice of engineering in the District of Columbia shall submit evidence that he is qualified to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to engage or offer to engage in the practice of engineering in the District of Columbia, or by verbal claim, sign, advertisement, letterhead, card, or in any other way, represent himself to be a professional engineer, or through the use of the title including the word "engineer" or words of like import, or any other title, imply that he is a professional engineer, unless such person is registered under the provisions of this chapter. (Sept. 19, 1950, 64 Stat. 855, ch. 953, § 4.)

§ 2–1805. Board of registration—Appointment of members — Qualification — Terms — Removal of members.

There is hereby created the District of Columbia Board of Registration for Professional Engineers, whose duty it shall be to administer the provisions of this chapter. The Board shall consist of five members who shall be appointed by the Commissioners. Each appointment to the first Board shall be from a list of three eligibles submitted by the representative organizations of the engineering profession in the District of Columbia. A person to be eligible for appointment to the Board shall be a citizen of the United States, shall have been engaged in the practice of engineering for twelve or more years, of which at least five years shall have been in responsible charge of important engineering work, and at the time of appointment shall have been actively engaged in the practice of engineering in the District of Columbia for a period of at least five years next preceding this appointment. The Board shall at all times include one representative for each of the chemical, civil, electrical, and mechanical branches of engineering. The members of the first Board shall be appointed within three months after the effective date of this chapter to serve for the following terms: One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of their appointment, or until their successors are duly appointed and qualified. Each member of the Board shall receive a certificate of his appointment from the Commissioners, and before beginning his term of office shall file with the Secretary of the Board of Commissioners his written oath for the faithful discharge of his official duty. Each member of the Board first appointed hereunder shall be registered as a professional engineer under this chapter. On the expiration of the term of any member of the Board, the Commissioners shall appoint for a term of five years a professional engineer to take the place of the member whose term on said Board is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified. The Commissioners may remove any member of the Board for incompetency, misconduct, neglect of duty, or for any sufficient cause. An appointment to fill an unexpired term on the Board shall be made within three months after the vacancy occurs, and shall be for the period of such unexpired term. (Sept. 19, 1950, 64 Stat. 855, ch. 953, § 5.)

EFFECTIVE DATE

Sec. 19 of the act approved September 19, 1950, cited to text, provided: "This Act shall take effect upon the expiration of the ninetieth day after the date of its enactment."

§ 2–1806. Compensation of members of Board.

Each member of the Board shall be entitled to receive such reasonable compensation for his services as may be determined by the Commissioners not to exceed $25 per day for each day he may be actually engaged upon business pertaining to his official duties as such Board member. (Sept. 19, 1950, 64 Stat. 856, ch. 953, § 6.)

§ 2–1807. Board meetings and organizations.

The Board shall hold a meeting within ten days after its members are first appointed and thereafter shall hold at least two regular meetings each year. The Board shall elect annually from its members at least the following officers: A Chairman and a secretary-treasurer. A quorum of the Board shall consist of not less than three members, and no action shall be taken without three members in accord. (Sept. 19, 1950, 64 Stat. 856, ch. 953, § 7.)

§ 2–1808. General powers of Board.

The Board shall have power:

(a) *Approval of institutions.*—To investigate and to approve those institutions that provide and maintain satisfactory standards for the education of students desiring to engage in the practice of engineering.

(b) *Registration of professional engineers.*—To register as a professional engineer any person of good character and repute who is a citizen of the United States, at least twenty-five years of age, and who speaks and writes the English language, if such person—

(1) holds a license or certificate of registration to engage in the practice of engineering issued to him by proper authority of a State or Territory of the United States in which the requirements and qualifications for obtaining such license or certificate of registration are reasonably equivalent in the opinion of the Board to the standards set forth in this chap-

ter. A person may be registered under this subdivision without examination; or

(2) holds a certificate of qualification issued by the National Bureau of Engineering Registration of the National Council of State Boards of Engineering Examiners: *Provided, however,* That the requirements and qualifications of said body for obtaining such certificate are reasonably equivalent, in the opinion of the Board, to the standards set forth in this chapter. A person may be registered under the provisions of this subdivision without examination; or

(3) has had four or more years' experience in engineering work of a grade or character satisfactory to the Board, and indicating that he is qualified to assume responsible charge of the work involved in the practice of engineering and either holds a certificate as an engineer-in-training issued to him by the Board or by proper authority of a State or Territory in which the requirements and qualifications of said bodies for obtaining such certificate are reasonably equivalent, in the opinion of the Board, to the standards set forth in this chapter, or is a graduate in engineering from an institution having a course in engineering of four or more years, and who, in either event, successfully passes a written, or written and oral, examination prescribed by the Board of engineering subjects. In the case of the examination of an engineer-in-training, his examination shall be directed and limited to those matters which will test the applicant's ability to apply the principles of engineering to the actual practice of engineering. In the case of an applicant who is not an engineer-in-training, the examination shall be for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and those matters which will test the applicant's ability to apply the principles of engineering to the actual practice of engineering; or

(4) has completed an approved secondary-school course of study or equivalent and has had twelve or more years of combined education and experience in engineering of a grade and character satisfactory to the Board and indicating that he is qualified to assume responsible charge of the work involved in the practice of engineering, and who successfully passes a written, or written and oral, examination prescribed by the Board for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and those matters which will test the applicant's ability to apply the principles of engineering to the actual practice of engineering; or

(5) submits evidence that he is an engineer of established and recognized standing in the engineering profession and that he has been lawfully engaged in the practice of engineering for twelve or more years, of which at least five years shall have been in responsible charge of important engineering work of a grade and character satisfactory to the Board. A person may be registered under this subdivision without examination; or

(6) submits evidence that he was a resident of the District of Columbia, or that he was engaged in the practice of engineering in the District of Columbia, prior to the date this chapter was approved and for one year immediately preceding the date of his application, and submits evidence of experience in engineering, of a grade and character satisfactory to the Board, indicating that he is qualified to assume responsible charge of the work involved in the practice of engineering. Registration shall not be granted under the provisions of this subdivision unless the application therefor is filed with the Board within one year after the date of enactment of this chapter. A person may be registered under this subdivision without examination.

The requirement of this subsection of residence or practice of engineering in the District of Columbia for one year immediately preceding the date of application shall not be applied to applicants who were on active duty in the armed forces of the United States during such year, and who entered on such duty after October 16, 1940, but any such applicant for license under this subsection must have been a resident or engaged in the practice of engineering in the District of Columbia for at least one year prior to the effective date of this chapter.

(c) *Certification Of Engineers-In-Training.*—To provide for and to regulate the certification and to certify as an engineer-in-training any person of good character and repute who is a citizen of the United States, at least twenty-one years of age or has graduated from an institution, and who speaks and writes the English language, if such person—

(1) is a graduate in engineering from an institution having a course in engineering of four or more years and who successfully passes a written, or written and oral, examination prescribed by the Board for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences. A person may be certified as an engineer-in-training under this subdivision without a written, or written and oral, examination: *Provided, however,* That the application therefor is filed with the Board within one year after enactment of this chapter; or

(2) has completed an approved secondary-school course of study or equivalent, and has had eight or more years of combined education, training, and experience in engineering, of a grade and character satisfactory to the Board, and who successfully passes a written, or written and oral, examination prescribed by the Board for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences.

(d) *Registration of noncitizen professional engineers.*—To register as a professional engineer any person who is not a citizen of the United States, who is of good character and repute, at least twenty-five years of age, and speaks and writes the English language, if such person submits evidence, of a grade and character satisfactory to the Board, that he is an engineer of established and recognized standing in the profession of engineering in his own country, and who submits certification as to character and qualifications from at least two professional engineers of the District of Columbia. Such registration shall entitle the holder to engage in the practice of engineering only for the duration of and in connection with a specific project for which it was granted, and shall be subject to annual renewal and to suspension or revocation as registration granted as otherwise provided in this chapter. Engineers to whom such temporary registration has been granted shall be separately listed in the roster.

(e) *Application form.*—To require all candidates for registration as professional engineers to file with the secretary-treasurer of the Board a written application on a prescribed form and accompanied by the required fee. Such application shall contain statements made under oath, showing the applicant's education, detailed summary of his experience in engineering work, and the general field or fields of engineering in which he has his principal activity, and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of his engineering training and experience.

(f) *Investigation of applications; determination of qualification and competency of applicants.*—To investigate the allegations contained in any application for registration as a professional engineer in order to determine the truth of such allegations, and to determine the competency of any person applying for a registration to assume responsible charge of the work involved in the practice of engineering, such competency to be determined by the grade and character of the engineering work actually performed. Any person having the necessary qualifications prescribed in this chapter to entitle him to registration or certification shall be eligible therefor, although he may not be practicing his profession at the time of making his application. Evaluation of experience in engineering shall be based upon the applicant's knowledge of the fundamental engineering subjects, which shall be broad in scope and of a nature to develop and mature the applicant's engineering knowledge and judgment. In considering the qualifications of an applicant who has graduated in engineering from an approved institution; each year, but not exceeding two years, of successful postgraduate study in engineering, and each scholastic year, in excess of four, of an approved five- or six-year engineering curriculum, and each year of teaching engineering subjects, in an approved institution may be considered as equivalent to one year of experience in engineering. In considering the qualifications of an applicant who is an undergraduate in engineering, or who has graduated in a curriculum other than engineering, from an approved institution; each equivalent year of approved engineering education, as determined by evaluation by the Board of the educational records submitted, may be considered as equivalent to two years of combined education and experience in engineering. Experience in engineering gained under the supervision of a professional engineer or similarly qualified engineer, and experience in engineering gained subsequent to the attaining of an equivalent of the minimum requirements for certification as an engineer-in-training, of a grade and character satisfactory to the Board, shall be given full credit. In any case when the evidence presented in the application does not appear to the Board conclusive nor warranting the issuance of a certificate of registration or a certificate as engineer-in-training without examination, the applicant may be required to present further evidence for the consideration of the Board, and may also be required to pass an oral or written examination, or both, as the Board may determine. Whenever the Board determines otherwise than by examination that an applicant has not produced sufficient evidence to show that he is competent to assume responsible charge of the work involved in the practice of engineering, and shall refuse to examine or to register such applicant, it shall set forth in writing its findings and the reasons for its conclusions, and furnish a copy thereof to the applicant.

(g) *Examinations.*—To prescribe the scope, manner, time, and place for the examination of applicants for registration as professional engineers, to provide for the conduct of and to conduct such examinations, and to make written reports of such examinations. The prescribed examinations shall be written, or written and oral, and designed to permit an applicant for registration as a professional engineer to take the examination in two stages. The first stage of the examination shall be designed to test the applicant's knowledge of fundamental engineering subjects, including mathematics, physical and applied sciences, properties of materials, and the principles of engineering design. Satisfactory passing of this portion of the examination shall constitute a credit for the life of the applicant or until he is registered as a professional engineer. The second stage of the examination shall be designed to test the applicant's ability to apply the principles of engineering to the actual practice of engineering in the field of engineering in which he has indicated his principal activity. An applicant failing to pass an examination may apply for reexamination at the expiration of six months and will be reexamined upon payment of the prescribed fee.

(h) *Certificate of registration; form and execution; expiration; duplicate certificate; biennial renewal of registration; renewal fee; penalty for delayed renewal.*—To issue a certificate of registration and a pocket registration card to each professional engineer granted registration under the provisions of this chapter. The certificate of registration shall authorize the registrant to practice as a professional engineer, show the full name of the registrant, have a serial number, and be signed

by the members of the Board under the seal of the Board. The pocket registration card issued with the certificate shall show the full name and registration number of the registrant, state that the person named therein has been granted registration to practice as a professional engineer for the period ending on the 31st day of October in the second year of the then current biennial registration renewal period, and be signed by the Chairman and secretary-treasurer of the Board; to provide for and regulate the renewal of registration of professional engineers registered under this chapter. On or before the 1st day of August 1952, and biennially thereafter, the secretary-treasurer of the Board shall mail to every professional engineer registered under this chapter a blank application for biennial renewal of registration, addressing such application to the last known post-office address. Upon receipt of such application blank, a registrant shall execute and return the application for his biennial registration renewal card to the Board together with the biennial registration renewal fee of $2. Upon receipt of such application and renewal fee the Board shall issue a pocket registration renewal card which shall show the full name and registration number of the registrant, be signed by the Chairman and secretary-treasurer of the Board, and state that the person named therein has been granted registration to practice as a professional engineer for the period beginning November 1 in the year of issue and expiring on the 31st day of October in the second year following. Application shall be made biennially on or before the 1st day of November and if not so made an additional fee of $1 for each thirty days delay beyond the 1st day of November, and up to the 1st day of March following shall be added to the current biennial registration renewal fee to be paid upon renewal; to issue a duplicate certificate of registration to replace a certificate lost, destroyed, or multilated, subject to the rules of the Board, and upon payment of the prescribed fee. The issuance of a certificate of registration by the Board shall be presumptive evidence in all courts and places that the person named therein is entitled to all the rights and privileges of a registered professional engineer while said certificate remains unsuspended, unrevoked, or unexpired.

(i) *Certificate of registration to a noncitizen; form and execution; expiration; renewal of registration; renewal fee.*—To issue a special certificate of registration and pocket registration card to every noncitizen professional engineer granted registration under the provisions of this chapter. The special certificate of registration shall authorize the registrant to practice as a professional engineer in connection with a specific project, show the full name of the registrant, have a registration number, and be signed by the members of the Board under the seal of the Board. The special pocket registration card issued with such certificate shall show the full name and registration number of the registrant, state that the person named therein has been granted temporary registration to practice as a professional engineer, state the specific project in connection with which the special registration is granted, the period for which it is granted, not to exceed one year from the date of issue, and be signed by the Chairman and secretary-treasurer of the Board. Temporary registration may be renewed at the discretion of the Board for periods not in excess of one year upon application therefor and payment of the annual renewal fee.

(j) *Certificate as engineer-in-training.*—To prescribe and to issue a certificate, attested by its seal and signed by the members of the Board, to any applicant who in the opinion of the Board has satisfactorily met all the requirements of this chapter for certification as an engineer-in-training.

(k) *Roster of registrants.*—To keep a roster of all professional engineers registered under this chapter, showing the registrant's name, place of business or employment, registration number, and the general field or fields of engineering in which registrant qualified to practice, and a roster of engineers-in-training certified under this chapter. These rosters, together with other information deemed to be of interest to the engineering profession, shall be published in booklet form by the Board on the 1st day of March of each even year, beginning with 1952, or as soon thereafter as practicable. The Board shall also, upon the 1st day of March of each odd year, beginning with 1953, or as soon thereafter as practicable, publish a supplemental roster of all registered professional engineers and certified engineers-in-training. Such published rosters shall contain at the beginning thereof the words: "Each professional engineer receiving this roster is requested to report to the Board the names and addresses of any persons known to be engaged in the practice of engineering in the District of Columbia whose names do not appear in this roster. The names of persons giving such information shall not be divulged". Copies of these rosters shall be mailed or otherwise sent to each registered professional engineer and engineer-in-training and be furnished to other persons upon request.

(l) *Official seal; minutes and records.*—To adopt and have an official seal, and to keep minutes and records of all its transactions and proceedings, and a complete record of the credentials of each applicant and registrant. A transcript of an entry in such minutes and records, certified by the secretary-treasurer under the seal of the Board, shall be prima facie evidence of the original entry in such minutes and records.

(m) *Member of national council of state boards of engineering examiners; dues.*—To become a member of the National Council of State Boards of Engineering Examiners and to pay such dues as said council shall establish, and to send a delegate to the annual meeting of said council and to defray his reasonable and necessary expenses.

(n) *Administrative rules and regulations; employees.*—To adopt, amend, rescind, promulgate, and enforce such administrative rules and regulations not inconsistent with this chapter, as are deemed necessary and proper by the Board to carry

into effect the powers conferred by this chapter. To employ such clerical or other assistants as are necessary for the proper performance of its duties. The regular annual employees of the Board shall, for the purpose of laws relating to compensation, classification, retirement, and leave, be employees of the District of Columbia. The Board may at its discretion fix and change from time to time, without reference to the Classification Act of 1949, the compensation of employees of the Board employed on a temporary or part-time basis.

(o) *Enforcement of laws; investigations; attendance of witnesses; production of books and papers; subpena procedure; witness fees.*—To enforce the provisions of this chapter, to investigate for unauthorized and unlawful practice, to employ such persons as it may deem necessary to assist in the investigations and prosecutions incident to enforcement, to require the attendance of witnesses and the production of books and papers, and to require such witnesses to testify as to any and all matters within its jurisdiction. The Chairman and secretary-treasurer of the Board shall have power to issue subpenas, and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any justice of the United States District Court for the District of Columbia, who may order the attendance of such witness, or the production of such documents, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such documents, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. Witnesses who have been subpenaed by the Board, and who testify if called upon, shall be paid the same fees that are paid witnesses in the United States District Court for the District of Columbia.

(p) *Refusal, suspension, and revocation of certificates.*—To refuse to issue a certificate to any person, or to suspend or revoke the certificate of registration of any professional engineer or the certification of any engineer-in-training issued hereunder if such person—

(1) has been convicted of a felony;

(2) has been found guilty of deceit, misrepresentation, violation of contract, fraud, or gross incompentency, in his practice;

(3) has been found guilty of fraud or deceit in obtaining his registration or certification;

(4) has aided or abetted any person in the violation of any provision of this chapter;

(5) has violated any provision of this chapter;

(6) has been declared insane by a court of competent jurisdiction and has not thereafter been lawfully declared sane.

(q) *Reissuance of revoked certificates.*—To reconsider the application of any person whose application has been refused or to reissue a certificate of registration to any professional engineer or a certification to any engineer-in-training whose certificate has been revoked for reasons the Board deems sufficient, upon payment of the prescribed fee for such reissuance. (Sept. 19, 1950, 64 Stat. 856, ch. 953, § 8.)

EFFECTIVE DATE

Sec. 19 of the 1950 act, which was approved September 19, 1950, provided: "This Act shall take effect upon the expiration of the ninetieth day after the date of its enactment."

§ 2–1809. Complaints — Hearings — Proceedings — Appeals.

(a) The Board may upon its own motion, and shall upon the sworn complaint in writing of any person setting forth charges which would constitute grounds for refusal, suspension, or revocation of a certificate, as set forth in section 2–1808 (p), investigate the acts of any person holding or claiming to hold a certificate. All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been filed.

(b) The Board shall, at least thirty days prior to the date set for the hearing, notify the accused in writing, of any charges made, and shall afford him an opportunity to be heard in person or by counsel in reference thereto. Such notice may be served by its delivery personally to the accused licensee by the United States marshal in the manner prescribed for service of original process in the United States District Court for the District of Columbia, or by mailing it by registered mail with return receipt demanded, to the place of business last theretofore specified by the accused in his last notification to the Board. At the time and place fixed in the notice, the Board shall proceed to hearing of the charges and both the accused and the complainant shall be accorded ample opportunity to present in person or by counsel, such testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The Board may continue such hearing from time to time and shall give notice in writing to all parties in interest of the date and hour to which the hearing has been continued, and the place at which it is to be held.

(c) The Board shall preserve a complete record of all proceedings at the hearing of any case wherein a certificate is refused, revoked, or suspended. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, and the orders of the Board shall be the record of such proceedings. The Board shall furnish a transcript of such record at cost to any person interested in such hearing.

(d) If, after completion of the hearing, the Board shall be of the opinion that the accused is guilty of the charges, or any of them, the Board shall issue an order refusing, suspending, or revoking the certificate. Such order shall be served upon the accused person either personally or by mailing it by registered mail to the address specified by the accused person in his last notification to the Board.

(e) Any person aggrieved by the action of the Board in refusing, suspending, or revoking a registration or certification or by any other action of the Board, which is alleged to be improper, unreasonable, or unlawful may appeal from such action of the Board to the United States District Court for the District of Columbia.

(f) Appeals from suspension or revocation of registration and certification must be taken within thirty days after such refusal, suspension, or revocation. In the case of appeals from other actions of the Board, the appeal may be taken at any time by the person aggrieved by such action. No such action shall act as supersedeas unless specially allowed by the court.

(g) Proceedings shall be conducted according to the Rules of Civil Procedure for the United States District Courts and the appeal shall be heard by the judge or judges of the court without a jury. The court shall affirm the decision of the Board, unless it shall find the same is in violation of the constitutional rights of the appellant, or is not in accordance with law, or was made upon unlawful procedure, or that any finding of fact made by the Board and necessary to support its adjudication is not supported by substantial evidence. If the adjudication of the Board is not affirmed the court may set aside or modify it in whole or in part, or may remand the proceeding to the Board for further disposition in accordance with the order of the court.

(h) Either party may appeal from the decision of the United States District Court for the District of Columbia to the United States Court of Appeals for the District of Columbia circuit. Any appeal on behalf of the Board may be filed without bond. The decree of the United States Court of Appeals shall be final and conclusive. (Sept. 19, 1950, 64 Stat. 862, ch. 953, § 9.)

§ 2–1810. Exemptions.

Nothing in this chapter shall be construed to affect or prevent the following:

(a) The practice of engineering by any person who, within one year after the enactment of this chapter, has filed with the Board an application for registration under this chapter. This exemption shall continue only for such time as the Board may require for consideration of said application.

(b) The practice of engineering for not exceeding thirty days in the aggregate in one calendar year by a nonresident not having a place of business in the District of Columbia, if such person is licensed or registered to engage in the practice of engineering in a State or Territory in which the requirements and qualifications for obtaining a license or registration are reasonably equivalent to those specified in this chapter.

(c) The practice of engineering for more than thirty days by a nonresident not having a place of business in the District of Columbia, or by a person who has recently become a resident of or has recently entered the practice of engineering in the District of Columbia, and who has filed with the Board an application for registration, if such person is registered or licensed to engage in the practice of engineering in a State or Territory in which the requirements and qualifications for obtaining a license or registration are reasonably equivalent to those specified in this chapter. Such practice shall be permitted only for such time as the Board requires for the consideration of the application.

(d) The performance of engineering work by any person who acts under the supervision of a professional engineer, or by an employee of a person lawfully engaged in the practice of engineering, and who, in either event, does not assume responsible charge of design or supervision.

(e) The practice of engineering as a consultant, officer, or employee of the Government of the United States or the government of the District of Columbia while engaged solely in such practice for said governments.

(f) The practice of any other legally recognized profession.

(g) The practice of engineering exclusively as an officer or employee of a public-utility corporation (sections 43–122 and 43–123) by rendering to such corporation such service in connection with its facilities and property which are subject to supervision with respect to safety and security thereof by the Public Utilities Commission of the District of Columbia and so long as such person is thus actually and exclusively employed and no longer: *Provided, however*, That each such public-utility corporation shall employ at least one registered professional engineer who shall be in responsible charge of such engineering work.

(h) The practice of architecture by a person authorized to use the title of architect or registered architect under the provisions of this chapter, and his doing such engineering work as is incidental to his architectural work.

(i) The construction or alteration of a building that does not cover over one thousand square feet of ground area and does not have a height of over twenty feet to the uppermost ceiling, or two habitable floors above a basement.

(j) The execution of construction work as a contractor, or the superintendence of such construction work as a foreman or superintendent, or the work performed as a salesman of engineering equipment or apparatus.

(k) The operation or maintenance of boilers, machinery, or equipment when the operators are duly licensed under the provisions of sections 2–1501 to 2–1507.

(l) The usual supervision of construction or installation of equipment within a plant under his immediate supervision by a person ordinarily designated as supervising engineer or chief engineer of power. (Sept. 19, 1950, 64 Stat. 863, ch. 953, § 10.)

EFFECTIVE DATE

Sec. 19 of the 1950 act, which was approved September 19, 1950, provided: "This Act shall take effect upon the expiration of the ninetieth day after the date of its enactment."

§ 2–1811. Seal of registrants.

(a) Each person registered under this chapter may obtain a seal of a design authorized by the

Board which shall bear the registrant's name and registration number, the legend "Registered Professional Engineer", and such other words or figures as the Board may deem necessary. Such seal, or a facsimile imprint of same, shall be stamped on all plans, specifications, and reports by the registrant responsible for the accuracy and adequacy of such plans, specifications, and reports, when filed with public authorities.

(b) It shall be unlawful for a registered engineer to affix or permit his seal to be affixed to any plans, specifications, or drawings for which he does not assume full responsibility for the adequacy and accuracy thereof.

(c) It shall be unlawful for any person to use such seal during the period the registration of the holder thereof is expired, suspended, or revoked, or to use a seal of any design not approved by the Board. (Sept. 19, 1950, 64 Stat. 864, ch. 953, § 11.)

§ 2–1812. Display of certificate of registration.

Whoever engages in the practice of engineering shall keep displayed in a conspicuous place in his established place of business the certificate of registration granted him under this chapter, and evidence of current renewal. (Sept. 19, 1950, 64 Stat. 864, ch. 953, § 12.)

§ 2–1813. Fees—Payment of expenses—Audit.

Each application for registration as a professional engineer shall be accompanied by the appropriate prescribed application fee and the registration fee. A person desiring certification as an engineer-in-training shall pay the prescribed application fee for such certification with his application and shall pay the additional application fee and the registration fee upon filing his application for registration as a professional engineer.

Should the Board deny the issuance of a certificate of registration to any applicant, the registration fee deposited with the application shall be refunded.

The amount of the fees prescribed in this chapter is that fixed by the following schedule:

(a) The application fee for professional engineer with first- and second-stage examination is $20.

(b) The application fee for professional engineer without examination is $10.

(c) The application fee for engineer-in-training with examination is $7.50.

(d) The application fee for engineer-in-training without examination is $5.

(e) The application fee for professional engineer with second-stage examination is $12.50.

(f) The fee for reexamination shall be determined by the Board not to exceed $10.

(g) The registration fee for professional engineer is $5.

(h) The biennial registration renewal fee for professional engineer is $2.

(i) The fee for reissuance of a revoked certificate of engineer-in-training is $7.50.

(j) The fee for reissuance of a revoked registration certificate is $20.

(k) The fee for issuance of a duplicate certificate of registration is $5.

(l) The penalty for delinquence is $1 for each month after the date upon which the biennial renewal fee became due: *Provided, however,* That the total shall not exceed $4.

The secretary-treasurer of the Board shall receive and account for all money derived from the provisions of this chapter and shall keep such money in a separate fund to be known as "Professional engineers' fund", such fund to be disbursed only by the secretary-treasurer, upon itemized vouchers approved by the Chairman and attested by the secretary-treasurer of the Board. The secretary-treasurer shall furnish bond for the faithful discharge of his duties, in such form and amount as the Commissioners shall require. The premium on such bond shall be regarded as a proper and necessary expense of the Board. The secretary-treasurer of the Board shall receive such salary as the Commissioners shall determine, in addition to the compensation provided for in section 2–1806. The Board may make expenditures from this fund for any purpose which, in the opinion of the Board, is reasonably necessary for the proper performance of its duties under this chapter: *Provided, however,* That such expenditures shall in no event exceed the total of receipts. It shall be the duty of the Auditor of the District of Columbia to audit annually the accounts of the Board and make a report thereof to the Commissioners. For the purpose of performance of such duty the Auditor shall have free access to the books of account, records, and papers of the Board. (Sept. 19, 1950, 64 Stat. 864, ch. 953, § 13.)

§ 2–1814. Penalties.

Whoever shall engage or offer to engage in the practice of engineering without being registered, or exempted, as provided in this chapter, or by verbal claim, sign, letterhead, card, or in any other way represent himself to be a professional engineer or through the use of any title including the word "engineer" or words of like import, or any other title, imply that he is a professional engineer without being registered as provided in this chapter, or shall present or attempt to use as his own the registration certificate of another, or shall give any false or forged evidence of any kind to the Board, or to any member thereof, in order to obtain registration as a professional engineer, or shall use any suspended or revoked registration, or shall otherwise violate the laws relating to the practice of engineering shall be guilty of a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than one year, or both. (Sept. 19, 1950, 64 Stat. 865, ch. 953, § 14.)

§ 2–1815. Prosecutions.

(a) All violations of laws relating to the practice of engineering in the District of Columbia shall be prosecuted in the municipal court for the District of Columbia by the corporation counsel. The corporation counsel shall render such other legal services as may from time to time be required by the Board.

(b) The Superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigations and prosecutions incident to the enforcement of this chapter.

(c) The corporation counsel is hereby authorized to apply for relief by injunction to restrain a person from the commission of any act which is prohibited by this chapter. In such proceedings it shall not be necessary for the corporation counsel to allege or prove either that an adequate remedy at law does not exist, or that substantial and irreparable damage would result, from the continued violation thereof. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 15.)

§ 2–1816. Annual reports.

The Board shall submit an annual report to the Commissioners on the first Monday in August, containing a statement of moneys received and disbursed and a summary of its official acts during the next preceding fiscal year, and recommendations for such further legislation relating to the practice of engineering as may be necessary in the public interest. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 16.)

§ 2–1817. Saving clause.

If any section or sections, clause or clauses, of this chapter, or any regulations promulgated thereunder, be declared unconstitutional or invalid, that shall not invalidate any other sections or clauses of this chapter, or any other regulations promulgated thereunder. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 17.)

§ 2–1818. Repeal of conflicting legislation.

All laws or parts of laws and regulations promulgated thereunder in conflict with the provisions of this chapter shall be, and the same are hereby, repealed. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 18.)

TITLE 3.—BOARD OF PUBLIC WELFARE

Chap. Sec.
1. Board of Public Welfare 3–101

Chapter 1.—BOARD OF PUBLIC WELFARE

Sec.
3–101. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished [Executed].
3–102. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.
3–103. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.
3–104. Organization—Meetings—Rules, regulations, and orders.
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3–122. Duties of trustees of National Training School for Girls transferred.
3–123. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.
3–124. Wards placed outside District of Columbia, Virginia, and Maryland to be visited.
3–125. Board may discharge from guardianship children entrusted to it.
3–126. Additional duties of Board.
3–127. Assisting child to leave institution without authority—Penalty.

§ 3–101 [8: 1]. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished [Executed].

The Board of Charities of the District of Columbia, created by Act of Congress June 6, 1900, the Board of Children's Guardians of the District of Columbia, created by Act of Congress July 26, 1892, the board of trustees of the National Training School for Girls, created under the name of the Reform School for Girls, by Act of Congress July 9, 1888, shall be abolished upon the appointment and organization of the Board of Public Welfare, as hereinafter provided. (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

COMPILER'S NOTES

The portions of the act of July 9, 1888, 25 Stat. 245, ch. 595, which are still in effect appear herein as §§ 32–902 to 32–905, 32–907, and 32–913.

The portions of the act of July 26, 1892, 27 Stat. 269, ch. 250, which are still in effect appear herein as §§ 3–115 to 3–118.

The portions of the act of June 6, 1900, 31 Stat. 664, ch. 807, which are still in effect appear herein as §§ 3–111 to 3–113.

CROSS REFERENCE

Transfer of powers, duties, and employees, § 3–102.

§ 3–102 [8: 2]. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.

There is hereby created in and for the District of Columbia a Board of Public Welfare, hereinafter called the board, which shall be the legal successor to the boards specified in section 3–101 and shall succeed to all of the powers, authority, and property and to all the duties and obligations vested in or imposed by law upon such boards. All employees of the boards specified in section 3–101 shall be the employees of the board for such time as their services may be deemed necessary. (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 2.)

§ 3–103 [8: 3]. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.

The board shall consist of nine members who shall be appointed by the Commissioners of the District of Columbia for terms of six years: *Provided, however,* That vacancies for unexpired terms, caused by death, resignation, removal, or otherwise, shall be filled by the Commissioners of the District of Columbia for such unexpired terms. No person shall be eligible for membership on the board who has not been a legal resident of the District of Columbia for at least three years. Any members of such board may be removed at any time for cause by the Commissioners of the District of Columbia. Appointments to the board shall be made without discrimination as to sex, color, religion, or political affiliation. The members of the board shall serve without compensation. (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 3; Apr. 17, 1930, 46 Stat. 170, ch. 176.)

COMPILER'S NOTE

Both the 1926 Act and the 1930 Act, cited to text, contained the following, "*Provided,* That the first appointments made under this act shall be for the following terms: Three persons shall be appointed for terms of two years, three persons shall be appointed for terms of four years, and three persons shall be appointed for terms of six years." This has been omitted as executed.

AMENDMENT

The 1930 amendment provided for the filling of vacancies.

§ 3–104 [8: 4]. Organization—Meetings—Rules, regulations, and orders.

The board shall elect a chairman, vice-chairman, and secretary, who shall severally discharge the duties usual to such offices and shall serve for terms of one year or until their successors are elected. The board shall hold not less than nine regular monthly meetings during each year. Special meetings may be held upon the call of the chairman, or, if he be absent or incapacitated, upon the call of the vice-chairman and also upon the call, in writing, of not less than three members. The board shall have authority to make all necessary rules, regulations, and administrative orders governing the organization of its work and the discharge of its duties as will promote efficiency of service and economy of operation. (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 4.)

CROSS REFERENCES

Duties concerning persons found guilty under laws against prostitution, § 22–2703.

Funds advanced for traveling and miscellaneous expenses, § 47–115.

May contract with Secretary of the Interior for care and treatment of patients in Freedmen's Hospital, § 32–319.

Rules and regulations in general, § 1–226 and notes.

§ 3–105 [8: 5]. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.

The Commissioners of the District of Columbia, upon the nomination of the Board, are hereby authorized to appoint a Director of Public Welfare, which position is hereby authorized and created, who shall be the chief executive officer of the Board and shall be charged, subject to its general supervision, with the executive and administrative duties provided for in this Act. The Director shall be a person of such training, experience, and capacity as will especially qualify him or her to discharge the duties of the office. The Director of Public Welfare may be discharged by the Commissioners of the District of Columbia upon recommendation of the Board. The Commissioners of the District of Columbia are authorized, upon the nomination of the Board, to appoint such personnel as may be necessary for the efficient performance of the duties of the Board: *Provided, however,* That all employees of the Board, except the Director, shall be appointed in accordance with and be subject to the provisions of U. S. Code, title 5, secs. 638 et seq., and the rules and regulations made in pursuance thereof in the same manner as members in the classified civil service of the United States, the Commissioners of the District of Columbia, however, being authorized in their discretion to give preference to residents of the District of Columbia. The Civil Service Commission is hereby authorized and directed to confer a competitive civil-service status upon those employees performing services for the Board on the effective date of this section who are citizens of the United States and who, within six months after the effective date of this section, are certified by the Commissioners, upon recommendation of the Board, (a) as having been appointed from among the highest available eligibles from an appropriate register of the Civil Service Commission or (b) as having rendered active service for the Board prior to the effective date of this section, and who qualify in such appropriate noncompetitive examinations as the Civil Service Commission may prescribe, except that as to employees engaged in work in which the Federal Government shares the expense, the Board of Public Welfare shall prescribe such conditions for eligibility to enter appropriate noncompetitive examinations prescribed by the Civil Service Commission as shall conform to the Federal Acts providing for Federal financial participation and to rules and regulations of the Federal agencies administering such Acts. Any employee of the Board who fails to meet these requirements or who fails to take or pass the noncompetitive examination prescribed by the Commission, or who is not certified by the Commissioners, may continue to serve for a period of not more than thirty days after the establishment of appropriate registers. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 5; Dec. 20, 1941, 55 Stat. 849, ch. 605, § 1.)

§ 3–106 [8: 6]. Institutions placed under control of board.

The board shall have complete and exclusive control and management of the following institutions of the District of Columbia: (a) The workhouse at Occoquan in the state of Virginia; (b) the reformatory at Lorton in the state of Virginia; (c) the Washington Asylum and Jail; (d) the National Training School for Girls, in the District of Columbia and at Muirkirk in the state of Maryland; (e) the Gallinger Municipal Hospital; (f) the Tuberculosis Hospital; (g) the Home for the Aged and Infirm; (h) the Municipal Lodging House; (i) the Industrial Home School; (j) Industrial Home School for Colored Children; (k) District Training School in Anne Arundel County, in the state of Maryland. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

COMPILER'S NOTE

Direction and control of the Tuberculosis Hospital (subdivision f) was transferred to the Health Department of the District of Columbia on July 1, 1937, see § 6–117.

CROSS REFERENCES

Board given exclusive control of the workhouse at Occoquan in the state of Virginia; the reformatory at Lorton, in the state of Virginia; and the Washington Asylum and Jail, § 24–409.

Control and supervision of District Training School, § 32–602 et seq.

Exclusive control and management of Industrial Home School, § 32–501.

Powers and duties of Board of Public Welfare over prisoners, § 24–409 et seq.

Transfer of control of certain institutions to Department of Corrections, see §§ 24–442, 24–443.

§ 3–107 [8: 7]. Supervision of personnel of institutions—Appointment and discharge of personnel.

The superintendents and all other employees engaged in the operation of the institutions enumerated in section 3–106 shall be subject to the supervision of the board. Each superintendent shall

have the management and control of the institution to which he is appointed and shall be subordinate to the director of public welfare. The superintendent and all other employees of each of the institutions enumerated in section 3–106 shall be appointed by the Commissioners of the District of Columbia upon nomination by the board and shall be subject to discharge by the Commissioners upon recommendation of the board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

SUPERINTENDENT OF GALLINGER MUNICIPAL HOSPITAL; TERMINATION DATE

The act of July 5, 1945, ch. 270, 59 Stat. 411, provided: "That notwithstanding the limitations of existing law, the Commissioners of the District of Columbia may appoint any retired officer of the United States Public Health Service or any retired civilian employee of the United States Government or District of Columbia government to the position of Superintendent of Gallinger Municipal Hospital and pay him a salary at the rate of $8,000 per annum and in addition to pay him at the rate of not to exceed $1,500 per annum for commutation of living quarters until such time as a new Superintendent's residence at said hospital has been constructed and is ready for occupancy. Such retired officer or retired civilian employee may receive such salary and commutation of living quarters or his retired pay or retirement benefits, whichever he may elect. If he elects to receive his retired pay or retirement benefits he shall receive neither such salary nor such commutation of living quarters. If he elects to receive such salary, with or without commutation of living quarters, he shall not receive his retired pay or retirement benefits, but any such retired officer or retired civilian employee who elects to receive such salary shall not, because of his appointment to or service in such position as Superintendent, be deprived of his status as such retired officer or retired civilian employee, nor, at the termination of such service as Superintendent, his right to his retired pay or retirement benefits.

"SEC. 2. The Surgeon General of the United States Public Health Service may detail, at the request of the Commissioners of the District of Columbia, any commissioned officer of such Service to act as Superintendent of Gallinger Municipal Hospital, said officer to receive during the period he is so detailed the salary and commutation of living quarters provided in section 1 hereof in lieu of his salary as an officer of the United States Public Health Service.

"SEC. 3. This Act shall remain in force during the present war and for a period of six months following the termination of the war."

CROSS REFERENCE

Approval of superintendents of prisons, §§ 24–411 to 24–419.

§ 3–108 [8: 8]. Regulation of admissions to, and administration of institutions.

It shall be the duty of the board to make such rules and regulations relating to the admission of persons to, and the administration of, the institutions hereinbefore referred to, as will promote discipline and good conduct of inmates and employees and efficiency and economy in the operation of these institutions. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 9.)

COMPILER'S NOTES

This section may be partially superseded by § 32–308 which gives the Commissioners authority to make rules and regulations for the admission of paying patients to the psychopathic ward of Gallinger Municipal Hospital.

This section may be partially superseded by § 32–309 which gives the Commissioners authority to make rules and regulations for the admission of paying patients to the contagious ward of Gallinger Municipal Hospital.

§ 3–109 [8: 9]. Registration records—System of accounts.

Under the authority herein granted the board may prescribe forms of record keeping to secure accuracy and completeness in the registration of persons under care and the services rendered in their behalf. The board may recommend to the Comptroller General of the United States, and the Comptroller General may prescribe, so far as practicable, a uniform system of accounts to record receipts and disbursements and to determine comparative costs of operation. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 9.)

§ 3–110 [8: 10]. Powers of Board of Charities transferred.

The following powers and duties prior to March 16, 1926, imposed by law upon the Board of Charities shall be vested in the board, and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board: (a) To provide for the transportation to their respective places of residence of nonresident indigent persons, and to provide for indigent persons, who are legal residents of the District of Columbia, medical care and treatment when necessary, under contracts with such hospitals as are or may be designated by law; (b) to provide for the transportation to their respective places of residence, of nonresident insane persons and to afford hospital care for indigent insane persons who are legal residents of the District of Columbia in such hospital or hospitals as are or may be designated by law; (c) to provide for the maintenance of boys committed by the courts of the District of Columbia to the National Training School for Boys under contracts which are or may be authorized by law; (d) to provide for all other aged, infirm, or needy persons, including women and children, in the manner authorized by law or by appropriations enacted by the Congress. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

COMPILER'S NOTE

The words "and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board" are temporary and probably obsolete.

CROSS REFERENCES

Aged and infirm persons making application to Commissioners for assistance under the Social Security Act may be referred to Board of Public Welfare for admission to Home for Aged and Infirm, § 46–203.

Duty to collect cost of maintenance of insane persons in St. Elizabeths Hospital, § 21–318.

General provision concerning nonresident insane persons, § 21–317.

§ 3–111 [8: 11]. General supervision over institutions supported by congressional appropriations.

The said Board of Public Welfare shall visit, inspect, and maintain a general supervision over all institutions, societies, or associations of a charitable, eleemosynary, correctional, or reformatory character which are supported in whole or in part by appropriations of Congress, made for the care or treatment of residents of the District of Columbia; and no payment shall be made to any such charitable, eleemosynary, correctional, or reformatory institution for any resident of the District of Columbia

who is not received and maintained therein pursuant to the rules established by such Board of Public Welfare, except in the case of persons committed by the courts, or abandoned infants needing immediate care. (June 6, 1900, 31 Stat. 664, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

COMPILER'S NOTE

This section may partially supersede §§ 32–1001, 32–1002, which require the Commissioners to investigate and inspect institutions of charity supported, in whole or in part, by public funds.

AMENDMENT

The 1926 amendment confers the powers and duties of the Board of Charities upon the Board of Public Welfare.

§ 3–112 [8: 12]. Plans for new institutions to be submitted to board—Investigation of institutions.

All plans for new institutions shall, before adoption of the same, be submitted to the Board of Public Welfare for suggestion and criticism. The commissioners of the District of Columbia may at any time order an investigation by the board, or a committee of its members, of the management of any penal, charitable, or reformatory institution in the District of Columbia; and said board, or any authorized committee of its members, when making such investigation, shall have power to send for persons and papers and to administer oaths and affirmations; and the report of such investigation, with the testimony, shall be made to the commissioners. (June 6, 1900, 31 Stat. 664, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

AMENDMENT

The 1926 amendment confers the powers and duties of the Board of Charities upon the Board of Public Welfare.

§ 3–113 [8: 13]. Members and employees to have no interest in contracts.

No member or employee of said board shall be either directly or indirectly interested in any contract for building, repairing, or furnishing any institution which by this chapter the Board of Public Welfare is authorized to investigate and supervise. (June 6, 1900, 31 Stat. 665, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

AMENDMENT

The 1926 amendment confers the powers and duties of the Board of Charities upon the Board of Public Welfare.

§ 3–114 [8: 14]. Powers of Board of Children's Guardians transferred.

The following powers and duties prior to March 16, 1926, imposed by law upon the Board of Children's Guardians shall be vested in the board and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board: (a) The board may make temporary provision for the care of children pending investigation of their status; (b) to have the care and legal guardianship of children who may be committed by courts of competent jurisdiction and to make such provision for their care and maintenance, either temporarily or permanently, in private homes or in public or private institutions, as the welfare of the child may require. The board shall cause all of its wards placed out under care to be visited as often as may be required to safeguard their welfare and when children are placed in family homes or private institutions, so far as practicable such homes or institutions shall be in control of persons of like faith with the parents of such children: *Provided,* That whenever the board shall for any reason place the child with any organization, institution, or individual other than of the same religious faith as that of the parents of the child, the board shall set forth the reasons for such action in the records of the case; (c) to provide care and maintenance for feeble-minded children who may be received upon application or upon court commitment, in institutions equipped to receive them, within or without the District of Columbia. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

COMPILER'S NOTE

The act of July 26, 1892, 27 Stat. 270, ch. 250, § 7, provided as follows:

BOARD OF GUARDIANS.—The Commissioners of the District shall have authority to prescribe the form of records to be kept by the board of guardians, and the methods to be employed by them in paying bills and auditing accounts; and an annual report of its operations hereunder shall be made by the board to the superintendent of charities. The superintendent of charities shall have full powers of investigation and report regarding all branches of the work of the board, as well as over all institutions in which children are placed by the board; and it shall be his duty to recommend annually the appropriations which in his judgment are necessary to the carrying on of its work.

§ 3–115 [8: 15]. Contracts for care of dependent children.

The board shall have the power, subject to the approval of the commissioners, to conclude arrangements with persons or institutions for the care of dependent children at such rates as may be agreed upon. (July 26, 1892, 27 Stat. 269, ch. 250, § 3.)

AMENDMENTS

The 1892 act, cited to the text, provided for the employment of two agents and fixed their compensation. It also provided for the election of officers of the Board of Children's Guardian, which board was abolished and its powers and duties transferred to the Board of Public Welfare by the act of March 16, 1926, 44 Stat. 210, ch. 58, §§ 1, 2 (§§ 3–101, 3–102).

CROSS REFERENCE

Allowance for care of dependent, children, conditions, investigation, duties, rules, and regulations, §§ 32–701 to 32–710.

§ 3–116 [8: 16]. Children over whom board shall have supervision.

Said Board of Public Welfare shall have the care and supervision of the following classes of children: First. All children committed under section 32–209. Second. All children who are destitute of suitable homes and adequate means of earning an honest living, all children abandoned by their parents or guardians, all children of habitually drunken or vicious or unfit parents, all children habitually begging on the streets or from door to door, all children kept in vicious or immoral associations, all children known by their language or life to be vicious or incorrigible whenever such children may be committed to the care of the board by the Juvenile Court of the District: *Provided,* That the laws regulating the commitment of children to the training schools

of the District shall not be deemed to be repealed in any part by this section. Third. Subject to the provisions of section 11–915, such children as the board of trustees of the National Training School for Boys may, in their discretion, commit to the Board of Public Welfare, and power is hereby given the board of trustees of the said school to commit any inmate thereof to the said Board of Public Welfare, conditionally upon the good behavior of the child so committed. Fourth. Under the rules to be established by the board children may be received and temporarily cared for pending investigation or judgment of the court. (July 26, 1892, 27 Stat. 269, ch. 250, § 4; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; May 27, 1908, 35 Stat. 380, ch. 200; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

COMPILER'S NOTE

The phrase "Subject to the provisions of section 11–915" has been inserted by the compiler in view of "An act to create a juvenile court in and for the District of Columbia," March 19, 1906, 34 Stat. 73, ch. 960, § 8, and § 11–915 of this code, the last sentence of which states, "No child once committed to any public institution by order of the juvenile court shall be discharged or paroled therefrom or transferred to another institution without the consent and approval of the said court."

AMENDMENTS

The words "police or criminal court" appearing in the 1892 act have been changed to "juvenile court" by the 1906 act, cited to the text, conferring original and exclusive jurisdiction of all cases involving legal punishment of children under the said 1892 act upon the juvenile court.

The 1908 act, cited to the text, changed the name of the reform school to the National Training School for Boys.

The 1926 act transferred the powers and duties of the Board of Children's Guardians to the Board of Public Welfare.

CROSS REFERENCES

Commitment of juveniles by juvenile court, § 11–915.

Commitment of minors employed in violation of law, § 36–222.

Duty to designate hospital for treatment to prevent blindness of new-born infants, § 6–202.

NOTES TO DECISIONS

EFFECT OF MARRIAGE OF INCORRIGIBLE

Under this and other laws giving the courts jurisdiction of an incorrigible female of the age of 15 years, marriage of such a child does not automatically end the right of custody and care by the Government nor give her the right to release, on habeas corpus, from the National Training School to which she has been committed. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

REHABILITATION

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

§ 3–117 [8: 17]. Board to care for dependent and neglected children—Children to be placed in private families—Adoption.

The Board shall have full power (1) to accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Board, and to provide for the care and support of such children during their minority or during the term of their commitment; (2) the Board shall also have full power with respect to all children accepted by it for care to place them in private families either without expense or at a fixed rate of board, to place them in institutions willing to receive them either without expense or at a fixed rate of board; (3) to consent to the adoption of all children committed to its care whose parents have been permanently deprived of custody by court order. (July 26, 1892, 27 Stat. 269, ch. 250, § 5; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 3.)

AMENDMENTS

The first sentence of § 5 of the 1892 act, cited to the text, made the board the guardian of all children committed to it by the courts and gave the power to board the children in private families and in institutions.

This status and power were re-created in the 1926 act, cited to the text, and now appear in § 3–114 of this code.

The 1906 act, cited to the text, conferred jurisdiction upon the juvenile court. (See notes under § 3–116.)

The act of Jan. 12, 1942, cited to text, amended section generally.

The catchline has been rewritten.

CROSS REFERENCES

General provisions concerning apprentices, §§ 36–101 to 36–111.

Powers and duties of board in adoption proceedings, §§ 16–201, 16–203, 16–206.

§ 3–118 [8: 18]. Antecedents of children to be investigated—Records confidential—Physical and mental care.

The antecedents, character, and condition of life of each child received by the Board shall be investigated as fully as possible, and the facts learned entered in permanent records, in which shall also be noted the subsequent history of each child, so far as it can be ascertained. Such records shall be confidential but may be made available in the discretion of the Board. Provision shall be made for study of the physical and mental conditions of children received for care in order that care for each child may be planned to meet his particular physical and mental needs. (July 26, 1892, 27 Stat. 269, ch. 250, § 6; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 4.)

AMENDMENTS

The 1926 act, cited to the text, transferred the powers and duties of the Board of Children's Guardians to the Board of Public Welfare.

The act of Jan. 12, 1942, cited to text, added provisions regarding keeping records confidential and regarding physical and mental care.

The catchline has been rewritten.

§ 3–119 [8: 19]. Voluntary aid may be accepted.

The said Board of Public Welfare is authorized to accept voluntary aid in the placement and supervision of children under its care. (May 18, 1910, 36 Stat. 409, ch. 248; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

AMENDMENT

The 1926 act. cited to the text, conferred the powers and duties of the Board of Children's Guardians upon the Board of Public Welfare.

CROSS REFERENCE

General provision prohibiting voluntary services to District, § 1–215.

§ 3–120 [8: 20]. Commitments by Juvenile Court.

The judge of the Juvenile Court of the District of Columbia is hereby authorized and empowered, at his discretion, to commit to the custody and care of the Board of Public Welfare of the District of Columbia

children under seventeen years of age who shall be convicted of petty crimes or misdemeanors which may be punishable with fine or imprisonment; and said Board of Public Welfare shall place, under contract, such children in such suitable homes, institutions, or training schools for the care of children as it may deem wise and proper. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 1; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

AMENDMENT

The 1906 act, cited to the text, conferred jurisdiction upon the juvenile court. (See notes under § 3–116.) The 1926 act, cited to the text, conferred the powers and duties of the Board of Children's Guardians upon the Board of Public Welfare.

CROSS REFERENCE

Commitment by juvenile court, § 11–915.

§ 3–121 [8: 21]. Children under 17 years not to be committed to jail, workhouse, or police station.

No court shall commit a child under seventeen years of age, charged with or convicted of a petty crime or misdemeanor punishable by a fine or imprisonment, to a jail, workhouse, or police station, but if such child be unable to give bail or pay a fine, it may be committed to the Board of Public Welfare temporarily or permanently, in the discretion of the court, and said board shall make some suitable provision for said child outside the inclosure of any jail, workhouse, or police station, or said court may commit such child to the National Training School under the laws now providing for such commitment. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 2; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

AMENDMENT

The 1926 act, cited to the text, conferred the powers and duties of the Board of Children's Guardians upon the Board of Public Welfare.

CROSS REFERENCES

Provision of place of detention for minor in custody of juvenile court, §§ 11–912, 11–927.

Laws "providing for such commitment", §§ 32–801 to 32–822, 32–901 to 32–913.

NOTES TO DECISIONS

FELONY

This section did not forbid the commitment to a jail, workhouse, or police station any child under 17 years of age if charged with or convicted of a felony. (*Peak* v. *Reed*, 58 App. D. C. 44, 24 Fed. (2d) 619.)

§ 3–122 [8: 22]. Duties of trustees of National Training School for Girls transferred.

The duties prior to March 16, 1926, imposed by law upon the board of trustees of the National Training School for Girls concerning the admission, care, parole, and discharge of inmates shall be vested in the board. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 12.)

CROSS REFERENCE

Control, management, parole, and discharge of inmates, rules and regulations of National Training School for Girls, § 32–901 et seq.

§ 3–123 [8: 23]. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.

It shall be the duty of the board to prepare and submit to the commissioners of the District of Columbia, in such manner as they shall require, an annual budget itemizing the appropriations necessary to the proper discharge of the duties imposed by law upon the board and for the support and maintenance of the institutions under its management. The board shall also submit to the commissioners an annual report of its activities and the work carried on under its direction, together with its recommendations for securing more efficient and humane care for all persons in need of public assistance. The board shall study from time to time the social and environmental conditions of the District of Columbia and shall incorporate in its reports the results thereof and recommendations designed to further safeguard the interests and well-being of the children of the District of Columbia and to diminish and ameliorate poverty and disease and to lessen crime. Except in the placement of children in institutions under the public control, the board shall when practicable place them in institutions or homes of the same religious faith as the parents: *Provided,* That whenever the board shall for any reason place the child with any organization, institution, or individual other than of the same religious faith as that of the parents of the child, the board shall set forth the reason for such action in the record of the case. Inmates of public institutions shall be given the fullest opportunity for the practice of their religion. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 13.)

§ 3–124 [8: 24]. Wards placed outside District of Columbia, Virginia, and Maryland to be visited.

A ward placed outside the District of Columbia and the states of Virginia and Maryland shall be visited not less than once a year by a voluntary agent or correspondent of the Board of Public Welfare. (Mar. 2, 1927, 44 Stat. 1323, ch. 271.)

§ 3–125 [8: 25]. Board may discharge from guardianship children entrusted to it.

The Board of Public Welfare shall have power, upon proper showing, in its discretion, to discharge from guardianship any child committed to its care. (Mar. 2, 1927, 44 Stat. 1323, ch. 271.)

§ 3–126. Additional duties of Board.

The Board of Public Welfare of the District of Columbia established by this title, shall, in addition to the other duties and responsibilities imposed upon it by law, have the following duties and responsibilities:

(1) To investigate the circumstances affecting children handicapped by dependency, neglect or mental defect, or who may be in danger of becoming delinquent, and to provide such services for the protection and care of such children as will assist in conserving satisfactory home life;

(2) To safeguard the welfare of children born out of wedlock, by providing services for their mothers and in caring for and in obtaining support for such children;

(3) To assume responsibility for the care and support of dependent or neglected children under the age of eighteen years needing public care away from their own homes, when such need has been determined by careful investigation and is requested by

the parent or parents or any person or agency responsible for the care of such children;

(4) To make suitable provision for the reception and care of children in need of detention pending court action, or who are temporarily detained under court order, or who are temporarily homeless;

(5) Upon proper showing, in its discretion, to discharge from custody or guardianship any child committed to its care. (Jan. 12, 1942, 55 Stat. 882, ch. 649, § 1.)

§ 3–127. Assisting child to leave institution without authority—Penalty.

Any person who shall entice or attempt to entice, away from any home or institution, any child legally committed to the Board of Public Welfare and placed by said Board in such home or institution, or any person who shall assist or attempt to assist any such child to leave without permission such home or institution, knowing such child to be an inmate of such institution or to have been placed in such home, or any person who shall harbor, conceal, or aid in harboring or concealing any such child who shall be absent without leave from a home or institution in which he has been placed by the Board of Public Welfare, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall pay a fine of not less than $10 nor more than $100; and any policeman shall have power, and it is hereby made his duty, to take into custody any child, when in his power to do so, who shall be absent without leave from a home or institution in which he has been placed and return him thereto or to the Receiving Home. (Jan. 12, 1942, 55 Stat. 883, ch. 649, § 2.)

TITLE 4.—POLICE AND FIRE DEPARTMENTS

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Chapter 1.—METROPOLITAN POLICE

Sec.

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§ 4–101 [20: 451]. Metropolitan Police district created.

The District is constituted a police district, to be called "The Metropolitan Police district of the District of Columbia." (R. S., D. C., § 321.)

CROSS REFERENCE

Territorial area, §§ 1–101, 4–102.

NOTES TO DECISIONS

STATUS OF *EMPLOYEES*

A member of metropolitan police in District of Columbia is not an employee of the United States, but is an employee of the municipal corporation, the District of Columbia.—*Wham* v. *U. S.* (D. C. D. C. 1948, 81 F. Supp. 126)

§ 4–102 [20: 452]. Police districts and precincts to be established by commissioners.

The Metropolitan Police district of the District of Columbia shall be coextensive with the District of Columbia, and shall be subdivided into such police districts and precincts as the commissioners of said District may from time to time direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056.)

AMENDMENT

The 1906 amendment added the words "into such police districts and precincts."

CROSS REFERENCE

Territorial area, § 1–101.

§ 4–103 [20: 453]. Appointments—Civil service rules made applicable—Classification.

The commissioners of said District shall appoint to office, assign to such duty or duties as they may prescribe, and promote all officers and members of said Metropolitan police force: *Provided,* That all officers, members, and civilian employees of the force, except the major and superintendent, the assistant superintendents, and the inspectors, shall be appointed and promoted in accordance with the provisions of an act entitled "An Act to regulate and improve the civil service of the United States," approved January 16, 1883, as amended (U. S. C., title 5, § 638, et seq.), and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States: *Provided further,* That the assistant superintendents and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the commissioners so determine: *Provided further,* That privates of class 1, if found efficient, shall serve one year on probation, privates of class 2 shall serve two years subsequent to service in class 1, and privates of class 3 shall include all those privates who have served efficiently three or more years. In order that the full complement of the Metropolitan police force may at all times be maintained, as authorized by law, the commissioners of the District of Columbia are authorized, when vacancies occur in classes 2 and 3 of said Metropolitan police force, which can not be filled by promotion, to appoint privates in class 1 equal in number to the positions vacated in said classes 2 and 3; and the respective salaries specifically provided for such vacant positions may be reduced to pay the salaries of the privates so appointed to class 1. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056, par. 2; May 26, 1908, 35 Stat. 296, ch. 198; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1.)

COMPILER'S NOTE

While this section speaks of "assistant superintendents," § 4–106 authorizes the appointment of only one assistant superintendent.

AMENDMENTS

First sentence to the first colon is from the 1906 act, cited to the text; the remaining part of said act providing for the classification of police officers at the time of the passage of the act was deleted in effect by the later amendments.

The last sentence was added by the 1908 amendment.

The two proviso clauses were added by the 1919 amendment.

CROSS REFERENCES

Appointment of Metropolitan Police to White House Police, § 4–302.

Appointment of police matrons, §§ 4–116 to 4–118.

Appointment of police surgeons, § 4–124.

Appointment of private detectives, § 4–168.

Appointment of property clerk, § 4–151.

Appointment of special policemen for protection of specific private property, § 4–115.

Appointment of special policemen for street intersections, §§ 4–112 to 4–114.

Free transportation by street railway companies, § 44–213.

Membership on the Police and Firemen's Retiring and Relief Board, § 4–510.

Number of privates and officers to be appointed, § 4–106.

Policemen excluded from unemployment compensation under Social Security Act, § 46–301.

Police receiving awards for meritorious service in line of duty given preference in promotions, § 4–703.

Removal of policemen, §§ 4–121, 4–122.

Resignation of policemen, § 4–125.

Seniority of policemen serving in armed forces, see §§ 4–902, 4–903.

Special police upon emergency of riot, pestilence, invasion, insurrection, public election, ceremony, or celebration, § 4–133.

United States Park Police, §§ 4–201 to 4–208.

White House police, §§ 4–301 to 4–306.

STATUTORY REFERENCE

Capitol police for Capitol Building and grounds, U. S. C., title 40, §§ 206–215.

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAW

Whole tenor of this act shows that it was intended to supersede previous laws relating to the same subject matter, and to provide a system of government for the District complete in itself, and Commissioners may select

such persons, under appropriate regulations, as they may deem suitable and competent for the discharge of their duties, without regard to previous acts. *District of Columbia* v. *Hutton,* 143 U. S. 18 (36 L. Ed. 60, 12 Sup. Ct. 369, 36 L. Ed. 60).

§ 4–104 [20: 453a]. Oath of office.

The Commissioners of the District of Columbia shall require an oath of office to be taken by the members of the police force, and shall make suitable provisions respecting the same, and for the registry thereof, and such oath may be taken before one of said commissioners, any of whom is empowered to administer the same. (R. S., D. C., § 351; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act transferred the powers and duties of the Board of Metropolitan Police to the commissioners of the District of Columbia.

§ 4–105 [20: 454]. Service during probationary period—Discharge for unsatisfactory service—Retention equivalent to permanent appointment.

No person shall receive a permanent appointment who has not served the required probationary period, but the service during probation shall be deemed to be service in the uniformed force if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement, promotion, retirement, and pension in accordance with existing law. If the conduct or capacity of the probationer be unsatisfactory to the commissioners, the probationer shall be notified in writing that at the end of such probationary period he shall for that reason not be retained in the service. The retention of the probationer in the service otherwise shall be equivalent to a permanent appointment therein. (Aug. 31, 1918, 40 Stat. 938, ch. 164.)

COMPILER'S NOTE

Preceding the word "no" in the first line the original enactment contained the following: "Preliminary to permanent appointment as private, there shall be a period of probation for such time as may be fixed by the commissioners and." The probationary period has been definitely fixed at 1 year by § 4–108.

CROSS REFERENCES

Discharge for inefficiency, § 4–802.

Proceedings for removal of policemen for cause, §§ 4–121, 4–122.

§ 4–106 [20: 455]. Classification of officers and privates of police department—Duties of each.

The said Metropolitan police force shall consist of one major and superintendent, who shall continue to be invested with such powers and charged with such duties as is provided by existing law; and also of one assistant superintendent with the rank of inspector; four surgeons for the police and fire departments; three inspectors; ten captains; twelve lieutenants, one of whom shall be harbor master; and such number of sergeants; and privates of class three; privates of class two; privates of class one; mounted inspectors, captains, lieutenants, sergeants, and privates on horses and bicycles, and such others as said commissioners may deem necessary within the appropriations made by Congress: *Provided,* That the inspectors shall perform the duties required on June 8, 1906, of captains in the force, that the captains shall command police precincts and perform such duty or duties in connection therewith as the laws and regulations of the said commissioners may prescribe. The major and superintendent of the Metropolitan police shall be charged with the enforcement of all laws and regulations relating to the harbor, and employ the lieutenant, force, and means provided for this service in the execution of the duties appertaining thereto. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; Mar. 3, 1905, 33 Stat. 902, ch. 1406; June 8, 1906, 34 Stat. 221, ch. 3056, par. 3.)

COMPILER'S NOTES

By act of March 3, 1925, 43 Stat. 1125, ch. 443, § 15, the Commissioners were authorized to appoint 100 additional privates for the Metropolitan Police force.

Section 4–103 speaks of the appointment of "assistant superintendents." However, this section authorizes the appointment of only one assistant superintendent.

AMENDMENTS

The 1905 amendment added the last sentence.

The 1906 amendment increased the numbers of certain officers.

CROSS REFERENCES

Appointment and qualifications of police surgeons, § 4–124.

Assessment of a tax against premises used for purposes of prostitution, § 22–2717.

Copy of records of sales of certain weapons, § 22–3210.

Criminal penalty for impersonating police officer, after expiration of commission, § 22–1306.

Designation of officer to take bonds and collateral, § 23–610.

Detail of officer to assist Washington Humane Society in preventing cruelty to children and animals, §§ 32–209, 32–310.

Duty to enforce pharmacy regulations, § 2–617.

Duty to enforce Uniform Narcotic Drug Act, § 33–422.

Duty to investigate pharmacy licenses which may be subject to revocation, § 2–605.

Enforcement of laws regulating dentists, § 2–305.

General provisions concerning wharves, §§ 9–101, 9–102.

Harbor regulations, §§ 22–1701 to 22–1703.

Issuance of license to carry a pistol, § 22–3206.

Major and superintendent member of committee to make awards for meritorious service of police in line of duty, § 4–702.

Permission to sell certain types of weapons to designated classes of persons, §§ 22–3208, 22–3210, 22–3214.

Permit to congregate near property of foreign governments, § 22–1115.

Police rules and regulations, §§ 4–177, 4–178, and notes.

Power to file petition to revoke or suspend nurse's registration, § 2–407.

Probation officers have power of police officers, § 11–924.

Service of process issued by police court, §§ 11–611, 11–612.

§ 4–106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.

Hereafter the Commissioners of the District of Columbia may assign to duty as assistant to the inspector commanding the detective bureau in the Metropolitan Police Department any officer or member of the Metropolitan Police force and, during the period of such assignment, the said officer or member shall hold the rank and receive the pay of a captain of police and shall be eligible for assignment, by the said Commissioners, as chief of detectives. For the duration of such latter assignment such officer or member shall hold the rank and receive the pay of an assistant superintendent of police. (June 20, 1942, 56 Stat. 374, ch. 427, § 1.)

§ 4–107 [20: 456]. Age limits on original appointments.

The Commissioners of the District of Columbia are authorized to determine and fix the minimum limits of age within which original appointments to the Metropolitan police department may be made. (Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4.)

§ 4–108 [20: 457a]. Salaries of police force—Officers and privates—Annual increases—Original appointments—Probationary service.

The annual basic salaries of the officers and members of the Metropolitan police force shall be as follows: Major and superintendent, $8,000; assistant superintendents, $5,000 each; inspectors, $4,500 each; captains, $3,600 each; lieutenants, $3,050 each; sergeants, $2,750 each; corporals, $2,600; privates, a basic salary of $1,900 per year, with an annual increase of $100 in salary for five years, or until a maximum salary of $2,400 is reached. All original appointments of privates shall be made at the basic salary of $1,900 per year, and the first year of service shall be probationary. (July 1, 1930, 46 Stat. 839, ch. 783, § 1; June 30, 1949, 63 Stat. 376, ch. 287, § 2.)

COMPILER'S NOTES

This section became effective July 1, 1930.

Section 2 of the act approved July 1, 1930, 46 Stat. 839, ch. 783, provided basic salaries for members of the fire department and appears herein as § 4–405. Sections 3 and 4 of said act contained provisions applicable to salaries of both the Metropolitan Police and the Fire Department, and appear herein as §§ 4–801 and 4–802.

AMENDMENTS

Act June 30, 1949, cited to text, amended section by inserting after the words "sergeant, $2,750 each;" the words "corporals, $2,600 each". Said act also provided: "This section shall take effect as of July 1, 1945."

See also, note to § 4–806.

Act July 1, 1930, cited to text, amended section 1 of act May 27, 1924, ch. 199, 43 Stat. 174 entitled "An Act to fix salaries of officers and members of the Metropolitan Police force, the United States Park Police force, and the Fire Department of the District of Columbia" by changing the basic salaries of the officers and members of the Metropolitan Police force.

TEMPORARY INCREASE IN COMPENSATION

Act Apr. 1, 1943, ch. 32, 57 Stat. 57, as amended by act Mar. 11, 1944, ch. 89, 58 Stat. 115, provided:

"All employees of the District of Columbia Government whose compensation is prescribed by the Act entitled 'An Act to fix the salaries of officers and members of the Metropolitan Police Force and the Fire Department of the District of Columbia', approved July 1, 1930 (§§ 4–108, 4–405, 4–801) (including the United States Park Police in the District of Columbia), or by the Act entitled 'An Act to amend the Act entitled "An Act to fix and regulate the salaries of teachers, school officers, and other employees of the Board of Education of the District of Columbia" ', approved June 4, 1924 (§§ 31–109, 31–115, 31–119, 31–601 to 31–606, 31–617 to 31–619, 31–621, 31–626 to 31–629), all other employees of the District of Columbia Government, except employees whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose, not covered by the joint resolution entitled 'Joint Resolution extending until April 30, 1943, the period for which overtime rates of compensation may be paid under the Acts of June 28, 1940 (54 Stat. 676), October 21, 1940 (54 Stat. 1205), and June 3, 1941 (55 Stat. 241), and for other purposes', approved December 22, 1942 (set out as notes under 5 U. S. C. §§ 26a, 29), and all individuals whose rate of compensation is prescribed by the Act entitled 'An Act to create the White House Police Force, and for other purposes', approved September 14, 1922, as amended (3 U. S. C. §§ 61 to 67), shall receive additional compensation at the rate of $300 per annum, except that—

"(1) any such employee shall be paid only such additional compensation as will not cause his aggregate compensation to exceed the rate of $5,000 per annum; and

"(2) employees paid on a per diem basis shall receive an increase of 10 per centum in their compensation otherwise provided for by law, but such percentage increase shall not in any case exceed $25 per month.

"SEC. 2. This Act shall take effect as of December 1, 1942, and shall terminate on June 30, 1945, or such earlier date as the Congress by concurrent resolution may prescribe."

CROSS REFERENCES

Annual increase, withholding for inefficiency, discharge for inefficiency, extra compensation for demonstrated ability, § 4–802.

May not accept fees or presents in addition to salary, except by consent of Commissioners, § 4–129.

Other provisions concerning salaries of privates, § 4–801.

Salaries of members of United States Park Police governed by this section, § 4–203.

Salaries of members of White House Police governed by this section, § 4–303.

Salary increases and additional compensation in lieu of overtime or night pay differential, see sections 4–803 to 4–806.

STATUTORY REFERENCE

Salaries of police exempted from provisions of the Classification Act of 1923, U. S. C., title 5, § 662.

§ 4–108a. Allowance for use of private motor vehicles by inspectors.

The Commissioners of the District of Columbia are hereby authorized to allow not more than three inspectors of the Metropolitan Police force an allowance for privately owned automobiles used by the inspectors in the performance of official duties at not to exceed $480 per annum for each automobile used during the fiscal years 1945 and 1946 and thereafter to pay to not more than three inspectors of the Metropolitan Police force who may be called upon to use privately owned automobiles in the performance of official duties for each automobile an allowance not to exceed $480 per annum. (June 25, 1947, 61 Stat. 179, ch. 145.)

§ 4–109 [20: 458]. Security to be required from certain officers.

The Commissioners of the District of Columbia shall require security to be entered into by the major and superintendent, assistant superintendents, captains, lieutenants, and all other officers who may be intrusted with the keeping of money and valuables. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 2.)

CROSS REFERENCE

Property clerk, §§ 4–151 to 4–167.

§ 4–110 [20: 459]. Detail of privates for detective work.

The Commissioners of the District of Columbia are hereby authorized to detail from time to time from the privates of the police force such number of privates as may in their judgment be necessary for special service in the detection and prevention of crime, and while serving in such capacity they shall have the rank of sergeants in the force. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 3.)

CROSS REFERENCE

Funds for detection of crime, § 47–114.

§ 4–111 [20: 460]. Police not to be detailed as watchmen at municipal building.

Policemen shall not be detailed for duty as watchmen at the municipal building. (Mar. 3, 1909, 35 Stat. 689, ch. 250.)

§ 4–112 [20: 461]. Crossing policemen — Detail — Penalty for failure to stop cars.

The Commissioners of the District of Columbia are hereby authorized and required to station special policemen at such street railway crossings and intersections in the city of Washington as the said commissioners may deem necessary; every car shall be brought to a full stop, immediately before making such crossing or intersection. Neglect or failure to stop any car, as herein provided for shall subject the company to a fine of not to exceed twenty-five dollars for every such neglect or failure, to be recovered in any court of competent jurisdiction. (June 24, 1898, 30 Stat. 489, ch. 496, § 3; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

AMENDMENT

This section originally contained a clause following the word "necessary" and preceding the word "every" reading as follows: "The expense of such service to be paid pro rata by the respective companies."

The act of January 14, 1933, 47 Stat. 759, ch. 10, § 3, in part provided as follows: "All provisions of law making it incumbent upon any street railway company to bear the expense of policemen at street railway crossings and intersections, * * * are hereby repealed." The last sentence of the section as originally enacted provided for a fine of not to exceed $25 for failure to pay for the service monthly, i. e., the keeping of special policemen at street railway crossings and intersections.

CROSS REFERENCE

Removal of special policemen without cause or hearing, § 4–121.

§ 4–113 [20: 463]. Crossing policemen made members of Metropolitan police force.

All special policemen at street railway crossing and intersections in the District of Columbia, appointed pursuant to the provisions of section 4–112 are made members of the Metropolitan police force of the District of Columbia, and, as members thereof, shall be entitled to all the rights, benefits, privileges, and immunities now possessed, or which may hereafter be possessed, by other members of said Metropolitan police force. Said special policemen shall likewise be subject to the same rules and regulations and to the same discipline as other members of said Metropolitan police force, it being the true intent and meaning hereof that the said special policemen and the regular members of said police force shall, according to the period of service and classification, be placed upon the same footing. (Sept. 1, 1916, 39 Stat. 720, ch. 433.)

COMPILER'S NOTE

D. C. Code 1929, title 20, § 462, has been superseded by this section.

CROSS REFERENCE

Removal of special policemen without cause or hearing, § 4–121.

§ 4–114 [20: 465]. Substitution of other members of force for crossing duty.

The superintendent of police of the District of Columbia may, in his discretion, substitute other members of the Metropolitan police force for said special policemen at street railway crossings and intersections, and during such periods of substitution said special policemen shall perform whatever service may be assigned to them by said superintendent of police: *Provided,* That nothing herein shall be construed to amend, alter, or repeal the existing law relative to the payment of the compensation of the said special policemen now appointed or those that may hereafter be appointed. (Sept. 1, 1916, 39 Stat. 721, ch. 433, § 12.)

§ 4–115 [20: 466]. Special policemen — Appointment and compensation.

The Commissioners of the District of Columbia, on application of any corporation or individual, or in their own discretion, may appoint special policemen for duty in connection with the property of, or under the charge of, such corporation or individual; said special policemen to be paid wholly by the corporation or person on whose account their appointments are made, and to be subject to such general regulations as the said commissioners may prescribe. (Mar. 3, 1899, 30 Stat. 1057, ch. 422.)

CROSS REFERENCES

Police rules and regulations, §§ 4–177, 4–178, and notes.
Removal of special policemen without cause or hearing, § 4–121.

NOTES TO DECISIONS

SCOPE OF EMPLOYMENT

Special policemen are appointed "for one sole purpose, that of guarding from depredation the property of those who paid him for his services," and are not required to keep in repair the streets on their beats and may recover from the District for injuries sustained by its negligence in failing to remove the obstructions from the sidewalks. *Klopfer* v. *District of Columbia,* 25 App. D. C. 41.

§ 4–116 [20: 467]. Police matrons—Appointments.

The Commissioners of the District of Columbia are authorized to appoint three matrons for the police department of said District. (July 23, 1888, 25 Stat. 340, ch. 694, § 1.)

§ 4–117 [20: 468]. Duties of police matrons.

It shall be the duty of said police matrons to search, when necessary, examine, and care for the female prisoners who may be taken into custody by the police, and to take charge of lost or abandoned children while detained at a station-house to which a matron may be assigned, under such rules and regulations as the Commissioners of the District of Columbia may from time to time make. (July 23, 1888, 25 Stat. 340, ch. 694, § 2.)

CROSS REFERENCES

Duties concerning persons found guilty under laws against prostitution, § 22–2703.
Police rules and regulations, §§ 4–177, 4–178.

§ 4–118 [20: 469]. Police matrons to be recommended by ten women before appointment.

No woman shall be appointed a police matron unless suitable for the position, and recommended

therefor in writing by at least ten women of good standing, residents of the District. (July 23, 1888, 25 Stat. 340, ch. 694, § 3.)

§ 4–119 [20: 470]. Duties of Board of Commissioners as head of police department.

It shall be the duty of the Commissioners of the District of Columbia at all times of the day and night within the boundaries of said police district—

First. To preserve the public peace;

Second. To prevent crime and arrest offenders;

Third. To protect the rights of persons and of property;

Fourth. To guard the public health;

Fifth. To preserve order at every public election;

Sixth. To remove nuisances existing in the public streets, roads, alleys, highways, and other places;

Seventh. To provide a proper police force at every fire, in order that thereby the firemen and property may be protected;

Eighth. To protect strangers and travelers at steamboat and ship landings and railway-stations;

Ninth. To see that all laws relating to the observance of Sunday, and regarding pawnbrokers, mock auctions, elections, gambling, intemperance, lottery dealers, vagrants, disorderly persons, and the public health, are promptly enforced; and

Tenth. To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title. The police shall, as far as practicable, aid in the enforcement of garbage regulations. (R. S., D. C., § 335; June 11, 1878, 20 Stat. 107, ch. 180, § 6; July 14, 1892, 27 Stat. 160, ch. 171.)

AMENDMENTS

The act of 1878, cited to the text abolished the Board of Metropolitan Police and transferred its duties to the Commissioners of the District of Columbia.

The 1892 amendment added the last sentence.

CROSS REFERENCES

Arrests to be made known, § 4–142.

Authority to search and arrest in certain cases, § 4–145.

Detention of insane persons, § 21–326 et seq.

Detention of witnesses, § 4–144.

Discriminatory laws not to be enforced, § 4–139.

Duty of major and superintendent of police to enforce harbor laws and regulations, § 4–106.

Duty of major and superintendent to prosecute gaming houses and houses of prostitution, §§ 4–145, 4–146.

Duty of police force to obey major and superintendent of police and Commissioners, § 4–126.

Duty to enforce Healing Arts Practice Act, § 2–137.

Enforcement of smoke-prevention laws and regulations, § 6–804.

General limitation on power of Commissioners, § 1–801.

General provisions for the disposal of garbage, §§ 6–501 to 6–511.

Jurisdiction over alley laid out in plats of subdivisions, §§ 1–623, 7–307.

Motor vehicles of department may not be transferred to other departments, § 40–504.

Ordinances, rules, and regulations authorized, §§ 4–106, 4–115, 4–117, 4–121, 4–122, 4–124, 4–130, 4–131, 4–142, 4–144.

Other provisions concerning police power of Commissioners, §§ 1–218, 1–224, 1–226.

Policemen and Commissioners have all powers of common-law constables, except in service of civil process or collection of civil debt, § 4–136.

Policing Capitol grounds, §§ 9–112 to 9–114.

Power and authority of police to arrest without a warrant, § 4–140.

Power of police to execute warrant for search or arrest, § 4–138.

Powers of officers in connection with suspected felonies, § 4–141.

NOTES TO DECISIONS

POWER OF COMMISSIONERS

Under this act a distinction is provided between the police and the schools. An intermediate board is to be appointed for the latter, while the direct control of the police is given to the commissioners. *Eckloff* v. *District of Columbia* (135 U. S. 240, 34 L. Ed. 120, 10 Sup. Ct. 752).

§ 4–120 [20: 471]. Police jurisdiction to extend to public buildings and grounds.

The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia. (July 29, 1892, 27 Stat. 325, ch. 320, § 15.)

COMPILER'S NOTE

This section contains the last part of the act of July 29, 1892, 27 Stat. 325, ch. 320, § 15. The first part of § 15 of said act appears herein as § 22–3111.

CROSS REFERENCES

Jurisdiction and control over Capitol Building, Grounds, and Terraces, §§ 9–105 to 9–117.

Regulation and control over public parks, playgrounds, and reservations in general, § 8–101 et seq.

United States Park Police, §§ 4–201 to 4–208.

White House Police, §§ 4–301 to 4–306.

STATUTORY REFERENCE

Capitol Police for Capitol Building and Grounds, U. S. C., title 40, §§ 206–215.

§ 4–121 [20: 472]. Rules and regulations—Fine, suspension, or dismissal of police—Charges to be heard by trial board.

Said commissioners, in addition to the powers vested in them by law, are also hereby authorized and empowered to make, modify, and enforce, under such penalties as they may deem necessary, all needful rules and regulations for the proper government, conduct, discipline, and good name of said Metropolitan Police force; and said commissioners are hereby authorized and empowered to fine, suspend with or without pay, and dismiss any officer or member of said police force for any offense against the laws of the United States or the laws and ordinances or regulations of the District of Columbia, whether before or after conviction thereof in any court or courts, and for misconduct in office, or for any breaches or violation of the rules and regulations made by said commissioners for the government, conduct, discipline, and good name of said police force: *Provided,* That no person shall be removed from said police force except upon written charges preferred against him in the name of the major and superintendent of said police force to the trial board or boards hereinafter provided for and after an opportunity shall have been afforded him of being heard in his defense; but no person so removed shall be reappointed to any office in said police force: *Provided further,* That special policemen and additional privates may be removed from office by said commissioners, or a majority of them, without cause

and without trial: *Provided further,* That charges preferred against any member of said police force to the trial board or boards hereinafter provided for may be altered or amended, in the discretion of such trial board or boards, at any time before final action by such board or boards, under such regulations as the commissioners may adopt, provided the accused have an opportunity to be heard thereon. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056, par. 4.)

COMPILER'S NOTE

The provisions of this section concerning removal of special policemen without cause or hearing may be superseded insofar as special policemen for street intersections are concerned, § 4–113.

AMENDMENT

The 1906 amendment deleted most of the prior act, retaining only the sense of the last proviso thereof concerning removal by written charges and an opportunity to be heard.

CROSS REFERENCES

Accepting fees or presents in addition to salary as cause for removal, § 4–129.

Compromising of a felony or other unlawful act as cause for removal, § 4–175.

Failure to comply with rules of Commissioners concerning uniforms as cause for removal, § 4–130.

Inefficiency as cause for removal, § 4–802.

Joining organization which uses strikes to enforce demands as cause for removal, § 4–125.

Police rules and regulations, §§ 4–177, 4–178, and note.

Removal of probationers without hearing, § 4–105.

Trial boards, §§ 4–122, 4–601 to 4–604.

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAW

Full authority is given to the Commission; and in the absence of rules and regulations directing a different procedure, its act of summary dismissal from the police force of the District of Columbia of officers and members can not be challenged. *Eckloff* v. *District of Columbia* (135 U. S. 240, 34 L. Ed. 120, 10 Sup. Ct. 752).

CHARGES

"While a member of the police force may not be removed except upon written charges, Congress did not intend to require such charges to be formed with the technical accuracy of an indictment for crime. If the nature of the dereliction forming the subject matter of the investigation is pointed out with sufficient clearness and accuracy to enable the accused to prepare his defense, the purpose of the statute is met." *Rudolph* v. *Creamer,* 39 App. D. C. 1 (1912).

Where charges were filed against members of District of Columbia police force on ground of conduct prejudicial to reputation, good order and discipline of police force, specification that the members stopped in front of certain premises and were given money in attempt to procure or bring about failure of the members to report violation of law, or to take proper police action in connection with gambling business carried on in the premises, was sufficient. *Brodie* v. *Young,* 1943 (133 F. 2d 406, 77 U. S. App. D. C. 169).

HEARING ON TRANSFER

Even if transfer of District of Columbia police officer having civil service status from detective bureau to traffic bureau was a demotion, he was not entitled to hearing and to be furnished with copies of charges and to be allowed to answer, although police force rules provided that duration of assignment should be dependent on quality of officer's work which was subject to judgment of superintendent and Commissioners. *Maghan* v. *Board of Com'rs of District of Columbia,* 1944 (141 F. 2d 274, 78 U. S. App. D. C. 370).

PERFORMANCE OF DUTY

Where policewoman's 30-day sick leave for calendar year had been exhausted before granting of leave, salary for which was in issue, injury received by policewoman when struck by a taxicab while on her way home, after police surgeon, at about 11 a. m., had restored her to duty to report for active duty at 4 p. m. on the same day was not received in the "actual performance of duty" within regulation providing that in no case will sick time be allowed in excess of 30 days in any one calendar year, except when the same is in direct consequence of injury received in the actual performance of duty. *Stanberger* v. *Mason,* 1942 (124 F. 2d 401, 75 U. S. App. D. C. 105).

Under police regulation providing that in no case will sick time be allowed any member of the police force in excess of 30 days in any one calendar year, except when the same is in direct consequence of injury received in the actual performance of duty, the words "actual performance of duty" are used in a literal sense and mean more than being subject to orders from proper authorities and to call from citizens. *Stanberger* v. *Mason,* 1942 (124 F. 2d 401, 75 U. S. App. D. C. 105).

SICK LEAVE

It is for the Commissioners of the District of Columbia to make the rules which mark the limits of the classes of injuries for which sick leave on pay in excess of 30 days in any one calendar year will be allowed to members of the police force, and when the rules are clear the courts must enforce them as they find them. *Stanberger* v. *Mason,* 1942 (124 F. 2d 401, 75 U. S. App. D. C. 105).

§ 4–122 [20: 473]. Trial board—Appointment — Hearings—Findings—Appeals—Existing rules and regulations ratified.

The said commissioners are also hereby authorized and empowered to create one or more trial board or boards, to be composed of such number of persons as said commissioners may appoint thereto, for the trial of officers and members of said police force; and said commissioners are hereby also authorized and empowered to make and amend rules of procedure before such trial board or boards and to change or abolish any such trial board or boards as they may deem proper; and the findings of such trial board or boards shall be final and conclusive unless appeal in writing therefrom is made within five days to the Commissioners of the District of Columbia, the hearings on appeal to be submitted either orally or in writing, and the decision of the said commissioners thereon shall be final and conclusive: *Provided,* That said commissioners shall not be required, in their review of the sentences and findings of such trial board or boards, to take evidence, either oral, written, or documentary, and they shall have power to reduce or modify the findings and penalty of the trial board or boards or remand any case against any officer or member of said police force to such board or boards for such further proceedings as they may deem necessary: *Provided,* That the chairman for the time being of any and every trial board be, and he is hereby, authorized to administer oaths to and take affirmations of witnesses before such board or boards; *And provided,* That the rules and regulations of said Metropolitan police force promulgated and in force on July 8, 1906, are hereby ratified and shall remain in force until changed, altered, amended, or abolished by said commissioners. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056. par. 5.)

COMPILER'S NOTE

The amendatory act of 1906 contained the following proviso: "*Provided further,* That all proceedings now pending before any trial board authorized by said Commissioners shall be continued according to the practice heretofore existing until final determination thereof." This has been omitted as obsolete.

CROSS REFERENCE

See notes to § 4–121.

NOTES TO DECISIONS

CERTIORARI

Where police tribunals had full jurisdiction of charges against members of police force, specifications were adequate and sufficient and evidence supported finding that the members were guilty, it was not necessary for court to decide whether case was proper one for certiorari or whether the members lost privilege of using certiorari by their long delay in filing petition. *Brodie* v. *Young,* 1943 (133 F. 2d 406, 77 U. S. App. D. C. 169).

EVIDENCE

Where members of police force of District of Columbia were charged with conduct prejudicial to reputation, good order, and discipline of police force, evidence supported trial board's determination finding the members guilty and the affirmation of such determination by the Commissioners of the District of Columbia. *Brodie* v. *Young,* 1943 (133 F. 2d 406, 77 U. S. App. D. C. 169).

JURISDICTION

Where charges were filed against members of police force of District of Columbia on ground of conduct prejudicial to reputation, good order, and discipline of police force, the police tribunals had full jurisdiction. *Brodie* v. *Young,* 1943 (133 F. 2d 406, 77 U. S. App. D. C. 169).

§ 4–123 [20: 541]. Commissioners and major and superintendent of police may administer oaths.

Each commissioner, the major and superintendent of police, have power to administer, take, receive, and subscribe all affirmations and oaths to any depositions necessary by the rules and regulations of the commissioners, relating to the Metropolitan Police. (R. S., D. C., § 392; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 8, 1906, 34 Stat. 221, ch. 3056.)

AMENDMENT

The 1878 act abolished the Board of Metropolitan Police and transferred its duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

Oath by members of trial boards, § 4–604.

§ 4–124 [20: 475]. Police surgeons — Qualifications — Duties.

Police surgeons shall have actually and bona fide resided in the District of Columbia for at least two years next preceding the date of their appointment and shall be duly qualified according to law for the practice of medicine and surgery in said District and shall have actively been engaged in the practice of their profession for a period of at least three years next preceding the date of their appointment. Such police surgeons shall be subject to such laws, rules, and regulations as the Commissioners of the District of Columbia may from time to time make, alter, or amend. Such police surgeons shall attend, without charge, all members of said police force and of the fire department of said District, examine applicants for appointment and retirement in and to said police force and said fire department, and attend such dependent sick and injured, and examine and attend such insane or alleged insane persons as may be taken in charge by said police, and shall perform such other duties as the said commissioners may direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056, par. 7.)

AMENDMENT

This paragraph was added by the act of 1906 cited to the text.

CROSS REFERENCES

Certification of sanity of alleged insane person, § 21–329.

Commissioners to appoint four police surgeons, § 4–106.

Other provisions requiring police surgeon to attend firemen, § 4–404.

Police rules and regulations, §§ 4–177, 4–178.

Required to attend members of United States police, § 4–206.

Written report on physical condition of members of police and firemen to Police and Firemen's Retiring and Relief Board, § 4–510.

§ 4–125 [20: 476]. Affiliation with organizations advocating strikes, prohibited—Penalties—Conspiracy to interfere with operation of police force—Right of resignation restricted.

No member of the Metropolitan Police of the District of Columbia shall be or become a member of any organization, or of an organization affiliated with another organization, which itself, or any subordinate, component, or affiliated organization of which holds, claims, or uses the strike to enforce its demands. Upon sufficient proof to the Commissioners of the District of Columbia that any member of the Metropolitan Police of the District of Columbia has violated the provisions of this section, it shall be the duty of the commissioners of the District of Columbia to immediately discharge such member from the service.

Any member of the Metropolitan Police who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the police force in the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or by imprisonment of not more than six months, or by both.

No officer or member of the said police force, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the Commissioners of the District of Columbia, unless he shall have given the major and superintendent one month's notice in writing of such intention. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 223, ch. 3056, par. 9; Dec. 5, 1919, 41 Stat. 364, ch. 1, par. 9.)

AMENDMENT

The 1919 amendatory act added the first two paragraphs and reenacted the last paragraph which appeared in the 1906 act, cited to the text.

CROSS REFERENCE

Proceedings to remove officer, §§ 4–121, 4–122.

§ 4–126 [20: 477]. Police to respect and obey major and superintendent.

It shall be the duty of the police force to respect and obey the major and superintendent of police as the head and chief of the police force, subject to the

rules, regulations, and general orders of the Board of Commissioners. (R. S., D. C., § 344; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers to the Commissioners of the District of Columbia.

§ 4–127 [20: 478]. Major and superintendent to make quarterly reports.

The major and superintendent of police shall make to the Board of Commissioners quarterly reports in writing of the state of the police district, with such statistics and suggestions as he may deem advisable for the improvement of the police government and discipline of said district. (R. S., D. C., § 346; June 11, 1878, 20 Stat. 107, ch. 180 § 6.)

§ 4–128 [20: 479]. Police exempt from military and jury service—Service of process.

No person holding office under this chapter shall be liable to military or jury duty, nor to arrest on civil process, nor to service of subpoenas from civil courts while actually on duty. (R. S., D. C., § 353.)

CROSS REFERENCES

Exemption from military service, § 39–102.
Jury service, exemption, fees for service, §§ 11–1420 to 11–1423.

§ 4–129 [20: 480]. Rewards, presents, fee, or emolument to police officers—Notice to commissioners—Penalty for failure to give notice.

No member of the Board of Commissioners, or of the police force, shall receive or share in, for his own benefit, under any pretense whatever, any present, fee, or emolument, for police services, other than the regular salary and pay provided by law, except by consent of the Board of Commissioners.

The commissioners, for meritorious and extraordinary services rendered by any member of the police force, in the due discharge of his duty, may permit such member to retain for his own benefit any reward or present tendered him therefor.

Upon notice to the commissioners from any member of the police force, of the receipt by such member of any reward or present, the commissioners may order the member to retain the same, or shall dispose thereof for the benefit of the policemen and firemen's relief fund.

It shall be cause of removal from the police force for any member to receive rewards or presents without giving notice of the same to the commissioners. (R. S., D. C., §§ 357, 358, 359, 360; June 11, 1878, 20 Stat. 107, ch. 180, § 6; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12.)

AMENDMENTS

The 1878 act abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

The 1916 act, cited to the text, provided that the funds known as the "Firemen's Relief Fund" and the "Police Relief Fund" shall be designated and known as the "Policemen and Firemen's Relief Fund, District of Columbia."

CROSS REFERENCES

Awards for meritorious service, §§ 4–701 to 4–704.
Compromising a felony or other unlawful act, § 4–175.
Increase in salary for demonstrated efficiency, § 4–802.
Proceedings to remove officers, §§ 4–121, 4–122.

§ 4–130 [20: 481]. Clothing to be uniform.

The Board of Commissioners shall provide specific rules for uniform clothing of the police force, and any member shall be removed from the force for not complying with such rules. (R. S., D. C., § 365; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Police rules and regulations, §§ 4–177, 4–178.
Proceedings for removal of officers, §§ 4–121, 4–122.

§ 4–131 [20: 482]. Appropriations for clothing.

For furnishing uniforms and all other official equipment prescribed by department regulations as necessary and requisite in the performance of duty there is hereby authorized to be appropriated a sum not exceeding $75.00 per annum for each member of the Metropolitan police, to be expended subject to rules and regulations to be prescribed by the commissioners of the District of Columbia. (May 25, 1926, 44 Stat. 635, ch. 381.)

CROSS REFERENCE

Police rules and regulations, §§ 4–177, 4–178.

§ 4–132 [20: 483]. Residence of members of police force—Telephone.

There shall be no limitation or restriction of place of residence to any member of the police force, other than residence within the Washington, District of Columbia, metropolitan district: *Provided,* That for the purposes of this section, Washington, District of Columbia, metropolitan district, shall be held to include the District of Columbia and the territory adjacent thereto within a radius of twelve miles from the United States Capitol Building: *and provided further,* That any member of the Police Department living outside of the District of Columbia shall have and maintain a telephone at all times in his residence. (R. S., D. C., § 373; Aug. 9, 1935, 49 Stat. 568, ch. 501.)

AMENDMENT

The 1935 amendatory act deleted the words "Metropolitan Police district" after the words "within the" in line 3, and added the rest of the section.

§ 4–133 [20: 484]. Appointment of special police without pay.

The Board of Commissioners may, upon any emergency of riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration, appoint as many special privates without pay, from among the citizens, as it may deem advisable, and for a specified time. During the term of service of such special privates, they shall possess all the powers and privileges and perform all the duties of the privates of the standing police force of the District and such special privates shall wear an emblem to be presented by the commissioners. (R. S., D. C., §§ 378, 379; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

General limitation on power of Commissioners, § 1–801.
Removal of special police without cause or hearing, § 4–121.
Service of retired members in emergencies, § 4–514.

§ 4–134 [20: 485]. Records—General complaint-book—Registry of lost, missing, or stolen property—Book of records of police.

The Board of Commissioners shall cause to be kept the following books and records, namely:

First. General complaint-books, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant.

Second. Books of registry of lost, missing, or stolen property, for the general convenience of the public and of the police of the District.

Third. Books of records of the police, wherein shall be entered the name of every member of the police force, with the time and place of his nativity, and the time when he became a citizen if he was born out of the United States; his age; his former occupation; number and residence of family; the date of appointment or dismissal from office, with the cause of the latter. And in every such record sufficient space shall be left against all such entries wherein to make record of the number of arrests made by such member of the police force, or of any special services deemed meritorious by the major and superintendent of police. (R. S., D. C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

§ 4–135 [20: 486]. Records open to public inspection.

All the books mentioned in section 4–134 shall be, at all business hours, and when not in actual use, open to public inspection. (R. S., D. C., § 389.)

§ 4–136 [20: 487]. Police to have power of constables.

The members of the Board of Commissioners, and of the police force, shall possess in every part of the District all the common-law powers of constables, except for the service of civil process and for the collection of strictly private debts, in which designation fines imposed for the breach of the ordinances in force in the District, shall not be included. (R. S., D. C., §§ 394, 1035; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

COMMON-LAW POWERS

"At common-law a constable could arrest without warrant one whom he had reason to suspect had committed a felony, and we are aware of no statute in modification of that rule in this District." *Carroll* v. *Parry*, 48 App. D. C. 453.

§ 4–137 [20: 488]. Police returns and reports to be kept and bound by commissioners.

The Board of Commissioners shall also cause to be kept and bound all police returns and reports of the District. (R. S., D. C., § 390; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

§ 4–138 [20: 489]. Execution of warrants.

Any warrant for search or arrest, issued by any magistrate of the District, may be executed in any part of the District by any member of the police force, without any backing or indorsement of the warrant, and according to the terms thereof; and all provisions of law in relation to bail in the District shall apply to this chapter. (R. S., D. C., § 395.)

CROSS REFERENCES

Arrest by officers pursuing fugitive into District, under Uniform Act on Fresh Pursuit, § 23–501 et seq.
Duties under search warrant, § 23–301.
Execution of search warrant under Alcoholic Beverage Control Act, § 25–129.
Execution of search warrant under Uniform Narcotic Drug Act, § 33–414.
Service of process issued by police court, §§ 11–611, 11–612.

§ 4–139 [20: 490]. Discriminating laws not to be enforced.

The said Board of Commissioners shall not enforce any law or ordinance discriminating between persons in the administration of justice. (R. S., D. C., § 396; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

§ 4–140 [20: 491]. Arrests without warrant.

The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by Act of Congress, or by any law or ordinance in force in the District, but such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court, that he may be dealt with according to law. (R. S., D. C., § 397.)

CROSS REFERENCES

Arrest by inspectors of weights, measures, and markets, § 10–126.
Arrest by officers pursuing fugitives into District, under Uniform Act on Fresh Pursuit, § 23–501 et seq.
Arrest without warrant of violations of laws against cruelty to animals, § 32–205.

NOTES TO DECISIONS

ARREST, DEFINITION OF

The term "arrest" may be applied where a person is taken into custody or restrained of his full liberty, or where detention of person in custody is continued for even a short period of time. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed. 1428; see also 179 F. 2d 957).

CIRCUMSTANCES WARRANTING ARREST

An arrest for an offense committed in actual view of police officer is lawful. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

Where officers knew, before going to defendant's room, that another had been killed, and that liquor dealer had identified defendant as the man who had purchased liquor, prior to the killing, in a bottle of same kind, and same stamp number as one found at scene of murder, and who had come back later for more liquor, with blood on his clothing, evidence was sufficient to justify an arrest without a warrant, and shirt and trousers taken from defendant's closet and partly filled bottle of whisky and newspaper taken from table in his room were properly admitted in evidence. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed. 1428; see also 179 F. 2d 957).

CONSTRUCTION

Where Congress enacted two statutes applicable to different jurisdictions but both requiring that an accused be taken promptly before a committing officer, courts must assume the congressional intention in both instances was the same and give each statute the same construction. *Hayes* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

EVIDENCE ADMISSIBILITY

Where accused confessed guilt and consented to officers going to his home to recover stolen property shortly after his arrest, evidence of confession, and stolen property, were admissible, notwithstanding that accused was not arraigned until eight days later. *U. S.* v. *Mitchell,* 1944 (64 S. Ct. 896, 322 U. S. 65, 88 L. Ed. 1140, reversing 138 F. 2d 426, rehearing denied 64 S. Ct. 1257, 322 U. S. 770, 88 L. Ed. 1595).

Where defendant, after arrest but prior to arraignment, denied having any connection with robbery but admitted being in company of two other men, charged with same offense, shortly before and shortly after the robbery, admission of evidence of defendant's statement was not error where statement was not claimed to have been coerced. *Sykes* v. *U. S.*, 1944 (143 F. 2d 140, 79 U. S. App. D. C. 97).

A voluntary confession is not rendered inadmissible because obtained during an illegal detention provided it was not induced by the illegal detention. *Sykes* v. *U. S.*, 1944 (143 F. 2d 140, 79 U. S. App. D. C. 97).

Where defendant was arrested for vagrancy on Sunday, July 4, but criminal division of the Municipal Court was in session Monday notwithstanding that Monday was a legal holiday and defendant was not taken into court until Tuesday, defendant's detention was unlawful and testimony of arresting officer in vagrancy prosecution as to admissions made to him by defendant after arrest was improperly admitted. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

Where defendant was arrested Saturday afternoon while court was not in session but was taken to court Monday morning when court reopened, the detention was not illegal so as to justify excluding statement made by defendant to officer while under arrest. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

The rule that those statements obtained by the police through an unlawful detention are inadmissible against defendant does not exclude from evidence all statements made by defendant while in custody of the police. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

Where defendant was arrested without warrant Friday evening and could have been taken to court for arraignment on Saturday but was not taken into court until Tuesday, the detention was unlawful, and, in prosecution for vagrancy which followed, admission of statements made by defendant to arresting officer was error notwithstanding statements were made at time of arrest and while detention was still lawful. *Hayes* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

NOT IN OFFICER'S VIEW

An officer may not arrest for a misdemeanor, in the District, without a warrant, if not committed in his view. (*Maghan* v. *Jerome* (67 App. D. C. 9, 88 Fed. (2d) 1001.)

SEIZURE OF ARTICLES

Where arrests are lawful, it is equally lawful to search premises and to use incriminating things found as evidence in the prosecution. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

An officer making a lawful arrest on a criminal charge may take such articles as may reasonably be used as evidence. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed 1428; see also 179 F. 2d 957).

Where defendant was informed by officers that they were from police headquarters and that inspector wanted to talk to defendant, and officers took defendant to a police automobile, there was an "arrest" so as to authorize seizure of articles usable as evidence. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed. 1428; see also 179 F. 2d 957).

§ 4–141 [20: 492]. Powers of officers in connection with suspected felonies.

The major and superintendent of police and the lieutenants of police, having just cause to suspect that any felony has been, or is being, or is about to be, committed within any building, or on board of any ship, boat, or vessel within the said District, may enter upon the same at all hours of day or night, to take all necessary measures for the effectual prevention or detection of all felonies, and may take then and there into custody all persons suspected of being concerned in such felonies, and also may take charge of all property which he or they shall have then and there just cause to suspect has been stolen. (R. S., D. C., § 398.)

CROSS REFERENCE

For probable inclusion of captains and other officers, § 4–106.

§ 4–142 [20: 493]. Information and return after arrest.

Every case of arrest shall be made known within six hours thereafter to the lieutenant of police on duty in the precinct in which the arrest is made, by the person making the same; and it shall be the duty of the lieutenant within twelve hours after such notice, to make written return thereof, according to the rules and regulations of the Board of Commissioners, together with the name of the party arrested, the offense, the place of arrest, and the place of detention. (R. S., D. C., § 399; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Notice of arrest of insane persons, § 21–326.
Police rules and regulations, §§ 4–177, 4–178, and notes.

§ 4–143 [20: 494]. Penalty for neglect to make arrest.

If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding $500. (R. S., D. C., § 400.)

§ 4–144 [20: 495]. Detention of witnesses.

The Board of Commissioners shall provide suitable accommodations within the District for the detention of witnesses who are unable to furnish security

for their appearance in criminal proceedings, and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of all magistrates in committing witnesses to have regard to the rules and regulations of the Board of Commissioners in reference to their detention. (R. S., D. C., § 401; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its duties and powers to the Commissioners of the District of Columbia.

CROSS REFERENCE

Police rules and regulations, §§ 4–177, 4–178.

§ 4–145 [20: 496]. Authority for search and arrest in cases of gaming-houses, bawdy-houses, and deposit or sale of lottery tickets.

If any member of the police force, or if any two or more householders shall report in writing, under his or their signature, to the major and superintendent of police that there are good grounds, stating the same, for believing any house, room, or premises within the police district to be kept or used for any of the following purposes, namely:

First. As a common gaming-house, common gaming-room, or common gaming-premises, for therein playing for wagers of money at any game of chance; or,

Second. As a bawdy-house, or as a house of prostitution, or for purposes of prostitution; or,

Third. For lewd and obscene public amusement or entertainment; or,

Fourth. For the deposit or sale of lottery tickets or lottery policies, it shall be lawful for the major and superintendent of police to authorize any member or members of the police force to enter the same, who shall forthwith arrest all persons there found offending against law, and seize all implements of gaming, or lottery tickets, or lottery policies, and convey any person so arrested before the proper court, and bring the articles so seized to the office of the Board of Commissioners. (R. S., D. C., § 402; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Prostitution, pandering, and houses of prostitution, § 22–2701 et seq.

Search warrants, § 23–301 et seq.

NOTES TO DECISIONS

SEARCH WITHOUT WARRANT

Where defendant, who had been under police observation, was observed entering rooming house where he had rented a room and one of police officers, without search warrant, opened window leading to landlady's room, climbed through and admitted other officers to the house, officer looked through transom, observed defendant and a guest as well as numbers slips, money and adding machines, and officers then arrested defendant and his guest and seized the machines, numbers slips and money, denial of defendant's motion for suppression of evidence and return of property to him was error, and convictions of both defendant and his guest for carrying on a lottery would be reversed. *McDonald* v. *U. S.* 1948 (69 S. Ct. 191, 335 U. S. 451; 93 L. Ed. 153).

Where officers heard adding machines which they knew were frequently used in the numbers operation and saw defendants busily engaged in their lottery venture, the officers had adequate grounds for seeking a search warrant and inconvenience of officers and delay in preparing papers and getting before magistrate was not a justification for search without warrant. *McDonald* v. *U. S.* 1948 (69 S. Ct. 191, 335 U. S. 451, 93 L. Ed. 153).

§ 4–146 [20: 497]. Duty of major and superintendent to prosecute—Property seized.

It shall be the duty of the major and superintendent of police to cause all persons arrested in pursuance of the provisions of section 4–145 to be rigorously prosecuted, the articles seized to be destroyed, and such room or house to be closed, and not again used for such unlawful purpose. (R. S., D. C., § 403.)

§ 4–147 [20: 498]. Supervisory power over certain classes of business.

The Board of Commissioners shall possess powers of general police supervision and inspection over all—

Licensed pawnbrokers.

Licensed venders.

Licensed hackmen and cartmen.

Dealers in second-hand merchandise.

Intelligence office keepers.

Auctioneers of watches and jewelry.

Suspected private banking-houses, and other doubtful establishments within the Metropolitan police district; and in the exercise and furtherance of said supervision may, from time to time, empower members of the police force to fulfill such special duties in the premises, as may be ordained by the Board of Commissioners. (R. S., D. C., § 404; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

General limitation on power of Commissioners, § 1–801.

License required for auctioneers, § 47–2309.

License required for second-hand dealers, § 47–2339.

Other provisions concerning police power of Commissioners over business specified in this section and in general, §§ 1–218, 1–224, 1–226.

§ 4–148 [20: 499]. Examination of books and premises of certain establishments.

The Board of Commissioners may direct the major and superintendent to empower any member of the police force, whenever such member shall be in search of property feloniously obtained, or in search of suspected offenders, to examine the books of any pawnbroker or his business premises, or the business premises of any licensed vender or dealer in second-hand merchandise, or intelligence office keeper, or auctioneer of watches and jewelry, or suspected private banking-house, or other doubtful establishment. (R. S., D. C., § 405; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

§ 4–149 [20: 500]. Examination of property pledged.

Any member of the police force, when thereto authorized in writing by the major and superintendent of police, and having in his possession a pawnbroker's receipt or ticket, shall be allowed to examine the property purporting to be pawned or pledged, or deposited upon said receipt or ticket, in whosesoever possession said property may be; but no such property shall be taken from the possessor thereof without due process or authority of law. (R. S., D. C., § 406.)

CROSS REFERENCE

See § 4–147 and notes.

§ 4–150 [20: 501]. Penalty for interfering with officer.

Any wilfull interference with the major and superintendent of police, or with any member of the police force, by any of the persons named in section 4–147, while in official and due discharge of duty, shall be punishable as a misdemeanor. (R. S., D. C., § 407.)

CROSS REFERENCE

See § 1–417 and notes.

§ 4–151 [20: 502]. Property clerk—Office created.

There shall be an officer known as "property clerk" of the Metropolitan police district. (R. S., D. C., § 408; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1.)

CROSS REFERENCE

Clerk may be required to give security, § 4–109.

§ 4–152 [20: 503]. Custody of stolen, lost, or abandoned property.

All property, or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force, or the police or criminal court of the district, or which shall come into such custody, shall be, by such member, or by order of the court, given into the custody of the property clerk and kept by him. (R. S., D. C., § 409.)

CROSS REFERENCES

Coroner to deposit property and effects found upon the person of any one on whom he holds an inquest, § 11–1203.

Custody and disposition of property seized under search warrant, § 23–302 et seq.

Custody and sale of property confiscated for violations of fish and game laws, § 22–1608.

Intoxicating liquors seized under Alcoholic Beverage Control Act, § 25–129.

§ 4–153 [20: 504]. Record of stolen, lost, or abandoned property to be kept.

All such property and money shall be particularly registered by the property clerk in a book kept for that purpose, which shall contain also a record of the names of the persons from whom such property or money was taken, the names of all claimants thereto, the place where found, the time of the seizure, the date of the receipt, the general circumstances connected therewith, and any final disposal of such property and money. (R. S., D. C., § 410.)

§ 4–154 [20: 505]. Property clerk vested with power of notary public.

The property clerk is vested with all the powers conferred by law upon notaries public in the District. (R. S., D. C., § 411.)

§ 4–155 [20: 506]. Property clerk may administer oaths.

He may administer oaths and certify depositions which may be necessary to establish the ownership of any property or money lost, abandoned, or returned to him under the directions of the Board of Commissioners, including such property or money so returned which is alleged to have been feloniously obtained or to be the proceeds of crime. (R. S., D. C., § 412; June 11, 1878, 20 Stat. 107, ch. 180, § 6; May 9, 1941, 55 Stat. 185, ch. 99, § 1.)

AMENDMENTS

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

The act of May 9, 1941, cited to text, substituted after the word "Commissioners" the words "including such property or money so returned which is alleged to have been feloniously obtained or to be the proceeds of crime" in lieu of the words "other than such as may be so returned as the proceeds of crime."

§ 4–156 [20: 507]. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence.

(a) Upon satisfactory evidence of the ownership of property or money described in section 4–155 he shall deliver the same to the owner, his next of kin, or legal representative and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the property clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, or his next of kin, or legal representative, upon the filing of such power of attorney in the office of said clerk and the signing of a receipt for such property or money.

(b) In the event two or more persons claim ownership of any such property or money, the property clerk may give notice by registered mail to all such claimants of whom he shall have knowledge of the time and place of a hearing to determine the person to whom the property or money shall be delivered. At the time and place so designated the property clerk shall hear and receive evidence of ownership of the property or money concerned, and shall determine the identity of the owner. After such hearing, the property clerk shall deliver the property or money to the person whom the property clerk determines is the owner, his next of kin, or legal representative, and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the property clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, his next of kin, or legal representative, upon the filing of such power of attorney in the office of said clerk and the signing of a receipt for such property or money.

(c) The property clerk shall not be liable in damages for any official action performed hereunder in good faith.

(d) Except as provided in sections 4–163, 4–164, and 4–165 hereof, no property or money in the possession of the property clerk alleged to have been feloniously obtained or to be the proceeds of crime shall be delivered under this section if it is required to be held

under the provisions of section 4–158 hereof; nor shall it be delivered within one year after the date of receipt of said property or money by the property clerk unless the United States attorney in and for the District of Columbia shall certify that such property or money is not needed as evidence in the prosecution of a crime. (R. S., D. C., § 413; May 9, 1941, 55 Stat. 185, ch. 99, § 1.)

AMENDMENTS

The act of May 9, 1941, cited to text, amended the first paragraph and added subdivisions "(b)," "(c)" and "(d)." The catchline has been revised.

NOTES TO DECISIONS

TRIAL DE NOVO

This section giving police property clerk authority to conduct hearing for purpose of determining ownership of property coming into hands of police department does not confer force of a judgment upon clerk's determination, so as to deprive courts of jurisdiction to determine title to the property as between conflicting claims de novo. *Carroll* v. *E. Heidenheimer, Inc.* (D. C. Mun. App. 1945, 44 A. 2d 71).

§ 4–157 [20: 508]. Return of property to accused upon acquittal.

Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and whenever so brought with such claimant and the person arrested before any court for trial, and the court shall be satisfied from evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him, said court may, in writing, order such property or money to be returned, and the property clerk, if he have it, to deliver such property or money to the accused person himself, and not to any attorney, agent, or clerk of such accused person. (R. S., D. C., § 414.)

§ 4–158 [20: 509]. Claims of third persons.

If any claim to the ownership of such property or money shall be made on oath before the court, by or in behalf of any other persons than the persons arrested, and the accused person shall be held for trial or examination, such property or money shall remain in the custody of the property clerk until the discharge or conviction of the persons accused. (R. S., D. C., § 415.)

§ 4–159 [20: 510]. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased persons—Balance to relief funds for policemen and firemen.

All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime or from persons supposed to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the property clerk, to be fully registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police. Whenever any money or property of deceased persons coming into the custody of the property clerk of the police department shall remain in his hands for the period of one year without being claimed by the legal representatives of such deceased person, such money or property, when not exceeding $100 in value, shall be disposed of as lost or abandoned property as provided in this chapter: *Provided,* That when the value of such money or property shall exceed $100 and shall have remained in the custody of the property clerk for one year, all records pertaining to the same shall be certified by the property clerk to the probate court of the District of Columbia, which shall appoint an administrator of such estate, according to law: *Provided further,* That the administrator so appointed by the Probate Court shall deposit with the treasurer of the United States, to the credit of the policemen and firemen's relief fund, any balance remaining in his hands after the time limited for the final settlement of the estates of deceased persons under existing law. (R. S., D. C., § 416; May 29, 1896, 29 Stat. 191, ch. 270; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 1.)

AMENDMENTS

The 1901 act, cited to the text, changed the name of the Orphans' Court to the Probate Court.

The 1916 act, cited to the text, changed the name of the policemen's fund to the policemen and firemen's relief fund.

The 1936 amendatory act changed the amount from $50 to $100.

CROSS REFERENCE

Police and firemen's relief fund, § 4–503.

§ 4–160 [20: 511]. Sale at auction—Balance to policemen's fund.

All property, except perishable property and animals, that shall remain in the custody of the property clerk for the period of six months, with the exception of motor vehicles which shall be held for a period of three months, without any lawful claimant thereto after having been three times advertised in some daily newspaper of general circulation published in the District of Columbia, shall be sold at public auction, and the proceeds of such sale having been retained by the said property clerk for a period of three months without a lawful claimant, shall then be paid into the policemen's fund; and all money that shall remain in his hands for said period of six months shall be so advertised, and if no lawful claimant appear shall be likewise paid into the policemen's fund. (R. S., D. C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2.)

AMENDMENTS

D. C. 1929, title 20, § 511 which was amended herein, provided as follows: "Except money or property of deceased persons, referred to in section 510 of this title, the proceeds of crimes referred to in section 518 of this title, perishable property and animals, all property and money that shall remain in the custody of the property clerk for the period of six months without any lawful claimant thereto, after having been three times advertised in public newspapers, shall be sold at public auction, and the proceeds of such sale shall be paid into the policemen and firemen's relief fund."

NOTES TO DECISIONS

CONSTRUCTION

In imposing a notice requirement, Congress intended that the advertisement contain reasonably complete identification of the particular chattel to be sold, and such description should be such as to convey to a person reading the advertisement sufficient information to enable him to recognize the chattel as his own before commencing to count a limitation against him. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

PURPOSE

A two-fold purpose underlies this Code provision, namely, to provide for the police department a legal method of disposing of unclaimed property which has come into its custody and to restore such property to lawful claimants. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

§ 4–161 [20: 512]. Sale of unclaimed animals.

Horses and other animals taken by the police and remaining unclaimed for twenty days may be advertised and sold upon ten days' public notice. (R. S., D. C., § 418.)

§ 4–162 [20: 513]. Sale of perishable property.

All perishable property so taken and unclaimed shall be sold at once. (R. S., D. C., § 419.)

§ 4–163 [20: 514]. Delivery of property to owner pending trial.

When animals or articles of property (except perishable property) other than money, returned to the property clerk as the proceeds of crime, are shown by sufficient evidence to be necessary for the current use of the owner and not for sale, the Board of Commissioners has power, in its discretion, to authorize the property clerk to place the same in the custody of the owner, upon sufficient bonds being given by the owner in the sum of twice the value of the property, conditioned for the production of the same at any time within one year, when required for use in court as evidence in any proceedings thereon. (R. S., D. C., § 420; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its duties and powers to the Commissioners of the District of Columbia.

§ 4–164 [20: 515]. Perishable property may be delivered to owner—Security.

Perishable property, returned to the property clerk as the proceeds of crime, may be delivered to the owner on ample security being taken by the court for his appearance to prosecute the case. (R. S., D. C., § 421.)

§ 4–165 [20: 516]. When large quantities of goods held for sale by owner may be delivered.

When large quantities of goods held for sale by the owner, come into the possession of the property clerk as the proceeds of crime, the same may be delivered to the owner, his heirs or representatives, as provided in section 4–156, upon ample security to prosecute the case. But in such cases goods to the estimated value of $50.00 shall be retained by the property clerk until the discharge or conviction of the accused. (R. S., D. C., § 422.)

§ 4–166 [20: 517]. Use of property as evidence.

If any property or money placed in the custody of the property clerk shall be desired as evidence in any police or other criminal court, such property shall be delivered to any officer who shall present an order to that effect from such court; but such property shall not be retained in the court, but shall be returned to the property clerk, to be disposed of according to the provisions of this chapter. (R. S., D. C., § 423.)

§ 4–167 [20: 518]. Property not called for within one year to be treated as abandoned.

Any property or money returned to the property clerk as the proceeds of crime, and which shall not be called for as evidence by any proceeding in the courts of the District within one year from the date of such return, may, unless specially claimed by the owner within that time, be thereafter treated as other unclaimed, abandoned, or lost property or money, as provided in this chapter. (R. S., D. C., § 424.)

§ 4–168 [20: 519]. Private detectives — Specific appointment required.

No person shall assume or practice the occupation of detective within the limits of the District who shall not first receive a specific appointment for that purpose, unless pursuing the detection of criminals as a private business outside of such authority, and not otherwise specifically authorized by law. (R. S., D. C., § 425.)

CROSS REFERENCE

Section 47–2341 requires a private detective to obtain a license and prescribes an annual fee of $100. It also gives the Commissioners general authority to make rules and regulations for the conduct of such business and may partially supersede this section.

§ 4–169 [20: 520]. Private detectives to give bond.

Any person practicing as a private detective shall enter into bonds to the Board of Commissioners, with surety, in a sum not less than $10,000, to be approved by the Board of Commissioners, for a faithful and correct return to the Board of Commissioners, in such manner and at such times as the board shall direct, of all business transacted by such private detective. (R. S., D. C., § 426; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

See note to § 4–168.

§ 4–170 [20: 521]. Filing of bond of private detective—Record to be made.

Upon the execution of a private detective's bond, it shall be the duty of such private detective to report to the secretary of the Board of Commissioners, who shall file such bond and record the name, age, description, nationality, and residence of such private detective. (R. S.. D. C., § 427; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

See note to § 4–168.

§ 4–171 [20: 522]. Forfeiture of bond of private detective—United States Attorney to initiate action.

In every case of a forfeiture of a private detective's bond for failure to make such returns to the Board of Commissioners as required, or for failure of persons accused by bonded private detective to appear to answer charges in court, it shall be the duty of the attorney of the United States for the District to immediately prosecute the sureties upon such bond to the full extent of a recovery of the forfeitures. (R. S., D. C., § 428; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

See note to § 4–168.

§ 4–172 [20: 523]. Duty of private detective making arrest.

It shall be the duty of every person prosecuting the business of a private detective, who may arrest a person for crime, to bring the person arrested, with all evidence of the alleged crime, including property or money which may become evidence, immediately to the office of the major and superintendent of police, or to the proper court, where the case shall undergo an examination. (R. S., D. C., § 429.)

CROSS REFERENCE

See note to § 4–168.

§ 4–173 [20: 524]. Penalty for acting as private detective without compliance with law.

Any person practicing as a private detective or advertising or holding himself out as such without first complying with the provisions of law relative to private detectives shall be guilty of a misdemeanor and subject to a fine not exceeding $500 or imprisonment in the district jail for a period not exceeding eleven months and twenty-nine days. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 5.)

CROSS REFERENCE

See note to § 4–168.

§ 4–174 [20: 525]. Police laws and regulations applicable to private detectives.

All laws which govern the police force in the matters of persons, property, or money shall be applicable to all private detectives (or to persons practicing as detectives, whatever other name they may assume) and such detectives or persons shall make like returns and dispositions of such matters as required by law and the rules of the Board of Commissioners governing the police force. (R. S., D. C., § 430; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its duties and powers to the Commissioners of the District of Columbia.

CROSS REFERENCES

General limitation on power of Commissioners, § 1–801. Section 47–2341 contains a similar provision. See note to § 4–168.

§ 4–175 [20: 526]. Compromise of felony—Withholding information—Receiving compensation from person arrested or liable to arrest—Permitting escape—Penalty.

It is unlawful for any private detective, or any member of the police force, or for any other person to compromise a felony or any other unlawful act, or to participate in, assent to, aid or assist any person suspected of crime to escape a full judicial examination by failing to give known facts or reasonable causes of suspicion, or withholding any information relative to the charge or suspicion from the proper judicial authorities;

Or in any manner to receive any money, property, favor, or other compensation from, or on account of, any person arrested or subject to arrest for any crime or supposed crime;

Or to permit any such person to go at large without due effort to secure an investigation of such supposed crime.

And for any violation of the provisions of this section, or either of them, such member of the police force, or private detective, or other person guilty thereof, shall be deemed as having compromised a felony, and shall be thereafter prohibited from acting as an officer of said police force, or as a private detective, and shall be prosecuted to the extent of the law for aiding criminals to escape the ends of justice. (R. S., D. C., § 431.)

CROSS REFERENCES

Policemen may not accept fees or presents in addition to salary, except with consent of Commissioners, § 4–129. Proceedings for removal of police officer, §§ 4–121, 4–122.

§ 4–176 [20: 527]. Use of unnecessary or wanton force by officer made criminal.

Any officer who uses unnecessary and wanton severity in arresting or imprisoning any person shall be deemed guilty of assault and battery, and, upon conviction, punished therefor. (R. S., D. C., § 434.)

§ 4–177 [20: 528]. Police code—Publication authorized.

The Board of Commissioners is authorized, from time to time, without expense to the United States, to cause to be collected into compact form all the laws and ordinances in force in the District having relation and applicable to police and health, and to publish the same in a form easily accessible to all members of the community as the police code of the District. (R. S., D. C., § 437; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

The 1878 act, cited to the text, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Ordinances, rules, and regulations by Commissioners governing police authorized, §§ 4–106, 4–115, 4–117, 4–121, 4–122, 4–124, 4–130, 4–131, 4–142, 4–144.
Proof of ordinances and regulations, § 14–406.
Rules and regulations generally, § 1–226 and notes.

§ 4–178 [20: 529]. Legal effect of police code.

The police code, prepared in accordance with section 4–177 and such rules as the Board of Commissioners may from time to time adopt for the purpose of enforcing and carrying out the provisions thereof, shall constitute the law of the District upon the matters therein contained. (R. S., D. C., § 438.)

CROSS REFERENCE

See notes to § 4–177.

§ 4–179 [20: 530]. Leave of absence.

Each of the members of the Metropolitan police shall be entitled to leave of absence each year with pay for such time, not exceeding twenty days, as the commissioners shall determine. (Mar. 3, 1897, 29 Stat. 677, ch. 387.)

CROSS REFERENCES

See note to § 4–180.
Leave of absence while on active military duty, § 39–608.
Policemen exempted from general law concerning leave of absences for District employees, § 1–312.

§ 4–180 [20: 531]. Leave in lieu of Sunday.

In lieu of Sunday there shall be granted to the Metropolitan police of the District of Columbia one day off out of each week of seven days, which shall be in addition to his annual leave and sick leave now allowed by law: *Provided, however,* That whenever the commissioners of the District of Columbia declare that an emergency exists of such a character as to require the continuous service of all the members of the Metropolitan police force and the members of the fire department, the major and superintendent of police and the chief engineer of the fire department shall have authority, and it shall be their duty, to suspend and discontinue the granting of the said one day off in seven during the continuation of such emergency. (May 27, 1924, 43 Stat. 175, ch. 199, § 3.)

COMPILER'S NOTE

Sick leave referred to in this section is allowed under regulations in force on June 8, 1906, which regulations were continued in force by the last proviso of § 4–122.

CROSS REFERENCES

Pensions and compensation for injury or disease suffered in line of duty, §§ 4–501 to 4–516.
Policemen are exempted from general laws concerning leave of absence, sick leave, and compensation laws for District employees, §§ 1–311, 1–312.

§ 4–181 [20: 532]. War Department may furnish worn mounted equipment.

The War Department may, in its discretion, furnish the commissioners, for use of the police, upon requisition, such worn mounted equipment as may be required. (Mar. 2, 1927, 44 Stat. 1317, ch. 271.)

§ 4–182. Police Department band—Director.

There is hereby authorized to be established in the Metropolitan Police Department a band to perform at such municipal or civic functions and events as may be authorized by the Commissioners of the District of Columbia. The Major and Superintendent of Police is authorized in his discretion to detail, without additional compensation, such officers and members of the Metropolitan Police force as may request such a detail to participate in the activities of such band. The said Commissioners are authorized to employ, without reference to the civil-service laws, one director for such band with compensation at a rate not to exceed the rate of compensation to which a lieutenant in the Metropolitan Police force is entitled. (July 11, 1947, 61 Stat. 311, ch. 226, § 1.)

§ 4–183. Retired military or naval officers as director of band.

Notwithstanding the limitations of existing law, the said Commissioners may appoint to, and employ in, the position of director of such band, any retired officer of the United States Army, Navy, Marine Corps, or Coast Guard, and such retired officer shall be entitled to receive, in addition to his retired pay, the compensation authorized by this Act to be paid to such director, such additional compensation to be payable from District of Columbia appropriations. (July 11, 1947, 61 Stat. 311, ch. 226, § 2.)

§ 4–184. Appropriations for band authorized.

Appropriations to carry out the purpose of sections 4–183 and 4–184 is hereby authorized. (July 11, 1947, 61 Stat. 311, ch. 226, § 3.)

§ 4–185. Advances to the superintendent of police.

The disbursing officer of the District of Columbia is authorized to advance to the Superintendent of Police upon the approval of the Commissioners, sums of money to be used in the prevention and detection of crime, the total of such advancements not to exceed $5,000 at any one time. (June 19, 1948, 62 Stat. 544, ch. 555, § 1.)

Chapter 2.—UNITED STATES PARK POLICE

Sec.
4–201. United States watchmen to be known as United State Park Police—Powers and duties.
4–202. Organization of United States Park Police.
4–203. Salaries of United States Park Police—Time off from duty.
4–204. Equipment of United States Park Police.
4–205. Refund of payments to retirement fund.
4–206. Medical attendance.
4–207. Leave of absence of members of United States Park Police.
4–208. Special police—Appointment—Powers.

§ 4–201 [20: 533]. United States watchmen to be known as United States Park Police—Powers and duties.

The watchmen provided by the United States Government for service in any of the public squares and reservations in the District of Columbia shall, after Aug. 5, 1882, be known as the "United States park police." They shall have and perform the same powers and duties as the Metropolitan police of the District. (Aug. 5, 1882, 22 Stat. 243, ch. 389, § 1; Dec. 5, 1919, 41 Stat. 364, ch. 1, § 3; May 27, 1924, 43 Stat. 175, ch. 199, § 3.)

COMPILER'S NOTE

This section is a composite of the credits cited in the history line.

CROSS REFERENCES

Appointment of United States Park Police to White House Police, § 4–302.

Membership on Police and Firemen's Retiring and Relief Board, § 4–510.

CROSS REFERENCES

Watchmen of Department of Agriculture, similar provision, see 5 U. S. C. § 523.

NOTES TO DECISIONS

ARRESTS, POWER TO MAKE

Watchmen in public squares or reservations in the District of Columbia, invested with powers of Metropolitan Police may make arrests outside of such squares and reservations for offenses committed within the same. 1886 (18 Op. Atty. Gen. 433).

§ 4–202 [20: 534]. Organization of United States Park Police.

The United States park police shall be under the exclusive charge and control of the Director of the National Park Service. It shall consist of an active officer of the United States Army, detailed by the War Department, one lieutenant with grade corresponding to that of lieutenant (Metropolitan police), one first sergeant, five sergeants with grade corresponding to that of sergeant (Metropolitan police), and fifty-four privates, all of whom shall have served three years to be with grade corresponding to private, class three (Metropolitan police); all of whom shall have served one year to be with grade corresponding to private, class two (Metropolitan police) and such others as the Director of the National Park Service deems necessary and are appropriated for by Congress; and all of whom shall have served less than one year to be with grade corresponding to private, class one (Metropolitan police). (May 27, 1924, 43 Stat. 175, ch. 199, § 4; Feb. 26, 1925, 43 Stat. 983, ch. 339; July 3, 1926, 44 Stat. 834, ch. 760, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

COMPILER'S NOTE

Executive Order No. 6166, cited to the text, abolished the office of Public Buildings and Public Parks of the National Capital and transferred its functions to the office of National Parks, Buildings, and Reservations. See U. S. C., title 5, § 132, note. U. S. C., title 16, § 1, as amended, created the National Park Service and provided for a director thereof.

AMENDMENTS

The 1925 amendment abolished the office of Public Buildings and Grounds, and provided that its officers and employees should become officers and employees of the office of Public Buildings and Public Parks of the National Capital.

The 1926 amendment added the following words: "and such others as the Director of Public Buildings and Public Parks of the National Capital deems necessary and are appropriated for by Congress."

The 1934 amendment provided that the Office of National Parks, Buildings, and Reservations be continued in the National Park Service.

§ 4–203 [20: 535]. Salaries of United States Park Police—Time off from duty.

The salaries of members of the United States park police force shall be the same as the salaries of the officers and members of the Metropolitan police force of the District of Columbia in similar or corresponding grades.

In lieu of Sunday there shall be granted to members of the United States Park Police force one day off out of each week of seven days, which shall be in addition to their annual leave and sick leave: *Provided, however,* That whenever the Secretary of the Interior declares that an emergency exists of such a character as to require the continuous service of all the members of the United States Park Police force, the Superintendent of National Capital Parks shall have authority, and it shall be his duty, to suspend and discontinue the granting of said one day in seven during the continuation of such emergency. (May 27, 1924, 43 Stat. 175, ch. 199, § 5; Apr. 13, 1928, 45 Stat. 429, ch. 369; Apr. 29, 1950, 64 Stat. 96, ch. 138).

AMENDMENTS

The amendment of 1950 added the second paragraph.

The amendment of 1928 struck out the entire section and substituted the above section therefor.

CROSS REFERENCES

Salaries, § 4–108 and notes.

Salary increases and additional compensation in lieu of overtime or night pay differential, see sections 4–803 and 4–804.

§ 4–204 [20: 536]. Equipment of United States park police.

The members of the United States park police force shall be furnished with uniforms, means of transportation, and such other equipment as may be necessary for the proper performance of their duties, including badges, revolvers, and ammunition; the United States Army officer detailed as superintendent of the United States park police, who shall use on official business motor transportation furnished and maintained by himself, shall receive an extra compensation of not to exceed $480 per annum. Members detailed to motorcycle service shall each receive an extra compensation of $120 per annum. (May 27, 1924, 43 Stat. 175, ch. 199, § 6.)

CROSS REFERENCE

The White House Police are similarly equipped, § 4–303.

§ 4–205 [20: 537]. Refund of payments to retirement fund.

The refund provided for in section 724, title 5, United States Code, shall be paid to all members of the United States park police force, who, on May 27, 1924, were entitled to such refund, by reason of contributions previously made by them to the civil service retirement fund. (May 27, 1924, 43 Stat. 176, ch. 199, § 8.)

COMPILER'S NOTE

This section is in all probability obsolete by now.

§ 4–206 [20: 539]. Medical attendance.

The park watchmen on April 28, 1902, provided by law and those that may thereafter be provided for by law for service in any of the public squares and reservations in the District of Columbia, shall receive free medical attendance, the same as the Metropolitan police of said District. (Apr. 28, 1902, 32 Stat. 152, ch. 594.)

CROSS REFERENCE

Police surgeon, § 4–124.

§ 4–207 [20: 540]. Leave of absence of members of United States park police.

Each of the members of the United States park police force may be granted leave of absence with pay for such time, not exceeding twenty days in any one calendar year, as the director of the National Park Service shall determine: *Provided,* That upon the recommendation of the Board of Police and Fire Surgeons of the District of Columbia, acting as such board, or members thereof in their individual capacity, and with the approval of the director, members of the United States park police force may be granted additional leave with pay on account of sickness, not to exceed thirty days in any one calendar year; except that in case of sickness or injury incurred in actual performance of duty, the director of the National Park Service may grant such additional sick leave, with full pay, as may be recommended by the Board of Police and Fire Surgeons, acting as such, or members thereof in their individual capacity. (July 3, 1926, 44 Stat. 834, ch. 760, § 2; June 10, 1933, Ex. Ord. No. 6166, § 2; March 2, 1934, 48 Stat. 389, ch. 38, § 1.)

CROSS REFERENCES

Leave of absence while on active military duty, § 39–608.
Provisions for the police and firemen's relief fund, providing for pensions and compensation for injuries and diseases sustained in the line of duty (§§ 4–501 to 4–516) apply to the United States Park Police, § 4–515.
See compiler's note, § 4–202.

AMENDMENTS

Executive Order No. 6166 abolished the office of Public Buildings and Parks of the National Capital and transferred its functions to the office of National Parks, Buildings, and Reservations.
The 1934 amendment continued that office in the National Park Service.

§ 4–208 [20: 538, 540a]. Special police — Appointment—Powers.

The Director of the National Park Service, in his discretion, may appoint special policemen, without compensation, for duty in connection with the policing of the public parks and other reservations under his jurisdiction within the District of Columbia, such special policemen to have the same powers and perform the same duties as the United States park police and Metropolitan police of said District of Columbia, and to be subject to such regulations as he may prescribe: *Provided,* That the jurisdiction and police power of such special policemen shall be restricted to the public parks and other reservations under the control of the Director of the National Park Service. (May 27, 1924, 43 Stat. 176, ch. 199, § 9; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

COMPILER'S NOTE

D. C. 1929, title 20, § 538, was reprinted, as amended, in the supplement thereto as § 540a of the same title.

AMENDMENTS

The amendment of 1925 abolished the Office of Public Buildings and Grounds and provided that its officers and employees should become officers and employees of the Office of Public Buildings and Public Parks of the National Capital.
Executive Order 6166 abolished that agency and transferred its functions to the Office of National Parks, Buildings, and Reservations of the Department of the Interior. See U. S. C., title 5, § 132, note.
The 1934 amendment provided for the office to be continued in the National Park Service.

CROSS REFERENCES

See § 4–147 and notes.
General limitation on power of Commissioners, § 1–801.
Service of retired members in emergencies, § 4–514.

STATUTORY REFERENCES

Reorganization of executive agencies, U. S. C., title 5, § 132.

Chapter 3.—WHITE HOUSE POLICE

Sec.
4–301. Police force established—Control and supervision—Privileges, powers, and duties.
4–302. Personnel—Appointment—Vacancies.
4–303. Grades of appointees—Salaries—Transfers.
4–304. Members entitled to participate in policemen and firemen's relief fund of District of Columbia.
4–305. Refunds to members of United States Park Police force appointed to White House Police force.
4–306. Appropriation authorized.

§ 4–301 [20: 540*l*]. Police force established—Control and supervision—Privileges, powers, and duties.

There is hereby created and established for the protection of the Executive Mansion and grounds in the District of Columbia a permanent police force, to be known as the "White House Police." Such force shall be under the control and direct supervision of the Chief of the Secret Service Division. The members of such force shall possess privileges and powers and perform duties similar to those of the members of the Metropolitan police of the District of Columbia, and such additional privileges and duties as the Chief of the Secret Service Division may prescribe. (Sept. 14, 1922, 42 Stat. 841, ch. 308, § 1; May 14, 1930, 46 Stat. 328, ch. 277, § 1.)

AMENDMENT

In act of September 14, 1922, 42 Stat. 841, ch. 308, § 1, the police force was under sole control of the President and under direct supervision of such officer as he might designate. In general, the amendatory act herein changed control and supervision from the President to the Chief of Secret Service Division.

CROSS REFERENCES

Privileges, powers, and duties of Metropolitan Police, §§ 4–101 to 4–181.
Service of retired members in emergencies, § 4–513.

STATUTORY REFERENCE

This section is contained in U. S. C., title 3, § 61.

§ 4–302 [20: 540m]. Personnel—Appointment—Vacancies.

(a) The White House police force shall consist of one captain with grade corresponding to that of captain (Metropolitan police), two lieutenants with grade corresponding to that of lieutenant (Metropolitan police), four sergeants with grade corresponding to that of sergeant (Metropolitan police); and of such number of privates, with grade corresponding to that of private of the highest grade (Metropolitan police), as may be necessary, but not exceeding seventy-three in number. Members of the White House police shall be appointed from the members of the Metropolitan police force and the United States park police force from lists furnished by the

officers in charge of such forces. Vacancies shall be filled in the same manner.

(b) Any vacancy in the Metropolitan police force or in the United States park police force, caused by appointments to the White House police force, shall be filled in the manner provided by law. (Sept. 14, 1922, 42 Stat. 841, ch. 308, § 2; May 14, 1930, 46 Stat. 329, ch. 277, § 2; May 28, 1935, 49 Stat. 304, ch. 154; Apr. 22, 1940, 54 Stat. 156, ch. 133.

AMENDMENTS

The 1930 act provided for 1 captain, 1 lieutenant, increased the number of sergeants from 2 to 3, changed the number of privates from 30 to an indefinite number, not to exceed 43.

The 1935 act raised the number of privates to a possible 55.

The 1940 amendment raised the number of privates to a possible 73.

CROSS REFERENCE

Filling vacancies in the Metropolitan Police force or in the United States Park Police force, §§ 4–103, 4–105, 4–201, 4–202.

STATUTORY REFERENCE

This section is contained in U. S. C., title 3, § 62.

§ 4–303 [20: 540n]. Grades of appointees—Salaries—Transfers.

(a) No person shall be appointed a member of the White House police force at a grade lower than the grade held by him as a member of the Metropolitan police force or of the United States park police force at the time of his appointment.

(b) A member of the White House police force shall receive a salary at the rate provided for the corresponding grade in the Metropolitan police force, and he shall be furnished with uniforms and other necessary equipment similar to the uniforms and equipment furnished the United States park police, and he shall be entitled to the same leave allowances as a member of the United States park police force.

(c) Any member of the White House police force, appointed thereto from the Metropolitan police force, or the United States park police force, may be transferred to the organization of which he was a member at the time of such appointment. (Sept. 14, 1922, 42 Stat. 842, ch. 308, § 3; May 14, 1930, 46 Stat. 329, ch. 277, § 3.)

AMENDMENT

Paragraph (c) of the act of 1922 read as follows: "(c) The President may transfer a member of the White House Police force to the organization of which he was a member at the time of his appointment to such force."

CROSS REFERENCES

Equipment of United States Park police, § 4–204.

Grades of Metropolitan Police, § 4–106.

Salaries of Metropolitan Police, § 4–108 and notes.

Salary increases and additional compensation in lieu of overtime or night pay differential, see sections 4–803 and 4–804.

STATUTORY REFERENCE

This section is contained in U. S. C., title 3, § 63.

§ 4–304 [20: 540*o*]. Members entitled to participate in policemen and firemen's relief fund of District of Columbia.

(a) A member of the United States park police force appointed to the White House police force shall be included within the provisions of sections 4–501, 4–503, 4–506 to 4–508, 4–510, 4–512 to 4–514, upon payment into the policemen and firemen's relief fund, District of Columbia, of an amount equal to one and one-half per centum of the total basic salary received by him since September 1, 1916, as a member of such United States park police force and as a watchman of the United States in any public square or reservation of the District of Columbia.

(b) For the purposes of retirement under sections 4–501, 4–503, 4–506 to 4–508, 4–510, 4–512 to 4–514 service with the United States park police force and service as a watchman of the United States in any public square or reservation of the District of Columbia shall be deemed service with the White House police force.

(c) Any member of the Metropolitan police force appointed to the White House police force shall continue to be subject to the provisions of sections 4–501, 4–503, 4–506 to 4–508, 4–510, 4–512 to 4–514, and appointment of such member to the White House police force or transfer of such member to his former organization shall not affect any right, privilege, or duty of such member under the provisions of said sections. (Sept. 14, 1922, 42 Stat. 842, ch. 308, § 4.)

CROSS REFERENCES

Deductions from current salary for contribution to the police and firemen's relief fund, § 4–504.

Membership on the police and firemen's retiring and relief board, § 4–510.

STATUTORY REFERENCE

This section is contained in U. S. C., title 3, § 64.

§ 4–305 [20: 540p]. Refunds to members of United States park police force appointed to White House police force.

A member of the United States park police force appointed to the White House police force shall be paid a refund as provided for in section 724, title 5, United States Code, and upon transfer to the United States park police force he shall be paid a refund from the policemen and firemen's relief fund of all money paid by him as salary deductions into such fund, and he shall be reinstated and included within the provisions of chapter 14, title 5, United States Code, upon payment to the Secretary of the Treasury of an amount equal to the amount refunded to him, at the time of such appointment, under the provisions of section 724, title 5, United States Code, plus an amount equal to 2½ per centum of the total basic salary received by him during the period of his service as a member of the White House police force. For the purposes of retirement under chapter 14, title 5, United States Code, service with the White House police force shall be deemed service with the United States park police force. (Sept. 14, 1922, 42 Stat. 842, ch. 308, § 5.)

CROSS REFERENCE

Deductions from current salary for contributions to police and firemen's relief fund, § 4–504.

STATUTORY REFERENCE

This section is contained in U. S. C., title 5, § 65.

§ 4–306 [20: 540q]. Appropriation authorized.

There is authorized to be appropriated, out of any money in the treasury not otherwise appropriated, such sums as may be necessary to carry out the pro-

visions of this chapter. (Sept. 14, 1922, 42 Stat. 843, ch. 308, § 7; May 14, 1930, 46 Stat. 329, ch. 277, § 4.)

AMENDMENT

The 1930 amendment omitted that part of this section which provided: "That the amounts necessary for the payment of salaries and for the purchase of uniforms and other equipment of the White House Police force shall be disbursed by the officer in charge of public buildings and grounds."

STATUTORY REFERENCE

This section is contained in U. S. C., title 3, § 67.

Chapter 4.—FIRE DEPARTMENT

Sec.

4–401. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioners.
4–402. Commissioners to have exclusive jurisdiction—Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.
4–403. Age limits on original appointments.
4–404. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.
4–404a. Workweek established—Hours—Days off—Exceptions.
4–405. Salaries—Officers and privates—Annual increases—Original appointments—Probationary service.
4–406. Appropriations for clothing.
4–407. Resignation from service—Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.
4–408. Leave of absence.
4–409. Restrictions on members of department leaving District—Leaves of absence—Telephone.
4–410. Leave in lieu of Sunday.
4–411. Use of equipment for volunteer fire organizations.
4–412. Use of certain buildings granted fire department.
4–413. Apparatus—Construction.
4–414. Reciprocal agreements for mutual aid.

§ 4–401 [20: 551]. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioners.

The fire department of the District of Columbia shall embrace the whole of the said District, and its personal and movable property shall be assigned and located as the commissioners of said District may direct within the appropriations made by Congress. (June 20, 1906, 34 Stat. 314, ch. 3443, § 1.)

CROSS REFERENCE

Territorial area, § 1–101.

§ 4–402 [20: 552]. Commissioners to have exclusive jurisdiction—Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.

The commissioners of the District of Columbia shall appoint, assign to such duty or duties as they may prescribe, promote, reduce, fine, suspend, with or without pay, and remove all officers and members of the fire department of the District of Columbia, according to such rules and regulations as said commissioners, in their exclusive jurisdiction and judgment (except as herein otherwise provided), may from time to time make, alter, or amend: *Provided,* That the rules and regulations of the fire department heretofore promulgated (prior to January 24, 1920) are hereby ratified (except as herein otherwise provided) and shall remain in force until changed by said commissioners: *Provided further,* That all officers, members, and civilian employees of such department, except the chief engineer and deputy chief engineers, shall be appointed and promoted in accordance with the provisions of the Act entitled "An Act to regulate and improve the civil service of the United States," approved January 16, 1883, as amended (U. S. C., title 5, § 638 et seq.), and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States, except as herein otherwise provided: *Provided further,* That the chief engineer of the fire department shall be selected from among the deputy chief engineers, the battalion chief engineers, the fire marshal and the superintendent of machinery; the deputy chief engineers shall be selected from among the battalion chief engineers, the fire marshal, and the superintendent of machinery: *Provided further,* That all original appointments of privates shall be made to class one; privates who have served one year in class one shall, if found efficient, be transferred to class two, and privates who have served two years in class two shall, if found efficient, be transferred to class three. Such transfers shall not be subject to the provisions of such Act of January 16, 1883, as amended, and the rules and regulations made in pursuance thereof. Whenever vacancies occur in classes two or three which can not be filled by such transfers, the commissioners may appoint additional privates in class one equal in number to the positions vacant in class two or three; and any moneys appropriated for the payment of the salaries for such vacant positions shall be available to pay to such additional privates of class one the salaries of their grade. (June 20, 1906, 34 Stat. 314, ch. 3443, § 2; Jan. 24, 1920, 41 Stat. 396, ch. 54.)

AMENDMENT

The 1920 amendment inserted the words "as they may prescribe" after the word "duties," and the parenthetical phrase "except as herein otherwise provided," and added the matter following the first proviso.

CROSS REFERENCES

Exemption from military service, § 39–102.

Firemen receiving awards for meritorious service in line of duty given preference in promotions, § 4–703.

Free transportation by street-railway companies, § 44–213.

Jury service, exemption, fees for service, §§ 11–1420 to 11–1423.

Membership on the Police and Firemen's Retiring and Relief Board, § 4–510.

Motor vehicles of department may not be transferred to other departments, § 40–504.

Removal of members, trial boards, witnesses, §§ 4–601 to 4–604.

Removal of officer for engaging in strikes, § 4–407.

Rules and regulations generally, § 1–226 and notes.

Service of retired members in emergencies, § 4–514.

NOTES TO DECISIONS

PROHIBITION OF OTHER EMPLOYMENT

Commissioners of District may prohibit fire department employees performing other work for compensation. *Reichelderfer* v. *Ihrie* (61 App. D. C. 198, 59 Fed. (2d) 873. Cert. den. 287 U. S. 631, 77 L. ed. 547, 53 Sup. Ct. 82).

§4–403 [20: 553]. Age limits on original appointments.

The commissioners of the District of Columbia are hereby authorized to determine and fix the minimum and maximum limits of age within which original appointments to the fire department may be made. (Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4.)

§ 4–404 [20: 554]. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.

The fire department of the District of Columbia shall be composed of and operated upon a two-platoon system and the personnel thereof shall consist of one chief engineer; such number of deputy chief engineers, all of whom shall have had at least five years of experience in some regularly organized municipal fire department and battalion chief engineers as said commissioners may deem necessary from time to time within the appropriations made by Congress; one fire marshal; such number of deputy fire marshals, inspectors, and clerks as said commissioners may deem necessary from time to time within the appropriations made by Congress; such number of captains, lieutenants, and sergeants as said commissioners may deem necessary from time to time within the appropriations made by Congress; one superintendent of machinery; and such number of assistant superintendents of machinery, pilots, marine engineers, assistant marine engineers, marine firemen, privates of class six, privates of class five, privates of class four, privates of class three, privates of class two, privates of class one, hostlers, and laborers as said commissioners may deem necessary from time to time within the appropriations made by Congress: *Provided,* That the chief engineer of the fire department of the District of Columbia shall have the right to call for and obtain the services of any veterinary surgeon employed by the District who at the time shall not be engaged in a more emergent veterinary service for the District: *Provided further,* That the police surgeons of said District are required to attend, without charge, the members of the fire department of said District, and examine all applicants for appointment to, promotion in, and retirement from said fire department. (June 20, 1906, 34 Stat. 314, ch. 3443, § 3; Jan. 24, 1920, 41 Stat 397, ch. 54; June 19, 1948, 62 Stat. 498, ch. 530, § 1).

AMENDMENTS

The 1948 amendment provided for a two-platoon system; struck out the word "two" before the words "deputy chief engineers" and inserted in lieu thereof the words "such number of"; and inserted privates of classes four, five and six. Section 3 of the 1948 act provided: "This Act shall take effect one hundred and eighty days after funds have been appropriated and made available for the additional personnel necessary to carry out the purposes of this Act."

The 1920 amendment added different classes of employees.

EFFECTIVE DATE

Act of June 16, 1950, 64 Stat. 232, ch. 267, amended sec. 3 of act of June 12, 1948, set out in preceding paragraph, to read as follows: "This Act shall take effect as of the date funds are made available for the additional personnel necessary to carry out the purposes of this Act, or the date funds are appropriated for such personnel, whichever is the later date."

CROSS REFERENCES

Appointment of police surgeons, duty to attend firemen, § 4–124.

Certification by chief officer that certain businesses have complied with safety regulations before business license be issued, § 47–2302.

Chief engineer member of committee to make awards for meritorious service of firemen in line of duty, § 4–702.

§ 4–404a. Workweek established—Hours—Days off—Exceptions.

(a) The commissioners of the District of Columbia are authorized and directed to (1) establish a workweek of not more than seventy hours for officers and members of the Fire Department of the District of Columbia on night-platoon duty and of not more than fifty hours for such officers and members on day-platoon duty, and (2) require that the hours of work in each such workweek be performed within a period of five of any seven consecutive days. The two days off duty in each seven-day period to which each officer and member of the Fire Department is entitled under this subsection shall be in addition to his annual leave and sick leave allowed by law.

(b) Notwithstanding the provisions of subsection (a), whenever the commissioners declare that an emergency exists of such a character as to necessitate the continuous service of all officers and members of the Fire Department, it shall be the duty of the chief engineer of the Fire Department to suspend and discontinue the granting of such two days off in seven during the continuation of such emergency. (June 19, 1948, 62 Stat. 498, ch. 530, § 2.)

EFFECTIVE DATE

Sec. 3 of act of June 12, 1948, cited to text, provided: "This Act shall take effect one hundred and eighty days after funds have been appropriated and made available for the additional personnel necessary to carry out the purposes of this Act."

Act of June 16, 1950, 64 Stat. 232, ch. 267, amended sec. 3 of act of June 12, 1948, set out in preceding paragraph, to read as follows: "This Act shall take effect as of the date funds are made available for the additional personnel necesary to carry out the purposes of this Act, or the date funds are appropriated for such personnel, whichever is the later date."

§ 4–405 [20: 555a]. Salaries—Officers and privates—Annual increases—Original appointments—Probationary service.

The annual basic salaries of the officers and members of the Fire Department of the District of Columbia shall be as follows: Chief engineer, $8,000; deputy chief engineers, $5,000 each; battalion chief engineers, $4,500 each; fire marshal, $5,000; deputy fire marshal, $3,600; inspectors, $2,460 each; captains, $3,600 each; lieutenants, $3,050 each; sergeants, $2,750 each; superintendent of machinery, $5,000; assistant superintendent of machinery, $3,600; pilots, $3,400 each; marine engineers, $3,400 each; assistant marine engineers, $2,460 each; marine firemen, $2,100 each; privates, a basic salary of $1,900 per year, with an annual increase of $100 in salary for five years, or until the maximum salary of $2,400 is reached. All original appointments of privates shall be made at the basic salary of $1,900 per year, and the first year of service shall be pro-

bationary. (July 1, 1930, 46 Stat. 840, ch. 783, § 2; May 5, 1944, 58 Stat. 217, ch. 190; July 3, 1945, 59 Stat. 318, ch. 261.)

COMPILER'S NOTE

Section 1 of the act approved July 1, 1930, 46 Stat. 839, ch. 783, provided basic salaries for members of the Metropolitan Police and appears herein as § 4–108. Sections 3 and 4 of said act contained provisions applicable to salaries of both the fire department and the Metropolitan Police and appear herein as §§ 4–801 and 4–802.

AMENDMENTS

The act of July 3, 1945, cited to text, amended section by increasing annual salaries of pilots and marine engineers from $2,600 to $3,400.

The act of May 5, 1944, cited to text, amended section by increasing salaries of certain officers.

EFFECTIVE DATE

Section 1 of the act of July 3, 1945, cited to text, provided in part: "This Act shall become effective on the first day of the first month following the month in which approved."

Section 1 of act May 5, 1944, provided in part that the amendment by said act May 5, 1944, should become effective on the first day of the month following the month in which approved.

CROSS REFERENCES

Annual increase, withholding for inefficiency, discharge for inefficiency, extra compensation for demonstrated ability, § 1–802.

Firemen excluded from unemployment compensation under Social Security Act, § 46–301.

Other provisions concerning salaries of privates, § 4–801.

Salaries of members of fire department exempted from provisions of the Classification Act of 1923, U. S. C., title 5, § 662.

Pilots and marine engineers as excepted from salary increases, see section 4–805.

Salary increases and additional compensation in lieu of overtime or night pay differential, see sections 4–803 and 4–804.

Seniority of firemen serving in armed forces, see §§ 4–902, 4–903.

See note to § 4–504, *District of Columbia* v. *Smith* (63 App. D. C. 363, 72 Fed. (2d) 735).

§ 4–406 [20: 556]. Appropriations for clothing.

For furnishing uniforms and all other official equipment prescribed by department regulations as necessary and requisite in the performance of duty there is hereby authorized to be appropriated a sum not exceeding $75.00 per annum for each member of the fire department of the District of Columbia, to be expended subject to rules and regulations to be prescribed by the commissioners of the District of Columbia. (May 25, 1926, 44 Stat. 635, ch. 381.)

§ 4–407 [20: 557]. Resignation from service — Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.

No officer or member of said fire department, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the commissioners of the District of Columbia, unless he shall have given the said commissioners one month's previous notice, in writing, of such intention.

No member of the fire department of the District of Columbia shall directly or indirectly engage in any strike of such department. Upon sufficient proof to the commissioners of the District of Columbia that any member of the fire department of the District of Columbia has violated the provisions of this section, it shall be the duty of the commissioners of the District of Columbia to immediately discharge such member from the service.

Any member of the fire department of the District of Columbia who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the fire department of the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or by imprisonment of not more than six months, or by both. (June 20, 1906, 34 Stat. 315, ch. 3443, § 5; Jan. 24, 1920, 41 Stat. 398, ch. 54, § 2; July 31, 1939, 53 Stat. 1143, ch. 397.)

AMENDMENTS

The 1920 amendment added the second and third paragraphs. The 1939 amendment deleted the first sentence of the second paragraph of the section, added by the 1920 amendment, which read, "No member of the fire department of the District of Columbia shall be or become a member of any organization, or of an organization affiliated with another organization, which itself, or any subordinate, component, or affiliated organization of which, holds, claims, or uses the strike to enforce its demands," and inserted in lieu thereof the said sentence as it now appears.

CROSS REFERENCE

Proceedings for removal of members, § 4–402.

§ 4–408 [20: 558]. Leave of absence.

Each of the members of the fire department shall be entitled to leave of absence each year, with pay, for such time, not exceeding twenty days, as the commissioners shall determine. (Mar. 3, 1897, 29 Stat. 677, ch. 387.)

CROSS REFERENCES

Firemen exempted from provisions of general law concerning leave of absence for District employees, § 1–312.

Leave of absence while on active military duty, § 39–608.

Other provisions concerning leave, § 4–410.

§ 4–409 [20: 559]. Restrictions on members of department leaving District—Leaves of absence—Telephone.

No member of the fire department shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission, except that nothing in this section shall be construed to limit the right of members of the department to reside anywhere within the Washington, District of Columbia, Metropolitan district; and leaves of absence exceeding twenty days in any one year shall be without pay and require the consent of the commissioners, and such year shall be from January 1 to December 31, both inclusive, and thirty days shall be the term of total sick leave in any year without disallowance of pay; and leave of absence with pay of members of the fire department of the District of Columbia may be extended in cases of illness or injury incurred in line of duty, upon recommendation of the Board of Surgeons approved by the commissioners of the District of Columbia, for such period exceeding thirty days in any calendar year as in the judgment of the commissioners may be necessary: *Provided,* That for

the purposes of this section, Washington, District of Columbia, Metropolitan district, shall be held to include the District of Columbia and the territory adjacent thereto within a radius of twelve miles from the United States Capitol Building: *And provided further,* That any member of the fire department living outside the District of Columbia shall have and maintain a telephone at all times in his residence. (Mar. 4, 1913, 37 Stat. 960, ch. 150; Aug. 9, 1935, 49 Stat. 567, ch. 500.)

AMENDMENT

The amendment added the two provisos.

CROSS REFERENCES

Firemen exempted from provisions of general laws concerning leave of absence, sick leave, and compensation for injuries for employees of District, §§ 1–311, 1–312.

Pensions and compensation for injuries and disease sustained in line of duty, §§ 4–501 to 4–516.

§ 4–410 [20: 560]. Leave in lieu of Sunday.

In lieu of Sunday there shall be granted to each officer and member of the fire department of the District of Columbia one day off out of each week of seven days, which shall be in addition to his annual leave and sick leave now allowed by law. *Provided, however,* That whenever the commissioners of the District of Columbia declare that an emergency exists of such a character as to require the continuous service of all the members of the Metropolitan police force and the members of the fire department, the major and superintendent of police and the chief engineer of the fire department shall have authority, and it shall be their duty, to suspend and discontinue the granting of the said one day off in seven during the continuation of such emergency. (May 27, 1924, 43 Stat. 175, ch. 199, § 3.)

CROSS REFERENCES

Firemen exempted from provisions of general law concerning leave of absence for District employees, § 1–312.

Other provision concerning leave, § 4–408.

§ 4–411 [20: 562]. Use of equipment for volunteer fire organizations.

The commissioners of the District of Columbia are authorized to install under such rules and regulations as they may prescribe, in any suburb of the said District, such extra apparatus and appliances belonging to the fire department of the District of Columbia as may, in their opinion, be available for the use of any volunteer fire organization which may be created in such suburb; and such apparatus and appliances shall be maintained in proper condition for service by the purchase of the necessary supplies out of the appropriations provided for the fire department of the District of Columbia. (May 26, 1908, 35 Stat. 298, ch. 198.)

§ 4–412 [20: 563]. Use of certain buildings granted fire department.

The right of use and occupancy of the buildings and appurtenances known as the Union, Franklin, Columbia, and Anacostia engine houses, granted to the city of Washington for the purposes of the fire department, shall continue during the pleasure of Congress so long as used for such purposes. (R. S., D. C., § 192; Feb. 27, 1877, 19 Stat. 253, ch. 69, § 2.)

§ 4–413. Apparatus—Construction.

The commissioners are authorized, in their discretion, to build or construct, in whole or in part, fire-fighting apparatus in the fire department repair shop. (June 12, 1940, 54 Stat. 322, ch. 333, § 1.)

REPEATED

Act July 1, 1941, 55 Stat. 517, ch. 271, § 1; Act June 27, 1942, 56 Stat. 439, ch. 452, § 1; Act July 1, 1943, 57 Stat. 326, ch. 184, § 1; Act June 28, 1944, 58 Stat. 517, ch. 300, § 1; Act June 30, 1945, 59 Stat. 280, ch. 209, § 1; Act July 9, 1946, 60 Stat. 509, ch. 544, § 1; Act July 25, 1947, 61 Stat. 434, ch. 324, § 1; Act June 19, 1948, 62 Stat. 544, ch. 555, § 1; Act June 29, 1949, 63 Stat. 303, ch. 279, § 1; Act July 18, 1950, 64 Stat. 347, ch. 467, § 1.

§ 4–414. Reciprocal agreements for mutual aid.

(a) The Commissioners of the District of Columbia are hereby authorized in their discretion to enter into and to renew reciprocal agreements, for such period as they deem advisable, with the appropriate county, municipal, and other governmental units in Prince Georges and Montgomery Counties, Maryland, and Arlington and Fairfax Counties, Virginia, with the city of Alexandria, Virginia, with the city of Falls Church, Virginia, and with incorporated or unincorporated fire departments, fire companies, and organizations of firemen in such counties and cities, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of fire-fighting personnel and equipment, by and for the District of Columbia and such counties and cities, for the extinguishment of fires and for the preservation of life and property in emergencies, in the District and in such counties and cities.

(b) The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement.

(c) The Commissioners of the District of Columbia are hereby authorized to make available to the Federal Government personnel and equipment of the Fire Department of the District to extinguish fires, and to save lives, on property of the Federal Government in Prince Georges and Montgomery Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the city of Alexandria, Virginia; and the city of Falls Church, Virginia.

(d). For the purposes of chapter 5 of this title, service performed by any officer or member of the Fire Department of the District of Columbia under any mutual-aid agreement entered into by the District pursuant to this Act, service performed by any officer or member of the Fire Department of the District of Columbia at any other city, area, municipality, or other location where they shall have been directed to respond for the purpose of saving lives, extinguishing fires, or preserving property on orders of the Commissioners of the District of Columbia or of the Chief Engineer of said Fire Department or his acting designate, and service performed under (c) of this section by any such officer or member in extinguishing fires, or saving lives, on property of the

Federal Government, shall be held and considered to be service performed in line of duty. (Aug. 14, 1950, 64 Stat. 441, ch. 706, §§ 1–4.)

Chapter 5.—POLICE AND FIREMEN'S RELIEF FUND

Sec.
4–501. Creation.
4–502. Payment and deposit.
4–503. Composition—Deficiencies supplied from revenues of District of Columbia—Pensions payable from—Accounting.
4–504. Salary deductions—Refunds upon separation from service—Redeposits on reappointment—Payments to estate authorized.
4–504a. Credit for active service in military or naval forces.
4–505. Commissioners to determine amount of pension relief.
4–506. Allowance for temporary disability—Medical certificate—Approval.
4–507. Retirement allowance for total disability—Age retirement—Pensions to widows and orphans.
4–507a. Equalization of pensions of widows and orphans granted prior to October 1, 1949.
4–508. Voluntary retirement—Age and service requirements—Benefits—Transfer of funds.
4–509. Funeral expenses.
4–510. Retirement and relief board—Appointment—Duties—Hearings—Compulsory attendance of witnesses—Report of findings to Commissioners—Approval, disapproval, or modification by Commissioners.
4–511. Member of Park Police to be member of board in cases of Park and White House Police forces.
4–512. Medical examinations of pensioners—Commissioners' discretion.
4–513. Reduction or discontinuance of allowance—Causes.
4–514. Service of pensioners in emergency cases.
4–515. Retirement provisions made applicable to Park Police force—Rate of payment.
4–516. Apportionment of appropriations.
4–517. Equalization of pensions granted prior to December 5, 1919—Arrears of pensions.

§ 4–501 [20: 581]. Creation.

The funds authorized by law prior to September 1, 1916, and known as the police relief fund and the firemen's relief fund shall be designated and known as the policemen and firemen's relief fund, District of Columbia. (Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12.)

COMPILER'S NOTE

For prior laws as to policemen and firemen's relief fund, see Feb. 25, 1885, 23 Stat. 316, 317, ch. 145; June 11, 1896, 29 Stat. 404, ch. 419; Feb. 28, 1901, 31 Stat. 820, ch. 623; Mar. 1, 1905, 33 Stat. 821, ch. 1299; Mar. 31, 1906, 34 Stat. 95, ch. 1359; Feb. 27, 1907, 34 Stat. 1003, ch. 2081; May 26, 1908, 35 Stat. 296, ch. 198; Mar. 4, 1909, 35 Stat. 1066, ch. 316.

CROSS REFERENCES

Exemption from general employees' compensation laws, § 1–311.

Policemen and firemen excluded from unemployment compensation under Social Security Act, § 46–301.

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAWS

Under this act provision was made for a police fund, and it was derived from small deductions from the salaries of the policemen, dog licenses, police-court fines, etc., supplemented at irregular intervals by appropriations by Congress. *Dougherty* v. *United States ex rel. Roberts* (58 App. D. C. 308, 30 Fed. (2d) 471).

While there is no vested right in a pension which cannot be divested by the mere exercise of the legislative will, if relators have any rights, they are vested ones so long only as the statute in question remains in force and unchanged, subject to be divested at any time that Congress may desire. *Dougherty* v. *United States ex rel. Browning,* (60 App. D. C. 8, 45 Fed. (2d) 926).

§ 4–502 [20: 581a]. Payment and deposit.

Commencing with July 1, 1935, and thereafter, all moneys on June 14, 1935, required to be deposited to the credit of the policemen and firemen's relief fund, District of Columbia, under section 4–503, shall be paid to the collector of taxes of the District of Columbia and deposited in the treasury to the credit of the revenues of said District. (June 14, 1935, 49 Stat. 358, ch. 241, § 1.)

§ 4–503 [20: 582]. Composition—Deficiencies supplied from revenues of District of Columbia—Pensions payable from—Accounting.

The said fund shall consist of all fines imposed by the commissioners of the District of Columbia upon members of the police and fire departments of said District by way of discipline; all rewards, proceeds of gifts, and emoluments that may be received by any member of said departments (for extraordinary services), except such part thereof as the said commissioners may allow to be retained by members of said departments; a deduction of three and one-half per centum of the monthly salary of each member of said departments; donations; and the net proceeds of sales of unclaimed property in the custody of the property clerk of the police department; all of which shall be paid into the treasury of the United States to the credit of the "Policemen and firemen's relief fund, District of Columbia," herein provided for; and should the said fund at any time be insufficient to defray the expenditures hereinafter provided for, the commissioners of the District of Columbia, in that event, are authorized and it shall be their duty, to direct the collector of taxes of said District, and it shall be the duty of the said collector, pursuant to such direction, to pay into the treasury of the United States, out of the general revenue of the District of Columbia collected by him, to the credit of the said "Policemen and firemen's relief fund, District of Columbia," such sums as may be necessary from time to time to meet deficiencies in said fund. The moneys to the credit of the said fund shall be available for appropriation by Congress annually only for expenditure on requisitions of the said commissioners for the purposes set forth in sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514 inclusive, of this title, and all expenditures from said fund shall be made and accounted for in the same manner as other expenditures of the government of the District of Columbia are made and accounted for. (Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; May 27, 1924, 43 Stat. 176, ch. 199, § 7; June 7, 1924, 43 Stat. 560, ch. 302; July 1, 1930, 46 Stat. 840, ch. 783, § 5.)

AMENDMENTS

Act of May 27, 1924, extended the benefits of this fund to the United States Park Police force.

Act of June 7, 1924, changed the rate of salary deductions to 2½ per centum.

The 1930 act changed the rate of deduction to 3½ per centum.

CROSS REFERENCES

Salaries of police and firemen, §§ 4–108, 4–405, and notes.
Unclaimed property in the hands of property clerk, § 4–159.

NOTES TO DECISIONS

EMPLOYMENT STATUS

The plaintiff, as a member of the metropolitan police, is not an employee of the United States but is an employee of the municipal corporation, the District of Columbia. *Wham* v. *United States* (D. C., D. C. 1948, 81 F. Supp. 126); Reversed on other grounds *Wham* v. *United States,* C. A. D. C. 1950, 180 F. 2d 38, 86 US App D. C. 128).

§ 4–504 [20: 582a]. Salary deductions—Refunds upon separation from service—Redeposits on reappointment—Payments to estate authorized.

There shall be deducted for the benefit of the policemen and firemen's relief fund 5 per centum of the monthly pay of each member of the Metropolitan Police force, the fire department, the United States park police, and the White House police force. Upon the separation from the service of any such member, except for retirement as authorized by law, he shall be refunded the deductions made from his salary for said fund, and should any such member subsequently be reappointed to any of such police forces or the fire department he shall be required to redeposit to the credit of the policemen and firemen's fund the amount of deductions refunded to him. In the case of the death of any such member while in the service the amount of his deductions shall be paid to the legal representative of his estate, provided he leaves no widow or child or children entitled to and granted relief payable from said fund. (July 1, 1930, 46 Stat. 840, ch. 783, § 5; Aug. 4, 1949, 63 Stat. 566, ch. 394, § 4.)

AMENDMENT

The act of Aug. 4, 1949, cited to text, amended the section by striking out the figures "3½" and substituting in lieu thereof the figure "5".

EFFECTIVE DATE

See note following § 4–507.

CROSS REFERENCES

Amounts required to be paid by members of United States Park Police for the period prior to the effective date of this act, § 4–515.
Police and firemen excluded from unemployment compensation under the Social Security Act, § 46–301.
Salaries of police and firemen, §§ 4–108, 4–405, and notes.

NOTES TO DECISIONS

REDEPOSIT

In computing the period of service required of the fireman in order to qualify him for retirement the period preceding his resignation is included, and there is no inequity in requiring a member returning to the force to restore that which he had withdrawn for he receives the same consideration thereafter as if he had not retired. *District of Columbia* v. *Smith* (63 App. D. C. 363, 72 Fed. (2d) 735).

§ 4–504a. Credit for active service in military or naval forces.

In determining eligibility for and the amount of benefits from the policemen and firemen's relief fund, District of Columbia, each member of the Metropolitan Police Department of the District of Columbia, the United States Park Police force, the White House Police force, the Fire Department of the District of Columbia, and each member of the United States Secret Service who has actively performed duties other than clerical for ten years or more directly related to the protection of the President, who shall have left active employment in any such department, force, or service to perform active service in the military or naval forces of the United States, shall be credited with all periods of honorable active military or naval service performed on or after September 16, 1940, and prior to the termination of the war as declared by Presidential proclamation or concurrent resolution of the Congress. (July 21, 1947, 61 Stat. 398, ch. 272.)

§ 4–505 [20: 582b]. Commissioners to determine amount of pension relief.

The commissioners of the District of Columbia are hereby empowered to determine and fix the amount of the pension relief allowance heretofore and hereafter granted to any person under and in accordance with the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514. (July 1, 1930, 46 Stat. 841, ch. 783, § 6.)

CROSS REFERENCES

Allowance for permanent disability, age retirement, pensions to widows or orphans, § 4–507.
Allowance for temporary disability, § 4–506.
Amounts determined by Retirement and Relief Board, subject to approval or modification by Commissioners, § 4–510.
Continuation, increase, decrease, or discontinuation of relief, physical examination, §§ 4–512, 4–513.
Funeral expenses, § 4–509.

NOTES TO DECISIONS

ELECTION OF REMEDIES

Where member of Metropolitan Police Force was injured while on duty by the negligence of a government employee, and was not barred under Federal Tort Claims Act, he was not required to elect between relief granted by that Act or relief granted under the Police Pension Relief Fund, since case did not present the elements requiring an election: viz. existence of inconsistent remedies to enforce the same cause. *Wham v. U. S.* (C. A. D. C. 1950, 180 F. 2d 38, 86 U. S. App. D. C. 128).

NOT A VESTED RIGHT—CONSTITUTIONALITY

The right of a retired member of the police force to a pension, or to a particular pension, is not a vested right, and a change by statute does not impair the obligation of a contract. *Dougherty* v. *United States ex rel. Browning* (60 App. D. C. 8, 45 Fed. (2d) 926).

REDETERMINATION OF AMOUNT—CONSTITUTIONALITY

Commissioners are empowered to redetermine and fix the amount of the pension relief allowance of policemen and firemen already in the service, as well as those thereafter entering the service, and such redetermination is neither retroactive nor is it unconstitutional as impairing obligation of a contract. *Dougherty* v. *United States ex rel. Browning* (60 App. D. C. 8, 45 Fed. (2d) 926).

§ 4–506 [20: 583]. Allowance for temporary disability—Medical certificate—Approval.

Whenever any member of the police department or the fire department of the District of Columbia shall become temporarily disabled by injury received or disease contracted in the actual discharge of his duty, to such an extent as to require medical or surgical services other than such as can be rendered by the Board of Police and Fire Surgeons of said District, or to require hospital treatment, the ex-

penses of such medical or surgical services, or hospital treatment, shall be paid from the policemen and firemen's relief fund, District of Columbia, provided for in sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514; but no such expense shall be paid except upon a certificate of the said Board of Police and Fire Surgeons, or two members thereof, setting forth the necessity for such services or treatment and the nature of the injury or disease which rendered the same necessary, and upon the approval of the said certificate by the superintendent of the Metropolitan police or the chief engineer of the fire department, as the case may be, and the approval of the commissioners of the District of Columbia. (Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12.)

CROSS REFERENCES

Amount of allowance, § 4–505.

Police and firemen are exempted from provisions of general laws concerning compensation for injuries and sickness in line of duty for District employees, § 1–311.

Proceedings before Retirement and Relief Board, § 4–510.

Surgeons for police and firemen, §§ 4–106, 4–124.

NOTES TO DECISIONS

EMPLOYMENT STATUS

Where member of the Metropolitan Police Force was injured while on duty by the negligence of a government employee, he has a right of action against the U. S. under Federal Tort Claims Act, notwithstanding his position in the Metropolitan Police for whose members the U. S. established a Police Pension Relief Fund. *Wham* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 38, 86 U. S. App. D. C. 128).

§ 4–507 [20: 584]. Retirement allowance for total disability—Age retirement—Pensions to widows and orphans.

Whenever any member of the police department or the fire department of the District of Columbia shall become so permanently disabled through injury received or disease contracted in the line of duty as to incapacitate him for the performance of duty, or, having served not less than twenty-five years and having reached the age of fifty-five years shall, for any cause, become so permanently disabled as to incapacitate him for the performance of duty and shall make written application therefor and said application shall be approved by the commissioners of said District, or, having reached the age of sixty years, in the discretion of the said commissioners, he shall in either event be retired from the service thereof and be entitled to receive relief from the said policemen and firemen's relief fund, District of Columbia, in an amount not to exceed 50 per centum per year of the salary received by him at the date of retirement. In case of the death of any member of the police department or the fire department of the District of Columbia, before or after retirement from the service thereof, leaving a widow, or a child or children under eighteen years of age, the widow shall be entitled to receive relief from the said policemen and firemen's relief fund, District of Columbia, in an amount not to exceed $125 per month, and each child under the age of eighteen years in an amount not exceeding $25 per month: *Provided,* That such payments or any right thereto shall cease upon death or remarriage of the widow: *Provided further,* That any benefits to a child or children shall cease upon (1) attaining the age of eighteen years, (2) marriage, or (3) death: *And provided further,* That no widow, child, or children of any deceased member of the said police department or fire department resulting from any marriage contracted subsequent to the date of retirement of such member shall be entitled to any relief under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514. (Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Feb. 17, 1923, 42 Stat. 1263, ch. 95, § 1; Aug. 4, 1949, 63 Stat. 565, ch. 394, § 1.)

AMENDMENTS

The 1949 amendment raised the maximum monthly payment to a widow from $60 to $125, and to each child from $10 to $25, and raised the qualifying age of a child from age 16 years to age 18 years.

The 1923 amendment raised the maximum monthly payment to a widow from $35 to $60. That part of the original section which provided "and in no case shall the amount paid to any one family exceed the sum of $50 per month" has therefore been omitted.

EFFECTIVE DATE

Section 5 of the act of Aug. 4, 1949, cited to text, provided:

"SEC. 5. This Act shall take effect on the first day of the second month following the date of approval of this act."

CROSS REFERENCES

Amount of pension or relief, § 4–505.

Proceedings before Retirement and Relief Board, § 4–510.

NOTES TO DECISIONS

CONSTRUCTION

This section providing that in case of death of a member of the District of Columbia metropolitan police force, widow shall be entitled to receive relief from policemen and firemen's relief fund is remedial and entitled to liberality of construction. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 887).

The portion of this section providing for benefits to widow and children of a deceased member of District of Columbia metropolitan police force is not required to be read in terms with preceding portion providing for retirement for disability sustained in line of duty so as to require a construction that the death must have been the result of injury or disease sustained or contracted in line of duty in order for benefits to be payable. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 887).

DETERMINATION OF AMOUNT

Where commissioners of District of Columbia admitted the death of member of metropolitan police force, in exercise of such discretion as they had in determining whether widow and minor children of decedent were entitled to relief from policemen and firemen's relief fund, there was nothing remaining to be done except determination of amount to which widow was entitled. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 890).

DIVORCE

Where purported absolute divorce, obtained by member of police department and police relief association, was void for want of jurisdiction, purported marriage of the member with another was void ab initio, and his first wife whose marriage was terminated by his death was entitled to pension relief and death benefits payable to his widow. *Fleischhauer* v. *Hazen* (D. C., D. C. 1948, 80 F. Supp. 74).

FEDERAL INCOME TAX

Monies received by members of the police or fire departments of the District of Columbia, who were retired for disability, being in the nature of compensation for per-

sonal injuries under a workmen's compensation act, was not subject to federal income tax. *Frye* v. *U. S.* (D. C., D. C. 1947, 72 F. Supp. 405).

HEARING ON MERITS

Where member of metropolitan police force, while on military leave and serving as an officer in the marine corps, died, application of widow for herself and minor children for relief from policemen and firemen's relief fund was properly made by a person legally within class designated by this section and entitled as a consequence to a hearing on the merits by commissioners and claim could not summarily be rejected. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 887).

JUDICIAL REVIEW

The broad discretion given District of Columbia commissioners with respect to granting relief to widow and minor children of deceased member of metropolitan police force, which precludes review of commissioners' action properly taken, does not preclude judicial review of arbitrary denial without hearing on the merits of widow's application for relief. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 887).

MILITARY LEAVE

"Leave of absence without pay", given member of metropolitan police force of District of Columbia when he entered marine corps, temporarily excused him from performing acts of duty as a policeman, was in the nature of a furlough and did not terminate membership in police force or constitute a retirement therefrom so as to preclude benefit to his widow and minor children from policemen and firemen's relief fund following his death in line of duty in marine corps. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 890).

Where member of metropolitan police force of District of Columbia while on military leave, without pay, died in line of duty while serving as a marine corps officer, widow and minor children were within class of beneficiaries designated by this section as entitled to relief from policemen and firemen's relief fund notwithstanding that death did not result from injury or disease contracted in line of duty as a policeman. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 887).

MONEY JUDGMENT

Widow of deceased member of metropolitan police force of District of Columbia, in view of broad discretion granted commissioners, was not entitled to a money judgment against policemen and firemen's relief fund, following denial of pension by commissioners. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 887).

NATURE OF RELIEF

Relief sought by widow and minor children of deceased member of metropolitan police force of District of Columbia from policemen and firemen's relief fund is not a gratuity since fund was created in part by contribution of decedent. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 890).

RECOVERY FROM DISABILITY

It is apparent that Congress was of the view that it would be more equitable to place on a basis of equality all policemen and firemen who were retired on account of being unfit for duty due to specified causes, but it was not the intent to continue a pension where the pensioner has recovered from his disability. *Dougherty* v. *United States ex rel. Roberts* (58 App. D. C. 308, 30 Fed. (2d) 471).

SUMMARY JUDGMENT

Where answer of commissioners of District of Columbia to action by widow of member of metropolitan police force who had died while in military service for mandatory injunction to place widow and minor children on pension roll of police department raised no material issue of fact, widow was entitled to summary judgment, but amount of pension was a matter of discretion for commissioners subject to possible review for abuse thereof. *Thompson* v. *Young* (D. C., D. C. 1945, 63 F. Supp. 890).

§ 4–507a. Equalization of pensions of widows and orphans granted prior to October 1, 1949.

All widows and children of deceased members of the police department or of the fire department of the District of Columbia receiving relief under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, shall be entitled to receive relief to the same extent and in the same manner as is provided by section 4–507: *Provided,* That no relief shall be increased or allowed under the authority of this section for any period prior to October 1, 1949: *Provided further,* That any child or children who had attained the age of sixteen years and whose benefits were terminated shall be entitled to receive relief as provided by section 4–507 until the attainment of eighteen years of age. (Aug. 3, 1949, 63 Stat. 566, ch. 394, § 3.)

EFFECTIVE DATE

See note following § 4–507.

§ 4–508. Voluntary retirement—Age and service requirements—Benefits—Transfer of funds.

Whenever any member of the Metropolitan police department of the District of Columbia, or of the United States park police force, or of the White House police force, or the fire department of the District of Columbia has served twenty-five years or more as a member of such department or police force, or the fire department of the District of Columbia, or any combination of such service, or whenever any member of the United States Secret Service, who has served twenty-five years in the service of the United States government, the duties of whom in whole or in part related to the protection of the life of the President and who has actively performed duties other than clerical for ten years or more directly related to the protection of the President extended by the Secret Service Division and having reached the age of fifty-five years, he may, at his election, be retired from the service of any such police department or police force or division or fire department, and shall be entitled to receive retirement compensation from the said policemen and firemen's relief fund, District of Columbia, in an amount equal to 50 per centum per annum of the salary received by him at the date of retirement: *Provided, however,* That in any fiscal year any such retirement shall be in accordance with such rules and regulations as may be adopted by the commissioners of the District of Columbia, and in no fiscal year shall the amount of all such retirements authorized under the provisions of this paragraph aggregate more than $30,000: *Provided further,* That, when any member of the United States Secret Service Division shall have performed service in connection with the protection of the President for ten years or more, thereby becoming subject to future retirement after twenty-five years' service under the provisions of this section, that he shall be authorized to transfer all funds to his credit in the United States civil service retirement fund to the policemen and firemen's relief fund of the District of Columbia, and that after the transfer of such funds, the salary of that member shall be subject to the same deductions for credit to the policemen and firemen's relief fund of the District of Columbia as the

deductions from salaries of other members contributing to that fund, and he shall be entitled to the same benefits as other members contributing to that fund. (Sept. 1, 1916, 39 Stat. 721, ch. 433, § 12, paragraph added by act of Oct. 14, 1940, 54 Stat. 1118, ch. 860.)

§ 4–509 [20: 585]. Funeral expenses.

The commissioners of the District of Columbia are authorized to pay from the said policemen and firemen's relief fund, District of Columbia, a sum not exceeding $250 in any one case to defray the funeral expenses of any deceased member of the police department or the fire department of said District dying while in the service thereof. (Sept. 1, 1916, 39 Stat. 719, ch. 433, § 12; Aug. 4, 1949, 63 Stat. 566, ch. 394, § 2.)

AMENDMENT

The act of Aug. 4, 1949, cited to text, increased from $75 to $250 the maximum amount payable for funeral expenses.

EFFECTIVE DATE

See note following § 4–507.

CROSS REFERENCE

Other provisions giving Commissioners power to determine amount of relief to be granted, § 4–505.

§ 4–510 [20: 586]. Retirement and relief board—Appointment—Duties—Hearings—Compulsory attendance of witnesses—Report of findings to commissioners—Approval, disapproval, or modification by commissioners.

There is created in and for the District of Columbia a board to be known as the Police and Firemen's Retiring and Relief Board, to be composed of the corporation counsel of said District and one member from each the police department and fire department, to be designated by the said commissioners, and the said commissioners are authorized to change the personnel of said board from time to time, in their discretion, and they are further authorized and empowered to make, modify, and to amend from time to time regulations and rules of procedure for the conduct of the said board. The said board shall consider all cases for the retirement and relief of members of the police department and the fire department rendered necessary or expedient under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, and all applications for the relief of widows, and children under sixteen years of age. In every case of retirement of a member of either of said departments the Board of Police and Fire Surgeons shall certify, in writing, to the said retiring and relief board the physical condition of the member for whom retirement and relief is sought. The said retiring and relief board shall give written notice to any member of said departments under consideration by it for retirement and relief to appear before the board and give such evidence under oath as he may desire, and the proceedings of the board shall be reduced to writing and shall show the date of appointment of such member, his age, his record in the service, and any other information that may be pertinent to the matter of his retirement and relief. The said board is authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting retirement and relief under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514; and any member of the board shall have power to administer oaths or affirmations to witnesses appearing before the said board. Such summons shall be served by any member of the Metropolitan police force, and upon the refusal or neglect of a witness to appear before the said board or to testify when required, he or she may be compelled to attend and testify as provided in sections 4–601 to 4–603, and any witness knowingly making a false statement to the said board on any material matter shall be guilty of perjury and punishable accordingly. The said retiring and relief board shall in each case considered by it for retirement and relief submit to the commissioners of the District of Columbia a report of the findings, and the said commissioners shall have power to approve, disapprove, or modify such findings or to remand any case for further proceedings as they may deem necessary. (Sept. 1, 1916, 39 Stat. 719, ch. 433, § 12.)

CROSS REFERENCES

Allowance to be made by Commissioners, § 4–505.
Continuation, increase, decrease, or discontinuation of relief, physical examination, §§ 4–512, 4–513.
Police and fire surgeon, §§ 4–106, 4–124.
Representation on Board of members of United States Park Police and White House Police, § 4–511.
Rules and regulations in general, § 1–226 and notes.

NOTES TO DECISIONS

REVIEW

"Commissioners of the District, vested by law with discretion to continue or discontinue plaintiff's pension, have resolved the case against him; and, in the absence of an abuse of that discretion, the court, in a proceeding for a writ of mandamus, is without authority to review the case, as in error, and interfere with the exercise of that discretion." *Rudolph* v. *United States ex rel. Rock* (55 App. D. C. 362, 6 Fed. (2d) 487, 40 A. L. R. 1042. Cert. den. 269 U. S. 559, 70 L. Ed. 411, 46 Sup. Ct. 20).

§ 4–511 [20: 587]. Member of park police to be member of board in cases of park and White House police forces.

A member of the United States park police force, to be designated by the officer in charge of public buildings and grounds, shall be a member of the Police and Firemen's Retirement and Relief Board in all cases of relief and retirement of members of the United States park police force and of the White House police force. (May 27, 1924, 43 Stat. 176, ch. 199, § 7.)

CROSS REFERENCES

United States Park Police, §§ 4–201 to 4–208.
White House force, §§ 4–301 to 4–306.

§ 4–512 [20: 588]. Medical examinations of pensioners—Commissioners' discretion.

The commissioners of the District of Columbia, in their discretion and at any time, may cause any person receiving any relief allowance under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514 who has served less than twenty-five years, to appear and undergo a medical examination, as the result of which the said commissioners shall determine whether the relief in such case shall be continued, increased, decreased, or discontinued.

Should any person receiving relief under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514 after due notice, fail to appear and undergo the examination prescribed here, the said commissioners are authorized in their discretion to reduce or entirely discontinue such relief. (Sept. 1, 1916, 39 Stat. 720, ch. 433, § 12.)

§ 4–513 [20: 589]. Reduction or discontinuance of allowance—Causes.

The commissioners of the District of Columbia may, in their discretion, reduce or discontinue the relief granted to any person under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, upon receipt of duly certified information from a court of competent jurisdiction that any person receiving such relief has been convicted in such court of any crime involving moral turpitude; and the said commissioners may also, in their discretion, reduce or discontinue the relief granted to any person under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, when it shall appear to their satisfaction from evidence before them that such person is an habitual drunkard or guilty of lewd or lascivious conduct. (Sept. 1, 1916, 39 Stat. 720, ch. 433, § 12.)

NOTES TO DECISIONS

DISCONTINUANCE—MORAL TURPITUDE

Possession and transportation of intoxicating liquor is a crime involving moral turpitude, as regards ground for discontinuance of pension of policeman under this section. *Rudolph* v. *United States ex rel. Rock,* (55 App. D. C. 362, 6 Fed. (2d) 487, 40 A. L. R. 1042. Cert. den. 269 U. S. 559, 70 L. Ed. 411, 46 Sup. Ct. 20).

§ 4–514 [20: 590]. Service of pensioners in emergency cases.

Any retired member of the police department or fire department of the District of Columbia receiving relief under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, may in time of flood, riot, conflagration, during extraordinary assemblages, or unusual emergencies, be called by the commissioners of said District into the service of the department from which he was retired with relief for such duty as his disability will permit of him performing, without compensation therefor; and the said commissioners shall have power to enforce compliance with the provisions hereof by withholding the payment of relief; but nothing contained in this section shall be construed to enforce residence in the District of Columbia upon any retired member of either of said departments when it shall appear to the satisfaction of said commissioners that residence elsewhere is rendered necessary by the physical condition of such member. (Sept. 1, 1916, 39 Stat. 720, ch. 433, § 12.)

§ 4–515 [20: 591]. Retirement provisions made applicable to park police force—Rate of payment.

Under and in accordance with sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, members of the United States park police force shall be entitled to all the benefits of relief and retirement therein authorized upon the payment by each member into the policemen and firemen's relief fund, District of Columbia, of an amount equal to 1½ per centum of the total basic salary received by him between September 1, 1916, and June 30, 1924, and thereafter at the rate of 2½ per centum, as a member of such United States park police force, and as a watchman of the United States in any public square or reservation in the District of Columbia. (May 27, 1924, 43 Stat. 176, ch. 199, § 7.)

CROSS REFERENCE

For increase in deductions from current salary, see § 4–504.

§ 4–516 [20: 592]. Apportionment of appropriations.

On and after July 1, 1924, appropriations to pay relief and other allowances authorized by sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, shall be paid 60 per centum from the revenues of the District of Columbia and 40 per centum from the revenues of the United States. (May 27, 1924, 43 Stat. 176, ch. 199, § 7.)

CROSS REFERENCES

Congress now appropriates a lump sum to the District, § 47–134.

Permanent appropriation abolished, § 47–109.

§ 4–517 [20: 593]. Equalization of pensions granted prior to December 5, 1919—Arrears of pensions.

On and after February 17, 1923, all persons upon the pension rolls of the police and fire departments of the District of Columbia who were granted relief in accordance with laws enacted prior to December 5, 1919, shall receive such relief as is allowable under existing law, and all persons on or after February 17, 1923, receiving relief from the policemen and firemen's relief fund shall also be entitled to all pension benefits resulting from any increase in pay that has or may be granted by Congress: *Provided,* That no arrears of pension shall be granted for any period prior to an application for an increase in pension under the provisions of this section. (Feb. 17, 1923; 42 Stat. 1263, ch. 95.)

NOTES TO DECISIONS

BASE OF PENSION—PHYSICAL EXAMINATION

Pensions are to be based on pay of class to which applicant for increase belongs at time of application; and Board has power to make physical examination of retired applicant. *Dougherty* v. *United States ex rel. Roberts* (58 App. D. C. 308, 30 Fed. (2d) 471).

It is apparent that Congress was of the view that it would be more equitable to place on a basis of equality all policemen and firemen who were retired on account of being unfit for duty due to specified causes, but it was not the intent to continue a pension where the pensioner has recovered from his disability. *Dougherty* v. *United States ex rel. Roberts* (58 App. D. C. 308, 30 Fed. (2d) 471).

Chapter 6.—TRIAL BOARDS

Sec.

4–601. Trial boards may compel attendance of witnesses—Fees.
4–602. False swearing before trial boards.
4–603. Process to secure attendance of witnesses.
4–604. Oath of members of trial boards.

§ 4–601 [20: 601]. Trial boards may compel attendance of witnesses—Fees.

Any trial board of the Metropolitan police force or the fire department of the District of Columbia shall have the power to issue subpœnas in the name

of the Chief Justice of the District Court of the United States for the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers or documents before said trial board: *Provided,* That witnesses other than those employed by the District of Columbia subpœnaed to appear before said trial board shall be entitled to the same fees as are paid witnesses for attendance before the District Court of the United States for the District of Columbia, but said fees need not be tendered said witnesses in advance of their appearing and testifying and/or producing books, records, papers or documents before said trial board. (May 11, 1892, 27 Stat. 29, ch. 65, § 1; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 1; Apr. 16, 1932, 47 Stat. 86, ch. 118, § 1.)

AMENDMENTS

As enacted this section read: "Any trial board of the Metropolitan Police force and of the Fire Department of the District of Columbia shall have power to issue subpœnas, attested in the name of the president of the Board of Commissioners of the District of Columbia, to compel before it the attendance of witnesses upon any trial or proceedings authorized by the rules and regulations of the police force."

The act of February 20, 1896, added to the above the following words, "or of the fire department."

The act of April 16, 1932, cast the section in its present form.

CROSS REFERENCES

Commissioners of District of Columbia given similar powers, § 1–237.

Trial board for Metropolitan Police, § 4–122.

Trial boards for firemen, § 4–402.

Trials before Police and Firemen's Retiring and Relief Board, § 4–510.

§ 4–602 [20: 602]. False swearing before trial boards.

Any wilful false swearing on the part of any witness before any trial board mentioned in section 4–601 as to any material fact shall be deemed perjury and shall be punished in the manner prescribed by law for such offense. (May 11, 1892, 27 Stat. 29, ch. 65, § 2; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 2; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 3.)

AMENDMENTS

As originally enacted the section read: "Any wilful or corrupt false swearing on the part of any witness or person making deposition before any trial board mentioned in the preceding section as to any material fact in any proceedings, under the rules and regulations governing said police force, shall be deemed perjury, and shall be punished in the manner prescribed by law for such offense."

The amendment of February 20, 1896, changed the words "making deposition" to "giving evidence" and added after "police force," the words "and fire department."

The 1932 act, cited to the text, amended the section to read as set forth above.

§ 4–603 [20: 603]. Process to secure attendance of witnesses.

If any witness having been personally summoned shall neglect or refuse to obey the subpœna issued in section 4–601, then in that event the chairman of the trial board may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof and said court, or any justice thereof, is empowered to compel obedience to said subpœna to the same extent as witnesses may be compelled to obey the subpœnas of that court. (May 11, 1892, 27 Stat. 29, ch. 65, § 3; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 3; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 2.)

AMENDMENTS

As originally enacted the section read: "If any witness, having been first personally summoned, shall neglect or refuse to appear before any trial board mentioned in the first section of this act, then, on the fact being reported by the major and superintendent of police to one of the justices of the police court, it shall be the duty of that court to compel the attendance of such witness before such trial board in the same manner as witnesses are now compellable to appear before said court: *Provided,* That witnesses subpœnaed to appear before said trial boards, other than those employed by the District of Columbia, shall be entitled to the same fees as are now paid witnesses for attendance before the Supreme Court of the District of Columbia."

The amendatory act of February 20, 1896, added after the words "superintendent of police," the words "or chief of the fire department."

The act of April 16, 1932, cited to the text, amended the section to read as set forth above.

§ 4–604 [20: 604]. Oath of members of trial boards.

Each member of trial boards shall take an oath to be administered by the chief clerk of the police department for the faithful and impartial performance of the duties of the office. (Apr. 16, 1932, 47 Stat. 87, ch. 118, § 4.)

Chapter 7.—AWARDS FOR MERITORIOUS SERVICE

Sec.

4–701. Annual awards for meritorious service.
4–702. Committee to make awards.
4–703. Preference to medal holders in promotions.
4–704. Appropriation authorized.

§ 4–701 [20: 611]. Annual awards for meritorious service.

For the official recognition of outstanding acts in the line of duty by the members of the police and fire departments of the District of Columbia there shall be awarded annually one gold medal and one silver medal, appropriately inscribed, to those two members of each department who have by outstanding or conspicuous services earned such awards. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 1.)

CROSS REFERENCE

Policemen may not accept fees or presents in addition to salary, except with consent of Commissioners, § 4–129.

§ 4–702 [20: 612]. Committee to make awards.

The awards shall be made annually by a committee of five persons, consisting of the head of each department and three civilians appointed by the commissioners of said District; all to serve without compensation on such committee of award. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 2.)

§ 4–703 [20: 613]. Preference to medal holders in promotions.

When promotions are being made in the departments, the holders of such medals shall be preferred to other members of said departments, other things being equal. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 3.)

§ 4–704 [20: 614]. Appropriation authorized.

To provide for the cost of such medals there is hereby authorized to be appropriated annually such

sum as the commissioners of the District of Columbia may deem necessary for the purpose. (Mar. 4, 1929, 45 Stat. 1557, ch. 696, § 4.)

Chapter 8.—SALARIES

Sec.
4–801. Computation of pay of privates of police and fire departments.
4–802. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.
4–803. Salary increases for officers and members of police and fire departments.
4–804. Additional compensation in lieu of overtime and night differential pay.
4–805. Repealed.
4–806. Further additional compensation in lieu of overtime and night differential pay.

§ 4–801 [20: 617]. Computation of pay of privates of police and fire departments.

Privates of the Metropolitan police force and of the fire department shall be entitled to the following salaries: Privates who have served less than one year, at the rate of $1,900 per annum; privates who have served more than one year and less than two years, at the rate of $2,000 per annum; privates who have served more than two years and less than three years, at the rate of $2,100 per annum; privates who have served more than three years and less than four years, at the rate of $2,200 per annum; privates who have served more than four years and less than five years, at the rate of $2,300 per annum; privates who have served more than five years, at the rate of $2,400 per annum: *Provided*, That privates in class three on July 1, 1930, who have served less than six years shall be entitled to an annual salary of $2,200; privates who have served six years and less than seven years shall be entitled to an annual salary of $2,300; and privates who have served seven years or more shall be entitled to an annual salary of $2,400. (July 1, 1930, 46 Stat. 840, ch. 783, § 3.)

Compiler's Note

Section 1 of the act approved July 1, 1930, 46 Stat. 839, ch. 783, provided basic salaries for members of the Metropolitan Police and appears herein as § 4–108. Section 2 of said act provided basic salaries for members of the fire department and appears herein as § 4–405.

Cross References

Salaries of police and members of fire department exempted from provisions of the Classification Act of 1923, U. S. C., title 5, § 662.

Salary increases and additional compensation in lieu of overtime or night pay differential, see sections 4–803 and 4–804.

§ 4–802 [20: 618]. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.

No annual increase in salary shall be paid to any person who in the judgment of the commissioners of the District of Columbia, has not rendered satisfactory service, and any private who fails to receive such annual increase for two successive years shall be deemed inefficient and forthwith removed from the service by the commissioners: *Provided*, That under such rules and regulations as the commissioners shall promulgate, the major and superintendent of Police and the chief engineer of the fire department shall select and report to the commissioners from time to time the names of privates and sergeants in each department who by reason of demonstrated ability may be considered as possessed of outstanding efficiency, and the commissioners are authorized and directed to grant to not exceeding 10 per centum of the authorized strength, respectively, of such privates and sergeants in each department additional compensation at the rate of $5.00 per month: *Provided further*, That the commissioners may withdraw such compensation at any time and remove any name or names from among such selections. (July 1, 1930, 46 Stat. 840, ch. 783, § 4.)

Cross References

See compiler's note to § 4–801.

Discharge at end of probationary period, § 4–105.

May not accept fees or presents in addition to salary, except by consent of commissioners, § 4–129.

Rules and regulations in general, § 1–226 and notes.

§ 4–803. Salary increases for officers and members of police and fire departments.

The annual basic salary of any officer or member of the Metropolitan Police, the United States Park Police, the White House Police, or the Fire Department of the District of Columbia, whose rate of compensation is governed by sections 4–108, 4–405, 4–503 to 4–505, 4–801, and 4–802 is increased by 20 per centum of that part thereof which is not in excess of $1,200 per annum, plus 10 per centum of that part thereof which is in excess of $1,200 per annum but not in excess of $4,600 per annum, plus 5 per centum of that part thereof which is in excess of $4,600 per annum; plus 14 per centum of such annual basic salary as increased by the foregoing percentages. (July 14, 1945, 59 Stat. 470, ch. 303, § 1; July 5, 1946, 60 Stat. 480, ch. 542, § 1.)

Effective Date

Section 4 of act July 14, 1945, cited to text, provided: "This Act (§§ 4–803 to 4–805) shall take effect on July 1, 1945."

Amendments

The last clause was added by the act of July 5, 1946, cited to text, and made effective as of July 1, 1946, by section 3 of that act.

Limitation on Total Annual Compensation

Sec. 2 of the act of July 5, 1946, cited to text provided: "Sec. 2. Notwithstanding the amendment to such Act of July 14, 1945, made by the first section of this Act, no officer or member of the Metropolitan Police, the United States Park Police, the White House Police, or the Fire Department of the District of Columbia shall, by reason of the enactment of this Act, be paid with respect to any pay period basic salary, or basic salary plus additional compensation, at a rate in excess of $10,000 per annum."

§ 4–804. Additional compensation in lieu of overtime and night differential pay.

In lieu of overtime pay and night pay differential, officers and members of the Metropolitan Police, the United States Park Police, the White House Police, and the Fire Department of the District of Columbia shall be paid additional compensation at the rate of 8 per centum of their annual basic salaries as provided for in section 4–803. (July 14, 1945, 59 Stat. 470, ch. 303, § 2.)

§ 4–805. Repealed Dec. 28, 1945, 59 Stat. 662, ch. 598, eff. Dec. 1, 1945.

Act July 14, 1945, ch. 303, § 3, 59 Stat. 471, provided that the provisions of sections 4–803 and 4–804 did not apply to pilots and marine engineers whose salaries had been increased by section 4–405.

§ 4–806. Further additional compensation in lieu of overtime and night differential pay.

The annual basic salary of each officer and member of the Metropolitan Police, the United States Park Police, the White House Police, and of the Fire Department of the District of Columbia, as increased by the Act entitled "An Act to provide for an adjustment of salaries of the Metropolitan Police, the United States Park Police, the White House Police, and the members of the Fire Department of the District of Columbia", approved July 14, 1945, as amended, shall be further increased by $330, plus 8 per centum of such $330 as additional compensation in lieu of overtime pay and night pay differential: *Provided, however,* That no such officer or member shall, by reason of the enactment of this Act, be paid with respect to any pay period, basic salary, or basic salary plus additional compensation, at a rate in excess of $10,330 per annum. (June 30, 1949, 63 Stat. 376, ch. 287, § 1.)

EFFECTIVE DATE

Section 1 of act June 30, 1949, cited to text, also provided: "This section shall take effect as of the first day of the first pay period which began after June 30, 1948."

COMPILER'S NOTE

Sections 4 and 5, act of June 30, 1949, section 5, having been further amended by act Oct. 28, 1949, 63 Stat. 951, ch. 779, provided:

"SEC. 4. Authority is hereby granted to the Commissioners and to other wage-fixing authorities of the municipal government of the District of Columbia, in their discretion, to grant, retroactive to the first day of the first pay period which began after June 30, 1948, additional compensation at rates not to exceed $330 per annum to each employee in or under the municipal government of the District of Columbia whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to the Classification Act of 1923, as amended, or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1949: *Provided*, That the authority granted by this section shall expire ninety days after the enactment of this Act.

"SEC. 5. No additional compensation shall be payable by reason of the enactment of this Act for any period prior to June 30, 1949, in the case of any person who was not an employee in or under the municipal government of the District of Columbia on June 30, 1949, except that (1) such additional compensation shall be paid to a retired employee for services rendered between the first day of the first pay period which began after June 30, 1948, and the date of his retirement, and (2) a retired officer or member of the Metropolitan Police, the United States Park Police, the White House Police, or the Fire Department of the District of Columbia who is entitled to retirement compensation from the policemen and firemen's relief fund shall be entitled, without application therefor, as of July 1, 1948, or the day on which he became entitled to such compensation, whichever is later, to the pension benefit resulting from the increase in pay made by the first section. No person whose salary or compensation is increased by this Act shall be entitled to additional compensation for overtime, night, or holiday work, as provided in sections 201, 203, 301, and 302 of the Federal Employees Pay Act of 1945, as amended, or as provided in section 23 of the Act approved March 28, 1934, as amended (sec. 673c, United States Code), based on the additional compensation provided by this Act for any pay period ending prior to the date of enactment of this Act."

Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.

4–901. Memorial fountain to members of Metropolitan Police Department.
4–902. Seniority rights for policemen and firemen serving in armed forces—Reenlistment.
4–903. Rank or grade of policemen or firemen serving in armed forces preserved—Restriction on compensation.
4–904. Five-day week established for officers and members of Metropolitan Police, United States Park Police and White House Police—Suspension during emergencies.

§ 4–901. Memorial fountain to members of Metropolitan police department.

The Commissioners of the District of Columbia are authorized and directed to accept and maintain for the District of Columbia the gift of a memorial fountain to the members of the Metropolitan police department: *Provided,* That the design and model of the memorial fountain are approved by the Commission of Fine Arts, and thereafter erected at a location to be approved by the commissioners of the District of Columbia and the National Capital Park and Planning Commission on land now owned by the District of Columbia, for the municipal center. (Apr. 22, 1940, 54 Stat. 157, ch. 136.)

STATUTORY REFERENCE

Commission of Fine Arts, U. S. C., Title 40, §§ 104–106.

§ 4–902. Seniority rights for policemen and firemen serving in armed forces—Reenlistment.

(a) Any officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia, who served in the armed forces of the United States during the period beginning May 1, 1940, and ending December 31, 1946, and (1) whose name appeared during such service (as a result of a regular or reopened competitive examination for promotion) on any civil-service register with respect to such force or department for promotion to a higher rank or grade, or (2) whose name appeared on such a register as a result of a reopened examination taken subsequent to his release, shall, for the purpose of determining his seniority rights and service in such rank or grade, be held to have been promoted to such rank or grade as of the earliest date on which an eligible standing lower on the same promotion register received a promotion either permanently or temporarily to such rank or grade.

(b) No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall be entitled to the benefits of this section who has reenlisted after June 1, 1945, in the Regular Military Establishment or after February 1, 1945, in the Regular Naval Establishment. (July 1, 1947, 61 Stat. 240, ch. 193, § 1.)

§ 4–903. Rank or grade of policemen or firemen serving in armed forces preserved—Restriction on compensation.

No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall, by reason of the enactment of sec-

tion 4–902, be (1) reduced in rank or grade, or (2) entitled to any compensation for any period prior to July 1, 1947. (July 1, 1947, 61 Stat. 240, ch. 193, § 2.)

§ 4–904. Five-day week established for officers and members of Metropolitan Police, United States Park Police and White House Police—Suspension during emergencies.

(a) Every officer and member of the Metropolitan Police force, the United States Park Police force, and the White House Police force shall be granted two days off in each period of seven days, which shall be in addition to the annual leave and sick leave to which he is entitled by law.

(b) Notwithstanding subsection (a), whenever the Commissioners of the District of Columbia declare that an emergency exists of such a character as to require the continuous service of all officers and members of the Metropolitan Police force, it shall be the duty of the major and superintendent of police to suspend and discontinue the granting of such two days off in seven during the continuation of such emergency.

(c) Notwithstanding subsection (a), whenever the Secretary of the Interior declares that an emergency exists of such a character as to require the continuous service of all officers and members of the United States Park Police force, it shall be the duty of the superintendent of National Capital Parks to suspend and discontinue the granting of such two days off in seven during the continuation of such emergency.

(d) Notwithstanding subsection (a), whenever the Chief of the Secret Service Division finds that an emergency exists of such a character as to require the continuous service of all officers and members of the White House Police force, he shall suspend and discontinue the granting of such two days off in seven during the continuation of such emergency. (Aug. 15, 1950, 64 Stat. 447, ch. 715, § 1.)

EFFECTIVE DATE

Sec. 3 of act of Aug. 15, 1950, cited to text, provided: "This Act shall take effect when funds have been appropriated and made available for the additional personnel necessary to carry out the purposes of this Act."

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap.		Sec.
1.	Alley Dwellings	5–101
2.	Building Lines	5–201
3.	Fire Escapes and Safety Provisions	5–301
4.	Zoning and Height of Buildings	5–401
5.	Unsafe Structures	5–501
6.	Insanitary Buildings	5–601
7.	Housing Redevelopment	5–701
8.	Preservation of historic places and areas in the Georgetown area	5–801

CROSS REFERENCES

Additional penalties for violation of building regulations, see § 1–224a.

Chapter 1.—ALLEY DWELLINGS

Sec.

5–101. Regulation of alley dwellings—Definition—Depreciated alley property—Repair—Condemnation—Use of such property.

5–102. Penalty.

5–103. Alley Dwelling Law—Declaration of legislative interest and public policy—Power of President to purchase, condemn, and acquire by gift, land and buildings to prevent alley dwellings, to replat and improve such property, and to make loans for improvements.

5–104. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

5–105. Appropriation of funds—"Conversion of inhabited alley fund"—Power of the Authority to borrow money—Total cost in any square—Incidental powers.

5–105a. Disposition of receipts from sales, leases, etc.

5–106. Annual reports of the Authority—Alley dwelling forbidden after July 1, 1955—Construction or alteration of alley dwelling forbidden—Penalty.

5–107. The Authority to report to President—Further legislation after July 1, 1944.

5–108. Publication of notice to owners of alley dwellings.

5–109. Definitions.

5–110. Separability of provisions.

5–111. Citation.

5–112. Definitions.

5–113. Additional powers of Authority.

5–114. Authority considered a public housing agency—Federal financial assistance.

5–115. Contributions by District of Columbia authorized.

5–116. Loans authorized.

§ 5–101 [25: 21]. Regulation of alley dwellings—Definition—Depreciated alley property—Repair—Condemnation—Use of such property.

It shall be unlawful in the District of Columbia to erect, place, or construct any dwelling on any lot or parcel of ground fronting on an alley where such alley is less than thirty feet wide throughout its entire length and which does not run straight to and open on two of the streets bordering the square, and is not supplied with sewer, water-mains, and gas or electric light; and in sections 5–101, 5–102 the term "alley" shall include any and all courts, passages, and thoroughfares, whether public or private, and any ground intended for or used as a highway other than the public streets or avenues; and any dwelling-house on September 25, 1914, fronting an alley less than thirty feet wide and not extending straight to the streets and provided with sewer, water-main, and light, as aforesaid, which has depreciated or been damaged more than one-half its original value, shall not be repaired or reconstructed as a dwelling or for use as such, and no permit shall be issued for the alteration, repair, or reconstruction of such a building, when the plans indicate any provision for dwelling purposes: *Provided,* That rooms for grooms or stablemen to be employed in the building to be erected, repaired, or reconstructed may be allowed over stables, when the means of exit and safeguards against fire are sufficient, in the opinion of the inspector of buildings, subject to the approval of the Commissioners of the District of Columbia; and no building on or after June 1, 1923, fronting on an alley or on any parcel of ground fronting on an alley less than thirty feet wide and not otherwise in accordance with sections 5–101, 5–102 shall be altered or converted to the uses of a dwelling. Any such alley house depreciated or damaged more than one-half of its original value shall be condemned as provided by law for the removal of dangerous or unsafe buildings and parts thereof, and for other purposes. No dwelling-house after September 25, 1914, erected, or placed along any alley and fronting or facing thereon shall in any case be located less than twenty feet back clear of the center line of such alley, so as to give at least a thirty-foot roadway and five feet on each side of such roadway clear for a walk or footway, and any stable or other building hereafter placed, located, altered, or erected on or along such an alley upon which a dwelling faces or fronts shall be set back clear of the walk or footway the same as the dwelling or dwellings, but the fact that dwellings are located in such alleys shall not affect the location of stables or other buildings otherwise.

The use or occupation of any building or other structure erected or placed on or along any such alley as a dwelling or residence or place of abode by any person or persons is hereby declared injurious to life, to public health, morals, safety, and welfare of said District; and such use or occupation of any such building or other structure on, from, and after the first day of June, 1923, shall be unlawful. (Sept. 25, 1914, 38 Stat. 716, ch. 310, § 1; Sept. 6, 1922, 42 Stat. 837, ch. 304.)

AMENDMENT

The 1922 amendment postponed operation of the second paragraph of this section from July 1, 1918 to June 1, 1923.

COMPILER'S NOTE

This section will eventually be superseded in whole or in part by § 5–106.

CROSS REFERENCES

Alley Dwelling Act, §§ 5–103 to 5–116.
Duties of building inspector, § 1–728 and notes.
Insanitary buildings, §§ 5–601 to 5–615.
Powers and duties of Commissioners concerning building regulations, §§ 1–228, 5–412.
Provisions for removal of dangerous or unsafe buildings, §§ 5–501 to 5–505.
Zoning and height of buildings, Zoning Commission, §§ 5–401 to 5–430.

NOTES TO DECISIONS

ANTICIPATED VIOLATION

Equity will not take jurisdiction to enjoin an anticipated violation of this act. *Rudolph* v. *Lockwood* (55 App. D. C. 101, 2 Fed. (2d) 319).

ENFORCEMENT NOT ENJOINED

Commissioners will not be enjoined from enforcing this act, matters alleged being available for defense if prosecuted. *Rudolph* v. *Lockwood* (55 App. D. C. 101, 2 Fed. (2d) 319).

LIGHTING

Information that alley dwelling not lighted by gas or electricity does not charge offense for statute provides alley, not dwelling, must be so lighted. *District of Columbia* v. *Nash,* 57 App. D. C. 269, 20 Fed. (2d) 285; *District of Columbia* v. *Lockwood* (57 App. D. C. 270, 20 Fed. (2d) 286).

§ 5–102 [25: 22]. Penalty.

Any person or persons, whether as principal, agent, or employee, violating any of the provisions of sections 5–101, 5–102 or any amendment thereof for the violation of which no other penalty is prescribed, shall, on conviction thereof in the police court, be punished by a fine of not less than $10.00 nor more than $100 for each such violation, and a like fine for each day during which such violation has continued or may continue, to be recovered as other fines and penalties are recovered. (Sept. 25, 1914, 38 Stat. 717, ch. 310, § 2.)

§ 5–103 [25: 23]. Alley Dwelling Law — Declaration of legislative intent and public policy—Power of President to purchase, condemn, and acquire by gift, land and buildings to prevent alley dwellings, to replat and improve such property, and to make loans for improvements.

(a) It is hereby declared to be a matter of legislative determination that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain in order to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of buildings in alleys, and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate, and sanitary habitations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings under the terms of this title, and to prevent an acute shortage of decent, safe, adequate, and sanitary dwellings for persons of low income, and to carry out the policy declared in the Act approved May 18, 1918, as amended, of caring for the alley population in the District of Columbia, and to that end it is necessary to enact the provisions hereinafter set forth.

(b) In order to remedy the conditions and evils hereinbefore recited and to carry out the policy hereinbefore declared, the President is hereby authorized and empowered to acquire by purchase, gift, condemnation, or otherwise—

(1) any land, building, or structures, or any interest therein, situated in or adjacent to any inhabited alley in the District of Columbia;

(2) any land, buildings, or structures, or any interest therein, within any square containing an inhabited alley, the acquisition of which is reasonably necessary for utilization, by replatting, improvement, or otherwise, pursuant to the provisions of sections 5–103 to 5–116, of any property acquired under subparagraph (1) of this subsection; and

(3) any other land, together with any structures that may be located thereon, in the District of Columbia that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the provisions of this title.

(c) The authority is authorized and empowered to replat any land acquired under sections 5–103 to 5–116; to pave or repave any street or alley thereon; to construct sewers and watermains therein; to install street lights thereon; to demolish, move, or alter any buildings or structures situated thereon and erect such buildings or structures thereon as deemed advisable: *Provided, however,* That the same shall be done and performed in accordance with the laws and municipal regulations of the District of Columbia applicable thereto.

(d) The authority is hereby authorized and empowered to lease, rent, maintain, equip, manage, exchange, sell, or convey any such lands, buildings, or structures acquired under this title, for such amounts and upon such terms and conditions as it may determine: *Provided,* That sales of real property shall be made at public sale to the highest responsible bidder on terms satisfactory to the authority after advertising for three consecutive weeks in at least one daily newspaper of general circulation published in the District of Columbia: *Provided, however,* That the authority may, without advertising, sell such property to a quasi-public institution or agency not organized or operated for private profit at not less than the cost of such property to the authority, including improvements: *And provided further,* That if any such lands, buildings, or structures are required for the purposes of the United States or of the District of Columbia, they may be transferred thereto upon payment to the authority of the reasonable value thereof.

(e) The authority is authorized and empowered to aid in providing, equipping, managing, and maintaining houses and other buildings, improvements, and general community utilities on the property acquired under the provisions of this title, by loans, upon such terms and conditions as it may determine, to limited dividend corporations whose dividends do not exceed 6 per centum per annum, or to home owners to enable such corporations or home owners to acquire and develop sites on the property: *Provided, however,* That no loan shall be made at a lower rate of interest than 5 per centum per annum, and that all such loans shall be secured by reserving a first lien on the property involved for the benefit of the United States. (June 12, 1934, 48 Stat. 930, ch. 465, § 1; June 25, 1938, 52 Stat. 1186, ch. 691, § 1.)

COMPILER'S NOTES

The bracketed figures [16] were inserted by the compiler. Consultation of the act of June 12, 1934, shows that the date should be May 16 instead of May 18.

Said act of March 16, 1918, above referred to, was a temporary act authorizing the President to provide housing for war needs.

AMENDMENT

This section was entirely rewritten in the 1938 amendatory act.

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

CROSS REFERENCES

Contributions from District of Columbia authorized, § 5–115.

Definitions, §§ 5–109, 5–112.

Duty of surveyor to make plats at request of President of United States, § 1–612.

General provisions concerning plats, recording and effect thereof, §§ 1–605 to 1–614.

General provisions concerning sale of public lands, § 9–301 et seq.

Insanitary buildings, §§ 5–601 to 5–615.

Jurisdiction and control of streets, sidewalk, and sewers, § 7–102.

Other provisions concerning regulation of alley dwellings, § 5–101.

Other provisions for rental of public lands and buildings, § 9–202 and notes.

Powers and duties of commissioners concerning building regulations, §§ 1–228, 5–412.

Provisions for removal of dangerous or unsafe buildings, §§ 5–501 to 5–505.

Zoning and height of buildings, zoning commission, §§ 5–401 to 5–430.

NOTES TO DECISIONS

LIMITATION ON AUTHORITY

Authority held subject to U. S. C., title 40, § 276a, but not § 406 of said title. 38 O. A. G. 229.

§ 5–104 [25: 24]. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

(a) The President may designate, for the purpose of carrying out the provisions of sections 5–103 to 5–116, such official or agency of the government of the United States or of the District of Columbia (hereinafter referred to as "the Authority") as in his judgment is deemed necessary or advantageous, and the Authority shall have or obtain all powers necessary or appropriate therefor, including the employment of necessary personal services; but (1) all plans for replatting and/or method of condemnation under the provisions of sections 5–103 to 5–116 shall be submitted to and receive the written approval of the National Capital Park and Planning Commission and of the Board of Commissioners of the District of Columbia: *Provided, however,* That (a) failure of the National Capital Park and Planning Commission or of the Board of Commissioners of the District of Columbia to formally approve or disapprove in writing within sixty days after a plan has been submitted shall be equivalent to a formal approval, and (b) disapproval shall be accompanied by a written statement giving all the reasons for disapproval; and (2) any plan which shall involve action by any department, bureau, or agency of the United States or of the District of Columbia shall be made after consultation with such department, bureau, or agency.

(b) In the event condemnation proceedings are required to carry out the provisions of sections 5–103 to 5–116 the same shall be conducted in accordance with the provisions of sections 16–619 to 16–644.

(c) If the Authority determines in the case of any alley that it will be more advantageous to proceed in accordance with sections 7–301 to 7–305, 7–313 to 7–318, 7–320 to 7–323, the commissioners of the District of Columbia shall be notified of such determination and proceedings shall then be had as provided in such sections for alleys and minor streets, except that if the total amount of damages awarded by the jury and the cost and expenses of the proceedings be in excess of the total amount of the assessment for benefits, such excess shall be borne and paid by the Authority. (June 12, 1934, 48 Stat. 931, ch. 465, § 2.)

CHANGE OF NAME

The "Authority" which was designated the "Alley Dwelling Authority" by Ex. Ord. No. 6868, Oct. 9, 1934, was redesignated "National Capital Housing Authority" by Ex. Ord. No. 9344, May 21, 1943, 8 F. R. 6805.

CROSS REFERENCES

Condemnation proceedings generally, § 16–601 et seq.

See notes to § 5–103.

§ 5–105 [25: 25]. Appropriation of funds—"Conversion of inhabited alley fund"—Power of the Authority to borrow money—Total cost in any square—Incidental powers.

(a) The President is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, "National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933–1935," symbol 03/5666, not to exceed $500,000 of any amount thereof dedicated for low-cost housing and slum-clearance projects in the District of Columbia, to be set aside in the treasury and be known as "Conversion of inhabited alleys fund" (hereinafter referred to as the "fund").

(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of

sections 5–103 to 5–116, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the fund and shall be available for the purposes of sections 5–103 to 5–116. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the treasury of the United States not to exceed $1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the four succeeding fiscal years, upon such terms and conditions as the President may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the treasury: *Provided,* That the Authority shall be obligated for the payment of interest at the going federal rate as defined in the United States Housing Act of 1937 (U. S. C., title 42, ch. 8).

(c) The fund shall be available annually in such amount as may be specified in the annual appropriation acts.

(d) The total amount paid for property or properties acquired, except by condemnation, in any square shall not exceed 30 per centum over and above the current assessed value of all the property or properties acquired, except by condemnation, in such square to carry out the provisions of sections 5–103 to 5–116.

(e) In carrying out the provisions of sections 5–103 to 5–116, the Authority is hereby authorized and empowered (1) to procure services or make any purchase without regard to the provisions of section 41, title 5, United States Code, provided the aggregate amount involved is not more than $100, (2) to purchase books of reference, directories, and periodicals that are necessary in connection with its work, and (3) to secure architectural and engineering services on specific projects, without regard to the civil service laws and the Classification Act of 1923, as amended (U. S. C., title 5, ch. 13): *Provided,* That this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis. (June 12, 1934, 48 Stat. 931, ch. 465, § 3; June 25, 1938, 52 Stat. 1187, 1188, ch. 691, §§ 2–4.)

AMENDMENT

The 1938 amendment added the last sentence of subsection (b), inserted the phrases "except by condemnation" and changed "present" to "current" in subsection (d) and added subsection (e).

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

CROSS REFERENCE

Appropriations under this chapter may be used in opening, extending, widening, straightening, or closing minor streets and alleys, §7–331.

NOTES TO DECISIONS

CONSTITUTIONAL LAW

Title 1 of the National Industrial Recovery Act was declared unconstitutional. *Panama Ref. Co.* v. *Ryan* (293 U. S. 388, 79 L. Ed. 446, 55 Sup. Ct. 241).

§ 5–105a. Disposition of receipts from sales, leases, etc.

All receipts derived from sales, leases, or other sources shall be covered into the Treasury of the United States monthly. (June 27, 1942, 56 Stat. 398, ch. 450, § 1; June 26, 1943, 57 Stat. 191, ch. 145, title I, § 1; June 27, 1944, 58 Stat. 374, ch. 286, title I, § 1; May 3, 1945, 59 Stat. 121, ch. 106, title I, § 1; March 28, 1946, 60 Stat. 73, ch. 113, title I, § 1; July 30, 1947, 61 Stat. 600, ch. 359, § 1.)

CODIFICATION

This section was not enacted as a part of the Alley Dwelling Law.

AMENDMENTS

The act of June 26, 1943, cited to text, amended section by omitting ", after July 1, 1942," following "other sources".

§ 5–106 [25: 26]. Annual reports of the Authority—Alley dwelling forbidden after July 1, 1955—Construction or alteration of alley dwelling forbidden—Penalty.

(a) The objects set forth in section 5–103 shall be accomplished as rapidly as feasible and to this end the Authority shall, in each annual report, set forth what it proposes to do during the next succeeding fiscal year.

(b) On and after July 1, 1955, it shall be unlawful to use or occupy any alley building or structure as a dwelling in the District of Columbia.

(c) No alley dwelling shall be constructed in the District of Columbia, nor shall any building or structure be moved, altered, or converted for use as an alley dwelling.

(d) Any person violating any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than $500 or by imprisonment for not more than six months, or both. Each week of seven days of the continuance of any such violation shall constitute a separate offense. (June 12, 1934, 48 Stat. 932, ch. 465, § 4; June 8, 1944, 58 Stat. 271, ch. 238, § 1; July 5, 1945, 59 Stat. 410, ch. 268, § 1; June 26, 1946, 60 Stat. 319, ch. 503, § 1; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18 (a).)

COMPILER'S NOTE

This section will eventually supersede, in whole or in part, § 5–101.

AMENDMENTS

Subsec. (b) amended by the act of Aug. 2, 1946, cited to text, which substituted "July 1, 1955" for "July 1, 1947".

Subsec. (b) amended by the act of June 26, 1946, cited to text, which substituted "July 1, 1947" for "July 1, 1946".

Subsec. (b) amended by the act of July 5, 1945, cited to text, which substituted "July 1, 1946" for "July 1, 1945".

Subsec. (b) amended by the act of June 8, 1944, cited to text, which substituted "1945" for "1944".

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–107 [25: 27]. The Authority to report to President—Further legislation after July 1, 1944.

(a) The Authority shall make a report to the President, which he shall transmit to Congress at the beginning of each regular session, giving a full and detailed account of all operations under the provisions of sections 5–103 to 5–116, for the preceding fiscal year.

(b) Upon completion of the work contemplated by sections 5–103 to 5–116, the President shall submit a complete report to Congress giving a full and detailed account of all operations for the entire

period of operation. If such work is not completed by July 1, 1944, the President shall, on July 1, 1944, or at the opening of the next regular session of Congress after such date, make a report to Congress covering the operations under sections 5–103 to 5–116, for the entire period to July 1, 1944, including a statement of what further work remains to be done, and recommendation for further legislation if in his opinion such legislation is necessary.

(c) It is hereby declared to be the purpose and intent of Congress that the objects set forth in section 5–103 shall be accomplished, if possible, on or before July 1, 1944, except that loans made under sections 5–103 to 5–116 may run for periods extending beyond such time. (June 12, 1934, 48 Stat. 932, ch. 465, § 5.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–108 [25: 27a]. Publication of notice to owners of alley dwellings.

There shall be published three times each year during the month of January in a newspaper of general circulation published in the District of Columbia a notice to owners and tenants of alley dwellings and other property in squares containing inhabited alleys, the alley dwellings in such squares may be demolished, removed, or vacated, and that the squares may be replatted on or before July 1, 1955. (June 12, 1934, 48 Stat. 933, ch. 465, § 6; June 8, 1944, 58 Stat. 271, ch. 238, § 2; July 5, 1945, 59 Stat. 410, ch. 268, § 2; June 26, 1946, 60 Stat. 319, ch. 503, § 2; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18 (b).)

AMENDMENTS

The act of Aug. 2, 1946, cited to text, amended section by substituting "1955" for "1947".

The act of June 26, 1946, cited to text, amended section by substituting "1947" for "1946".

The act of July 5, 1945, cited to text, amended section by substituting "1946" for "1945".

The act of June 8, 1944, cited to text, amended section by substituting "1945" for "1944".

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–109 [25: 28]. Definitions.

As used in sections 5–103 to 5–116—

(a) The term "alley" means (1) any court, thoroughfare, or passage, private or public, less than thirty feet wide at any point; and (2) any court, thoroughfare, or passage, private or public, thirty feet or more in width, that does not open directly with a width of at least thirty feet upon a public street that is at least forty feet wide from building line to building line.

(b) The term "inhabited alley" means an alley in or appurtenant to which there are one or more alley dwellings.

(c) The term "alley dwelling" means any dwelling fronting upon or having its principal means of ingress from an alley. This definition does not include an accessory building, such as a garage, with living rooms for servants or other employees; if the principal entrance to the living rooms of the accessory building is from the street property to which it is accessory.

(d) The term "dwelling" means any building or structure used or designed to be used in whole or in part as a living or a sleeping place by one or more human beings.

(e) The term "person" includes any individual, partnership, corporation, or association. (June 12, 1934, 48 Stat. 933, ch. 465, § 7.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–110 [25: 29]. Separability of provisions.

If any provision of sections 5–103 to 5–116 or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the said sections and the application thereof to other persons and circumstances shall not be affected thereby. (June 12, 1934, 48 Stat. 933, ch. 465, § 8.)

REPEAL

Section 9 of the act approved June 12, 1934, 48 Stat. 933, ch. 465, provided as follows: "All laws and parts of laws contrary to the provisions of sections 23–30 of this title or inconsistent therewith be, and the same are hereby, repealed."

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–111 [25: 30]. Citation.

Sections 5–103 to 5–116 may be cited as the "District of Columbia Alley Dwelling Act." (June 12, 1934, 48 Stat. 933, ch. 465, § 10.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–112 [25: 30a]. Definitions.

As used in sections 5–112 to 5–116—

(a) The term "housing project" shall mean any low-rent housing (as defined in the United States Housing Act of 1937 (U. S. Code, title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

(b) The term "development" shall mean any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a housing project, but not beyond the point of physical completion. (June 12, 1934, ch. 465, title II, § 201, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–113 [25: 30b]. Additional powers of Authority.

In addition to its other powers, the Authority shall have the power to acquire sites for and to prepare, carry out, acquire, lease, and operate housing projects, as defined in section 5–112, and to construct or provide for the construction, reconstruction, improvement, alteration, or repair of any such housing project, or any part thereof, in the District of Columbia. (June 12, 1934, ch. 465, title II, § 202, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

NOTES TO DECISIONS

CONSTITUTIONALITY

This chapter as amended, which provides for low rent housing projects and authorizes condemnation of land for that purpose, is valid and is not unconstitutional as authorizing condemnation of property for other than public uses. *Keyes* v. *U. S.*, 1941 (119 F. 2d 444, 73 App. D. C. 273, certiorari denied 62 S. Ct. 70, 314 U. S. 636, 86 L. Ed. 510).

PROPERTY SUBJECT TO CONDEMNATION

Under provision of this section the Authority had power to condemn sites for low cost housing projects in addition to and wholly independent of provisions of section 104 of this title relating to providing facilities to persons whose alley dwellings have been demolished. *Keyes* v. *U. S.*, 1941 (119 F. 2d 444, 73 App. D. C. 273, certiorari denied 62 S. Ct. 70, 314 U. S. 636, 86 L. Ed. 510).

The fact that taking of owner's property for construction of dwellings for families and persons of low income had no relation to demolition of alley dwellings did not constitute defense to condemnation proceeding which was brought under authority of this section. *Keyes* v. *U. S.*, 1941 (119 F. 2d 444, 73 App. D. C. 273, certiorari denied 62 S. Ct. 70, 314 U. S. 636, 86 L. Ed. 510).

Under this section, the property to be acquired need not itself be unsafe or unsanitary and is not required to be acquired only in connection with a project including the demolition of unsafe or unsanitary dwellings. *Keyes* v. *U. S.*, 1941 (119 F. 2d 444, 73 App. D. C. 273, certiorari denied 62 S. Ct. 70, 314 U. S. 636, 86 L. Ed. 510).

§ 5–114 [25: 30c]. Authority considered a public housing agency—Federal financial assistance.

For the purposes of sections 5–112 to 5–116 the Authority shall be considered a public housing agency within the meaning of, and to carry out the purposes of, the United States Housing Act of 1937 (U. S. Code, title 42, § 8); and as such, the Authority is empowered to borrow money or accept contributions, grants or other financial assistance from the United States Housing Authority for or in aid of any housing project in the District of Columbia, in accordance with the United States Housing Act of 1937 (U. S. Code, title 42, § 8) to take over or lease or manage any such housing project or undertaking constructed, owned, or operated by the United States Housing Authority, and to those ends to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable: *Provided,* That the tax exemption of the property of the Authority shall be deemed a contribution by the District of Columbia in accordance with the local contributions requirements of section 1410 (a) and section 1411 (f), title 42, United States Code. It is the purpose and intent of this title to authorize the Authority to do any and all things necessary to secure the financial aid of the United States Housing Authority in the undertaking, construction, maintenance, or operation in the District of Columbia of any housing project by the Authority. (June 12, 1934, ch. 465, title II, § 203, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

§ 5–115 [25: 30d]. Contributions by District of Columbia authorized.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects, the District of Columbia, or any department, instrumentality, or agency thereof, may, upon such terms, with or without consideration, as it may determine, as a contribution—

(a) Dedicate, sell, convey, or lease any needed property to the Authority;

(b) Cause parks, playgrounds, or recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(d) Enter into agreements with the Authority respecting action to be taken pursuant to any of the powers granted by sections 5–103 to 5–116;

(e) Cause services of a character which it is otherwise empowered to furnish to be furnished to the Authority;

(f) Enter into agreements with the Authority respecting the elimination of unsafe, insanitary, or unfit dwellings; and

(g) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects. (June 12, 1934, ch. 465, title II, § 204, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

CROSS REFERENCE

See notes to § 5–103.

§ 5–116 [25: 30e]. Loans authorized.

The commissioners of the District of Columbia are hereby authorized to lend to the Authority such amounts as may be necessary to enable the Authority to comply with the provisions of the United States Housing Act of 1937 (U. S. C., title 42, ch. 8) and appropriations for such purpose are hereby authorized out of the revenues of the District of Columbia, and the Authority is empowered to accept such loans. (June 12, 1934, ch. 465, title II, § 205, as added; June 25, 1938, 52 Stat. 1189, ch. 691, § 5.)

Chapter 2.—BUILDING LINES

Sec.

5–201. Building lines established on streets less than 90 feet wide.
5–202. Condemnation proceedings to be instituted.
5–203. Procedure.
5–204. Permits for extensions of buildings beyond building line.
5–205. Existing buildings may project beyond established building line—Commissioners to have control of parkings.
5–206. Appropriations available for establishing building lines.

§ 5–201 [25: 31]. Building lines established on streets less than 90 feet wide.

The Commissioners of the District of Columbia are authorized to establish building lines on streets or parts of streets less than ninety feet wide, in the District of Columbia, upon the presentation to them of a plat of the street or part of street upon which such action is desired, showing the lots and the names of the record owners thereof, and accompanied by a petition of the owners of more than one-half of the real estate shown on said plat requesting

that building lines be established, or when the commissioners deem that the public interest require that such building lines be established: *Provided,* That no such building lines shall be established on any part of street less than one block in length. (June 21, 1906, 34 Stat. 384, ch. 3505, § 1.)

CROSS REFERENCES

Acceptance as part of highway plans, § 7–117.

Powers and duties of Commissioners concerning building regulations, § 1–228.

Zoning and height of buildings, Zoning Commission, §§ 5–401 to 5–430.

§ 5–202 [25: 32]. Condemnation proceedings to be instituted.

Upon the filing of such plat and petition in the office of said commissioners, or when the commissioners shall deem that the public interests require it, the said commissioners shall institute condemnation proceedings in the District Court of the United States for the District of Columbia, sitting as a District Court, by a petition in rem, particularly describing the land to be taken, which petition shall be accompanied by duplicate plats, to be prepared by the surveyor of said District, showing the location of said proposed building lines, the number of square feet to be taken from each lot or part of lot and the boundaries thereof in each square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office. (June 21, 1906, 34 Stat. 384, ch. 3505, § 2.)

§ 5–203 [25: 33]. Procedure.

The condemnation proceedings herein provided for shall be in accordance with the provisions of sections 7–315 to 7–318, 7–320 to 7–323, 7–325, 7–326, both inclusive, as far as the same are applicable; and the assessment proceedings and assessment area for the establishment of building lines herein provided for shall be the same as that provided in sections 7–318, 7–319 of this title for assessments in the opening, extension, widening, and straightening of alleys or minor streets, in the same manner as if the establishment of building lines had been included in said section. (June 21, 1906, 34 Stat. 384, ch. 3505, § 3.)

COMPILER'S NOTE

In view of the specific provision that § 1608j of the Code of 1901 is to govern, it may be that the quoted provision set out as a note to § 7–318 still applies instead of § 7–319, since law set out in the last-mentioned section does not purport to amend § 1608j of the 1901 Code but is independent legislation.

NOTES TO DECISIONS

NOTICE

This statute does not require personal service, and newspaper publication of notice directed to all those owners who could be found is sufficient. *National Savings & Trust Co.* v. *Reichelderfer* (61 App. D. C. 38, 57 Fed. (2d) 404).

§ 5–204 [25: 34]. Permits for extensions of buildings beyond building line.

The action of the Commissioners of the District of Columbia in granting permits before March 3, 1891, for the extension of any building or buildings, or any part or parts thereof, in the District of Columbia, beyond the building line, and upon the streets and avenues of said District, is hereby ratified, without prejudice, however, to the legal rights of the government in the event of the destruction by fire, or otherwise, of any such structure. And after June 21, 1906, no such permits shall be granted except upon special application and with the concurrence of all of said commissioners, and where such extensions are to be placed upon buildings to be erected on land adjoining United States public reservations, the approval of the Director of the National Park Service. (Mar. 3, 1891, 26 Stat. 868, ch. 540; July 1, 1898, 30 Stat. 570, ch. 543, § 3; June 21, 1906, 34 Stat. 385, ch. 3506; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; June 10, 1933, Ex. Or. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

AMENDMENTS

The 1898 act cited to the text extended the provisions of this section, which originally applied only to the city of Washington, to the entire District of Columbia.

The 1906 amendment inserted in the last sentence the words "where such extensions are to be placed upon buildings to be erected on land adjoining United States public reservations."

The last three citations deal with the transfer of the duties of the Secretary of War and other officials to the National Park Service, and the final phrase "the approval of the Secretary of War" has therefore been changed to "the approval of the Director of the National Park Service."

CROSS REFERENCE

General provisions concerning streets, § 7–102 and notes.

§ 5–205 [25: 35]. Existing buildings may project beyond established building line—Commissioners to have control of parkings.

Said commissioners, whenever they deem it desirable in the interest of economy, may permit buildings existing at the time said building lines are established and which project beyond said lines to remain until such time as the owner of said buildings desires to reconstruct or substantially alter the said buildings: *Provided,* That section 5–204 shall apply to all parkings established under this chapter, and the control of said parkings otherwise shall be vested in the Commissioners of the District of Columbia, who are hereby authorized to make and enforce all reasonable and necessary regulations for their care and preservation. (June 21, 1906, 34 Stat. 385, ch. 3505, § 4.)

COMPILER'S NOTE

The words "this chapter" are a translation of the words "this Act," It is not clear to which act the words "the Act" refer. Presumably, they refer in general to ch. 3505 of the act of June 21, 1906.

§ 5–206 [25: 36]. Appropriations available for establishing building lines.

The appropriation available for opening alleys and minor streets in the District of Columbia is hereby made available for the purpose of establishing building lines as provided for in this chapter. (June 21, 1906, 34 Stat. 385, ch. 3505, § 5.)

CROSS REFERENCE

Provisions for opening alleys and minor streets, § 7–301 et seq.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

Sec.
5–301. Fire escapes required on certain structures—Exceptions.
5–302. Fire escapes—Stairways—Hall and stair lights required on certain structures.
5–303. When ten or more persons employed, fire escapes and other safety measures required.
5–304. Alterations may be required to locate fire escapes or add additional ones.
5–305. Elevator and stairway extending to basement to terminate in fireproof compartment—Certain other safety requirements—Office buildings—Certain exemptions, safety devices.
5–306. Obstruction of halls and stairways prohibited.
5–307. Fire escapes and approaches not to be obstructed.
5–308. Penalty for violations.
5–309. Notice, what to contain.
5–310. Notice, when deemed served—Fire escapes and other safety appliances may be provided by commissioners, when owner neglects—Costs to be lien on property.
5–311. Use of premises may be enjoined if not properly equipped with safety devices.
5–312. Definitions.
5–313. Upon failure of owner to correct condition violative of law, commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.
5–314. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.
5–315. Notice to correct wrongful conditions—How given—Methods of service—Required contents.
5–316. Commissioners of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury.
5–317. Means of egress and fire safety appliances required in certain public buildings.
5–318. Same—Occupancy prohibited after notice of noncompliance.
5–319. Same—Notice to owner requiring installation—Time for compliance.
5–320. Same—Penalty for noncompliance.
5–321. Same—Service of notice.
5–322. Same—Construction and installation by Commissioner on owner's noncompliance—Assessment of costs against buildings.
5–323. Same—Injunction against unlawful use or occupation of building.

§ 5–301 [25: 294]. Fire escapes required on certain structures—Exceptions.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building three or more stories in height, constructed or used or intended to be used as an apartment house, tenement house, flat, rooming house, lodging house, hotel, hospital, seminary, academy, school, college, institute, dormitory, asylum, sanitarium, hall, place of amusement, office building, or store, or of any building three or more stories in height, or over thirty feet in height, other than a private dwelling, in which sleeping quarters for the accommodation of ten or more persons are provided above the first floor, to provide and cause to be erected and fixed to every such building one or more suitable fire escapes, connecting with each floor above the first floor by easily accessible and unobstructed openings, in such location and numbers and of such material, type, and construction as the Commissioners of the District of Columbia may determine; except that buildings designed and built as single-family dwellings, and converted to use as apartment-houses, in which not more than three families reside, including the owner or lessee, or rooming-houses in which sleeping accommodations are provided for less than ten persons above the first floor, not more than three stories nor more than forty feet in height, and having a total floor area not more than three thousand square feet above the first floor, shall be exempted from the provisions of this section; and except that buildings used solely as apartment-houses, not more than three stories nor more than forty feet in height, so arranged that not more than five apartments per floor open directly, without an intervening hall or corridor, on a fire-resistive stairway, three feet or more in width, enclosed with masonry walls in which fire-resistive doors are provided at all openings, shall be exempted from the provisions of this section. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 1; Mar. 2, 1907, 34 Stat. 1247, ch. 2566, § 1; June 4, 1934, 48 Stat. 843, ch. 388.)

AMENDMENTS

The original 1906 act made it the duty of the "owner, lessee, occupant or person having possession, charge or control" of the premises to provide fire escapes.

The 1907 amendment restated the section and inserted after the classes of premises listed the words "not exempted as in this Act hereinafter provided."

The provisions as to rooming-houses, and the matter following the semicolon were added by the 1934 amendment.

CROSS REFERENCES

Building exempted, conditions of exemption, § 5–305.
Definitions, § 5–312.
Failure of owner to correct condition, § 5–313.
Inspection fees, § 5–316.
Notice to erect fire escape or other appliances, contents of notice, time to comply, § 5–309.
Powers and duties of commissioners concerning building regulations, §§ 1–228, 5–412.

NOTES TO DECISIONS

APPLICATION OF ACT

This act is in the nature of a police regulation and is intended to apply to both those buildings to be erected and those in existence and used for purposes named in this act. *Hill* v. *Raymond* (65 App. D. C. 144, 81 Fed. (2d) 278).

INDICTMENT, SUFFICIENCY

Where manslaughter indictment charged that, by reason of failure of landlord, its vice president, and tenant, who operated rooming house, to provide a dumb-waiter shaft of fire-resistive materials, and a front fire escape, and by reason of their acts in permitting shaftway to be used as a trash receptacle a fire started and a named individual received fatal burns, the indictment was insufficient to charge that absence of fire escape contributed to the death. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

KIND OF FIRE ESCAPE

Before Commissioners can order the erection of fire escapes, they must first determine the number and character required. *Moore's Victoria Theatre Co.* v. *District of Columbia* (55 App. D. C. 46, 299 Fed. 923.)

NEGLIGENCE

Failure of owner to comply with statute is not conclusive evidence of negligence, but is question for jury. *Hill* v. *Raymond* (65 App. D. C. 144, 81 Fed. (2d) 278).

Use of stairway by tenant when he is aware that owner has not complied with the statute is not contributory negligence as a matter of law but is a question of fact for the jury to determine. *Hill* v. *Raymond* (65 App. D. C. 144, 81 Fed. (2d) 278).

REGULATIONS UNDER § 5–317

Where, after institution of landlord's action for possession based on allegedly unlawful use of leased premises, rigid provisions of this section were relaxed and after entry of judgment for landlord, District Commissioners modified this section so that use complained of, which was the very use contemplated under original letting, was no longer unlawful, case was not "moot" and tenant was entitled on appeal to protection of regulations under § 5–317 and to reversal of judgment for landlord. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

VOLUNTARY ERECTION BY TENANT

Tenant cannot voluntarily erect fire escapes and recover therefor from the landlord. *Goldwyn Distributing Corp.* v. *Carroll* (51 App. D. C. 75, 276 Fed. 63).

§ 5–302 [25: 295]. Fire escapes—Stairways—Hall and stair lights required on certain structures.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building already erected, or which may hereafter be erected, in which ten or more persons are employed at the same time in any of the stories above the second story, except three-story buildings used exclusively as stores or for office purposes, and having at least two stairways from the ground floor each three or more feet wide and separated from each other by a distance of at least thirty feet, from one of which stairways shall be easy access to the roof, to provide and cause to be erected and affixed thereto a sufficient number of the aforesaid fire escapes, the location and number of the same to be determined by the commissioners, and to keep the hallways and stairways in every such building as is used and occupied at night properly lighted, to the satisfaction of the commissioners, from sunset to sunrise. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 2; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388.)

AMENDMENTS

The original 1906 act made it the duty of the "owner, lessee, occupant, or person having possession, charge, or control" of the premises to provide fire escapes.

The 1907 amendment added the exception as to stores and office buildings.

The only changes made by the 1934 act in this section were the omission of the word "said" before the first "Commissioners," and the words "of the District of Columbia" following the second "Commissioners."

CROSS REFERENCE

See notes to § 5–301.

NOTES TO DECISIONS

LIGHTS—BUILDINGS ERECTED PRIOR TO ACT

Requirement as to lights in apartment-houses applies to buildings erected prior to passage of act. Contributory negligence of tenant with knowledge of condition. *Hill* v. *Raymond* (65 App. D. C. 144, 81 Fed. (2d) 278).

§ 5–303 [25: 296]. When ten or more persons employed, fire escapes and other safety measures required.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building used or intended to be used as set forth in section 5–301 where fire escapes are required, or any building in which 10 or more persons are employed, as set forth in section 5–302, where fire escapes are required, also to provide, install, and maintain therein proper and sufficient guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, and alarm gongs and striking stations in such locations and numbers and of such type and character as the commissioners may determine; except that in buildings less than six stories in height, standpipes will not be required when fire extinguishers are installed in such numbers and of such type and character as the Commissioners may determine. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 3; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388.)

AMENDMENTS

The original 1906 act made it the duty of the "owner, lessee, occupant, or person having possession, charge, or control" of the premises to provide such equipment.

The 1907 amendment restated the section.

The 1934 amendment added the requirement of standpipes in buildings where fire escapes are required, also alarm gongs and striking stations, except that standpipes will not be required where fire extinguishers are installed.

CROSS REFERENCE

Voluntary erection by tenant, § 5–301 and notes.

§ 5–304 [25: 297]. Alterations may be required to locate fire escapes or add additional ones.

The Commissioners are hereby authorized and directed to issue such orders and to adopt and enforce such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of sections 5–301 to 5–312, and to require any alterations or changes that may become necessary in buildings now or hereafter erected, in order properly to locate or relocate fire escapes, or to afford access to fire escapes, and to require any changes or alterations in any building that may be necessary in order to provide for the erection of additional fire escapes, or for the installation of other appliances required by sections 5–301 to 5–312, when in the judgment of the commissioners such additional fire escapes or appliances are necessary. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 4; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENT

The 1934 amendment contained the new provision authorizing the Commissioners to issue such orders and regulations as necessary to carry into effect existing provisions of this act, and added the words "or for the installation of other appliances required by this act."

CROSS REFERENCE

Rules and regulations generally, §§ 1–226, 1–228, 5–412 and notes.

§ 5–305 [25: 298]. Elevator and stairway extending to basement to terminate in fireproof compartment—Certain other safety requirements—Office buildings—Certain exemptions, safety devices.

Each elevator shaft and stairway extending to the basement of the buildings heretofore mentioned shall

terminate in a fireproof compartment or enclosure separating the elevator shaft and stairs from other parts of the basement, and no opening shall be made or maintained in such compartment or enclosure unless the same be provided with fireproof doors.

Such buildings as are used solely for office buildings above the second floor and defined under the building regulations of the District of Columbia to be fireproof are exempted from the requirements of sections 5–301 to 5–312 as to fire escapes, guide signs, and alarm gongs; but when the face of a wall of any such fireproof building is within thirty feet of a combustible building or structure, or when the side or sides, front or rear of such building or structure faces within thirty feet of a combustible building, or contains a light or air shaft of similar recess within thirty feet of a combustible building, then each and every window or opening in said wall or walls shall be protected from fire by automatic iron shutters or wire glass in fireproof sash and frames. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 5; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENTS

The 1907 amendment added the second paragraph of this section.

The section was repeated in the 1934 act.

CROSS REFERENCE

General powers of Commissioners concerning regulation of elevators, § 1–229.

NOTES TO DECISIONS

INDICTMENT, SUFFICIENCY

Manslaughter indictment charging violations of elevator regulations should point out with particularity what regulations were violated and should plead facts concerning physical situation to show the regulations relied on where correctly applicable to the situation. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

§ 5–306 [25: 299]. Obstruction of halls and stairways prohibited.

It shall be unlawful to obstruct any hall, passageway, corridor, or stairway in any building enumerated in sections 5–301 to 5–312 with baggage, trunks, furniture, cans, or with any other thing whatsoever. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 6; June 4, 1934, 34 Stat. 844, ch. 388.)

AMENDMENT

The 1934 act substituted the word "enumerated" for "mentioned."

§ 5–307 [25: 300]. Fire escapes and approaches not to be obstructed.

No door or window leading to any fire escape shall be covered or obstructed by any fixed grating or barrier, and no person shall at any time place any encumbrance or obstacle upon any fire escape or upon any platform, ladder, or stairway leading to or from any fire escape. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 7; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENT

The act of 1934 reenacted the section as it appeared in the act of 1906.

§ 5–308 [25: 302]. Penalty for violations.

Any person failing or neglecting to provide fire escapes, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs, and striking stations, or other appliances required by sections 5–301 to 5–312 after notice from the Commissioners so to do, shall, upon conviction thereof, be punished by a fine of not less than $10.00 nor more than $100 and shall be punished by a further fine of $5.00 for each day that he fails to comply with such notice. Any person violating any other provision of sections 5–301 to 5–312 or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than $10.00 nor more than $100 for each offense. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 9; June 4, 1934, 48 Stat. 845, ch. 388, § 8.)

COMPILER'S NOTE

Section 8 of the act of March 19, 1906, was omitted from the act of June 4, 1934, which amended the entire law, but a similar provision was enacted in act of July 1, 1932, 47 Stat. 550, ch. 366, par. 2. This section appears as § 47–2302. For other licensing provisions, see §§ 47–2344, 47–2345.

AMENDMENT

The 1934 amendment added provisions as to guide lights, exit lights, hall and stairway lights, standpipes, and striking stations, and the provision as to regulations promulgated under the act.

NOTES TO DECISIONS

MOTION TO QUASH

Whether premises on which violations of rooming house regulations allegedly occurred were within the operation of such regulations though licensed as an apartment house could not be determined on motion to quash information. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

PREMISES INCLUDED

That premises were licensed as an apartment house did not preclude prosecution for violations of rooming house regulations which allegedly occurred on such premises. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

§ 5–309 [25: 303]. Notice, what to contain.

The notice from the Commissioners requiring the erection of fire escapes and other appliances enumerated in sections 5–301 to 5–312 shall specify the character and number of fire escapes or other appliances to be provided, the location of the same, and the time within which said fire escapes or other appliances shall be provided, and in no case shall more than ninety days be allowed for compliance with said notice unless the Commissioners shall, in their discretion, deem it necessary to extend their time. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 10; June 4, 1934, 48 Stat. 845, ch. 388, § 9.)

AMENDMENT

The 1934 amendment changed "said notice" to "notice from the Commissioners," and "Commissioners of the District of Columbia" to "Commissioners."

NOTES TO DECISIONS

OPPORTUNITY TO INSTALL

Owner of building is entitled to opportunity to install fire protection before proceedings are taken against him. *Moore's Victoria Theatre Co.* v. *District of Columbia* (55 App. D. C. 46, 299 Fed. 923).

§ 5–310 [25: 304, 25: 305]. Notice, when deemed served—Fire escapes and other safety appliances may be provided by Commissioners, when owner neglects—Costs to be lien on property.

Such notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or if no such residence or place of business can be found in said District by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or if no such office can be found in said District by reasonable search if forwarded by registered mail to the last-known address of the person to be notified and not returned by the post-office authorities, or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on ten consecutive days in a daily newspaper published in the District of Columbia, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided, or if delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of sections 5–301 to 5–312 be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notice to a foreign corporation shall, for the purposes of sections 5–301 to 5–312, be deemed to have been served if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia: *Provided,* That in case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any buildings specified in sections 5–301 to 5–312, to comply with the requirements of the notice provided for in section 5–309, the commissioners are hereby empowered and it is their duty to cause such erection of fire escapes and other appliances mentioned in the notice provided for, and they are hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, and to issue tax-lien certificates against such building and grounds for the amount of such assessments, bearing interest at the rate of 10 per centum per annum, which certificates may be turned over by the commissioners to the contractor for doing the work. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 11; June 4, 1934, 48 Stat. 845, ch. 388, § 10.)

COMPILER'S NOTE

This section partially supersedes §§ 5–313, 5–315.

AMENDMENT

The 1934 amendment contains a new clause providing for delivery of notice to a representative of the estate of the owner of record, and in the proviso, changes "owner, lessee, occupant, or person having possession, charge, or control" to "owner entitled to the beneficial use, rental, or control."

§ 5–311 [25: 306]. Use of premises may be enjoined if not properly equipped with safety devices.

The District Court of the United States for the District of Columbia in term time or in vacation, may, upon a petition of the District of Columbia, filed by its said commissioners, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of sections 5–301 to 5–312. (Mar. 19, 1906, 34 Stat. 72, ch. 957, § 12; June 4, 1934, 48 Stat. 846, ch. 388, § 11.)

AMENDMENT

The act of 1934 reenacted the section as it appeared in the act of 1906.

RULES OF CIVIL PROCEDURE

Injunction, Rule 65.

NOTES TO DECISIONS

CONDITION PRECEDENT

Any person who may be proceeded against under this statute is entitled to know what is required of him before he can be penalized in a criminal proceeding, enjoined in equity, or assessed for work done on his property. *Moore's Victoria Theatre Co.* v. *District of Columbia* (55 App. D. C. 46, 299 Fed. 923).

§ 5–312 [25: 306a]. Definitions.

As used in sections 5–301 to 5–312—

(a) The terms "apartment-house," "tenement-house," and "flat" mean a building in which rooms in suites are provided for occupancy by three or more families.

(b) The term "rooming-house" means a building in which rooms are rented and sleeping quarters provided to accommodate ten or more persons, not including the family of the owner or lessee.

(c) The term "lodging-house" means a building in which sleeping quarters are provided to accommodate ten or more transients.

(d) The term "hotel" means a building in which meals are served and rooms are provided for the accommodation of ten or more transients.

(e) The term "elevator shaft" includes a dumbwaiter shaft.

(f) The term "fire escape" means an exterior open stairway or arrangement of ladders constructed entirely of incombustible materials and of approved design, or an interior or exterior stairway of fire-resistive construction with enclosing walls of masonry with fire-resistive doors and windows.

(g) The term "standpipe" means a vertical iron or steel pipe provided with hose connections and valves, so arranged as to supply water for fire-fighting purposes.

(h) The terms "fireproof" and "fire-resistive" have the same meaning as is ascribed to the term "fire-resistive" in the Building Code of the District of Columbia. (Mar. 19, 1906, ch. 957, as added June 4, 1934, 48 Stat. 846, ch. 388, § 12.)

§ 5–313 [25: 307]. Upon failure of owner to correct condition violative of law, commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.

Whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner provided in section 5–315 to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the commissioners of said District, why he should not be required to correct such condition, then, and in that instance, the commissioners of the District of Columbia may, and they are authorized to, cause such condition to be corrected; assess the cost of correcting such condition and all expenses incident thereto (including the cost of publication, if any, herein provided for) as a tax against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of the District, and collect such tax in the same manner as general taxes in said District are collected: *Provided,* That the correction of any condition aforesaid by said commissioners under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same. (Apr. 14, 1906, 34 Stat. 114, ch. 1626, § 1.)

COMPILER'S NOTE

This section is partially superseded by §§ 5–310, 5–311.

§ 5–314 [25: 308]. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.

For the purpose of carrying into effect section 5–313 the Commissioners of the District of Columbia and all other persons, including contractors and employees of contractors acting under their authority or by their direction are authorized to enter upon and into any lands and tenements in said District, during all reasonable hours, to inspect the same and to do whatever may be necessary to correct, in a good and workmanlike manner, any condition that exists on or has arisen from such lands or tenements in violation of law or of any regulation made by authority of law, with the correction of which condition the owner of said lands or tenements is by law or such regulation chargeable. Any person who shall hinder, interfere with, or prevent any inspection or work authorized by sections 5–313 to 5–315 shall, upon conviction thereof, be punished by a fine not exceeding $100 or by imprisonment for a period not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. (Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 2.)

CROSS REFERENCE

This section is partially superseded by § 5–311.

§ 5–315 [25: 309]. Notice to correct wrongful conditions—How given—Methods of service—Required contents.

For the purposes of sections 5–313 to 5–315 any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served (a) if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; or (b) if no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or, (c) if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last-known address of the person to be notified and not returned by the post-office authorities; or, (d) if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on three consecutive days in a daily newspaper published in the District of Columbia; or (e) if by reason of an outstanding, unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of sections 5–313 to 5–315 be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the unlawful condition to be corrected, and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so. (Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 3.)

§ 5–316 [10: 21]. Commissioners of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury.

The Commissioners of the District of Columbia are authorized and directed, from time to time, to prescribe a schedule of fees to be paid for inspecting passenger elevators and for inspecting hotels, public halls, moving-picture shows, theaters, and other places of amusement which are required to have annual licenses, and for inspecting buildings which are required by law to have fire escapes; and they are further authorized and directed to impose fees for all inspections or service to be performed by any public officer or employee of the District of Columbia under any law or regulation in force July 11, 1919, or thereafter enacted; said fees to cover the cost and expense of such inspections or service; and a schedule of such fees shall be printed and conspicuously displayed in the office of the said commissioners, and said fees shall be paid to the collector of taxes, District of Columbia, and paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (July 11, 1919, 41 Stat. 69, ch. 7; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

COMPILER'S NOTES

Proportions in appropriation acts for expenses of the government of the District of Columbia, see acts June 7, 1924, 43 Stat. 539, ch. 302; Mar. 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 3, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 259.

The deficiency appropriation act of June 25, 1938, 52 Stat. 1125, ch. 681, § 1, and other such acts including the second deficiency appropriation act of June 27, 1940, 54 Stat. 639, ch. 437, contained the following language: "The foregoing sums for the District of Columbia, unless otherwise therein specifically provided, shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective fiscal years for which sums are provided."

AMENDMENT

The act of July 11, 1919, provided that the fees paid to the collector of taxes should be deposited in the Treasury of the United States to the credit of the revenues of the District of Columbia and the United States in equal parts. The act of February 22, 1921, cited to the text, provided that "on and after July 1, 1921, all fees, fines, and other miscellaneous items of revenue theretofore required by law to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia."

CROSS REFERENCES

Disposition of fees, § 47–126.

The United States now makes a lump-sum appropriation for the District, § 47–134.

§ 5–317. Means of egress and fire safety appliances required in certain public buildings.

The Commissioners of the District of Columbia, for protection against fire, are hereby authorized, after public hearing, to promulgate regulations to require the owner entitled to the beneficial use, rental, or control of any building now existing or hereafter erected, other than a private dwelling, which is three or more stories or over thirty feet in height, or is used as a hospital, school, asylum, sanitarium, convalescent home, or for similar use, or as a place of amusement, public assembly, restaurant, or for similar use, to provide, install and maintain sufficient and suitable means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, and such other appliances as the Commissioners may deem necessary for such buildings. (Dec. 24, 1942, 56 Stat. 1083, ch. 818, § 1.)

EFFECTIVE DATE

Section 9 of act Dec. 24, 1942, cited to text, provided: "This Act shall take effect after ninety days from the date of its enactment."

REPEAL

Section 8 of act Dec. 24, 1942, cited to text, provided: "All Acts, parts of Acts, and regulations promulgated thereunder inconsistent with this Act are hereby repealed."

NOTES TO DECISIONS

REGULATIONS, RETROACTIVE EFFECT

Where, after institution of landlord's action for possession based on allegedly unlawful use of leased premises, rigid provisions of § 5–301 were relaxed and, after entry of judgment for landlord, District Commissioners modified said § 5–301 so that use complained of, which was the very use contemplated under original letting, was no longer unlawful, case was not "moot" and tenant was entitled on appeal to protection of regulations under this section and to reversal of judgment for landlord. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

§ 5–318. Same—Occupancy prohibited after notice of noncompliance.

It shall be unlawful for any person to occupy any building thirty days after notice in writing from the Commissioners of the District of Columbia or their designated agents that the owner entitled to the beneficial use, rental, or control of any building has failed or neglected to comply with the notice provided for by section 5–319 to provide any such building with means of egress or appliances required by the regulations promulgated by the Commissioners of the District of Columbia under section 5–317. (Dec. 24, 1942, 56 Stat. 1083, ch. 818, § 2.)

EFFECTIVE DATE

See note under section 5–317.

§ 5–319. Same—Notice to owner requiring installation—Time for compliance.

The notice from the Commissioners requiring the erection of means of egress and other appliances required by the regulations promulgated under section 5–317 shall specify the character and number of means of egress or other appliances to be provided, the location of the same, and the time within which said means of egress or other appliances shall be provided, and in no case shall more than ninety days be allowed for compliance with said notice unless the Commissioners shall, in their discretion, deem it necessary to extend their time. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 3.)

EFFECTIVE DATE

See note under section 5–317.

§ 5–320. Same—Penalty for noncompliance.

Any owner entitled to the beneficial use, rental, or control of any building failing or neglecting to provide means of egress, guide signs, guide lights, exit [1] lights, halls and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, or other appliances required by the regulations promulgated under sections 5–317 to 5–323 after notice from the Commissioners or their designated agents so to do, shall, upon conviction thereof, be punished by a fine of not less than $10 nor more than $100 per day for each and every day he fails to comply with such notice. Any person violating any other provision of sections 5–317 to 5–323 or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than $10 nor more than $100 per day for each and every day such violation exists. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 4.)

EFFECTIVE DATE

See note under section 5–317.

§ 5–321. Same—Service of notice.

Any notice required by sections 5–317 to 5–323 shall be deemed to have been served if delivered to the person to be notified or left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or, if no such residence or place of business can be found in said District of Columbia by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or, if no such office can be found in said District, by reasonable search, if forwarded by registered mail to the last-known address of the person to be notified and not returned by the post-office authorities, or, if no address be known or can by reasonable diligence be ascertained, or, if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on ten consecutive days in a daily newspaper published in the District of Columbia, or, if by reason of an outstanding unrecorded transfer of title, the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore provided or delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of sections 5–317 to 5–323, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the services of notices on natural persons holding property in their own right, or if no such officer can be found in said District by reasonable search, then by publication for ten consecutive days in a daily newspaper published in the District of Columbia, and notice to a foreign corporation shall, for the purposes of sections 5–317 to 5–323, be deemed to have been served if served on any agent of such corporation personally or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia, or if published on ten consecutive days in a daily newspaper published in the District of Columbia. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 5.)

[1] "Exist" in original.

EFFECTIVE DATE

See note under section 5–317.

§ 5–322. Same—Construction and installation by Commissioners on owner's noncompliance—Assessment of costs against buildings.

In case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any building required by the regulations promulgated under sections 5–317 to 5–323 to comply with the requirements of the notice provided for in section 5–319, the Commissioners or their designated agents are hereby empowered to cause such construction and installation of means of egress and other appliances mentioned in the notice provided for, and the Commissioners are hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, said assessment to bear interest at the rate and be collected in the manner provided in section 47–1105. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 6.)

EFFECTIVE DATE

See note under section 5–317.

§ 5–323. Same—Injunction against unlawful use or occupation of building.

The District Court of the United States for the District of Columbia, in term time or in vacation, may upon a petition of the District of Columbia filed by its said Commissioners, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of sections 5–317 to 5–323 or of the regulations promulgated under sections 5–317 to 5–323 by the owner, lessee, or occupant. (Dec. 24, 1942, 56 Stat. 1085, ch. 818, § 7.)

EFFECTIVE DATE

See note under section 5–317.

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

Sec.

5–401. Height of certain nonfireproof dwellings limited.
5–402. Height of nonfireproof business buildings.
5–403. Fireproof materials required for buildings exceeding 60 feet in height—Hotels, apartment houses—Halls—Churches.
5–404. Additions—Towers, spires, and domes—Theaters.
5–405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fireproof requirements—Dean tract—Restrictions and limitations applicable to specific property.
5–406. Limit for frame dwellings.
5–407. Basis of measurement—Parapet walls.
5–408. Violations declared nuisance—Injunction proceedings—Penalty for contempt.
5–409. Right to alter or repeal reserved.
5–410. Applications for erection or alteration of buildings fronting on certain Government property to be submitted to Commission of Fine Arts.

Sec.
5–411. Plats of restricted area to be prepared.
5–412. Zoning Commission created—Membership—Assignment of employees.
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5–414. Purposes of zoning regulations.
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5–416. Majority vote required to amend zoning regulations—Maps.
5–417. Zoning Advisory Council—Creation—Membership—Submission of amendments to zoning regulations.
5–418. Maximum height of buildings.
5–419. Use of existing buildings—Restrictions—Discretion of Zoning Commission—Extension of use.
5–420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.
5–421. Maps and regulations of Zoning Commission—To be filed—Published.
5–422. Building permits—Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.
5–423. Enforcement of regulations—Power to adopt municipal regulations.
5–424. Effect of regulations on future construction.
5–425. Terms defined.
5–426. Appropriations authorized for Zoning Commission—Authority to employ—Compensation of Board of Zoning Adjustment.
5–427. Laws repealed.
5–428. Federal public buildings excepted.
5–429. Commissioners of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.
5–430. Building permits—May be canceled and tax refunded.

§ 5–401 [25: 501]. Height of certain nonfireproof dwellings limited.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied as a dwelling, flat, apartment house, tenement, lodging or boarding house, hospital, dormitory, or for any similar purpose shall be erected, altered, or raised to a height of more than four stories, or more than fifty-five feet in height above the sidewalk, and no combustible or nonfireproof building shall be converted to any of the uses aforesaid if it exceeds either of said limits of height. (June 1, 1910, 36 Stat. 452, ch. 263, § 1; May 20, 1912, 37 Stat. 114, ch. 124.)

COMPILER'S NOTE

Section 1–228 gives the Commissioners general authority to make building regulations, subject to the provisions of this chapter, see Compiler's Note to § 1–228.

AMENDMENT

The 1912 amendment changed the required height from 50 to 55 feet.

CROSS REFERENCES

Power of Zoning Commission concerning regulations for the erection of buildings, §§ 5–412 to 5–428.

Provisions concerning alley dwellings, §§ 5–101 to 5–116.

NOTES TO DECISIONS

LEGISLATIVE AUTHORITY

Zoning regulations must bear substantial relation to public health, safety, morals, or general welfare. *Dorsey v. Gotwals* (61 App. D. C. 41, 57 Fed. (2d) 407).

§ 5–402 [25: 502]. Height of nonfireproof business buildings.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied for business purposes only shall be erected, altered, or raised to a height of more than sixty feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height. (June 1, 1910, 36 Stat. 452, ch. 263, § 2.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, §§ 5–412 to 5–428.

§ 5–403 [25: 503]. Fireproof materials required for buildings exceeding 60 feet in height—Hotels, apartment houses—Halls—Churches.

All buildings of every kind, class, and description whatsoever, excepting churches only, erected, altered, or raised in any manner after June 1, 1910, as to exceed sixty feet in height shall be fireproof or noncombustible and of such fire-resisting materials, from the foundation up, as are now or at the time of the erecting, altering, or raising may be required by the building regulations of the District of Columbia.

Hotels, apartment houses, and tenement houses erected, altered or raised in any manner after June 1, 1910, so as to be three stories in height or over and buildings hereafter converted to such uses shall be of fireproof construction up to and including the main floor, and there shall be no space on any floor of such structure of an area greater than two thousand five hundred square feet that is not completely inclosed by fireproof walls, and all doors through such walls shall be of noncombustible materials.

Every building hereafter erected after June 1, 1910, with a hall or altered so as to have a hall with a seating capacity of more than three hundred persons when computed, as provided by the building regulations, and every church thereafter erected or building hereafter converted for use as a church, with such seating capacity, shall be of fireproof construction up to and including the floor of such hall or the auditorium of such church as the case may be. (June 1, 1910, 36 Stat. 452, ch. 263, § 3.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, §§ 5–412 to 5–428.

§ 5–404 [25: 504]. Additions — Towers, spires, and domes—Theaters.

Additions to existing combustible or nonfireproof structures after June 1, 1910, erected, altered, or raised to exceed the height limited by sections 5–401 to 5–408 for such structures shall be of fireproof construction from the foundation up, and no part of any combustible or nonfireproof building shall be raised above such limit or height unless that part be fireproof from the foundations up.

Towers, spires, or domes, thereafter constructed more than sixty feet above the sidewalk, must be of fireproof material from the foundation up, and must be separated from the roof space, choir loft, or balcony by brick walls without openings, unless

such openings are protected by fireproof or metal-covered doors on each face of the wall. Full power and authority is hereby granted to and conferred upon every person, whose application was filed in the office of the commissioners of the District of Columbia prior to the adoption of the present building regulations of said District, to construct a steel fireproof dome on any buildings owned by such person, in square three hundred and forty-five of said District, as set forth in the plans and specifications annexed to or forming a part of such applications so filed, any other provision in sections 5–401 to 5–408 contained to the contrary notwithstanding. And the inspector of buildings of said District shall make no changes in said plans and specifications unless for the structural safety of the building it is necessary to do so.

Every theater erected after June 1, 1910, and every building converted thereafter to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof construction from the foundation up and have fireproof walls between it and other buildings connected therewith, and any theater damaged to one-half its value shall not be rebuilt except with fireproof materials throughout and otherwise in accordance with the building regulations of the District of Columbia. (June 1, 1910, 36 Stat. 453, ch. 263, § 4.)

COMPILER'S NOTE

The second and third sentences of the second paragraph are probably obsolete.

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, §§ 5–412 to 5–428.

§ 5–405 [25: 505]. Width of street to govern height—Business streets — Residence streets — Corner lots—Fireproof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of two or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the Commissioners.

No buildings shall be erected, altered, or raised in any manner as to exceed the height of one hundred and thirty feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue between First and Fifteenth Streets, northwest, where an extreme height of one hundred and sixty feet will be permitted.

On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over eight stories in height or over ninety feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue, or highway sixty feet wide or less, where a height equal to the width of the street may be allowed: *Provided,* That any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this paragraph, and the Commissioners of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of ninety-five feet above the level of the adjacent curb.

The height of a building on a corner lot will be determined by the width of the wider street.

On streets less than ninety feet wide where building lines have been established and recorded in the office of the surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, in so far as it controls the height of buildings under sections 5–401 to 5–409, shall be held to be the distance between said building lines.

On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.

Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than eighty feet.

Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in sections 5–401 to 5–409 when and as the same may be approved by the Commissioners of the District of Columbia: *Provided, however,* That such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed: *And provided,* That penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof: *And provided further,* That a building be permitted to be erected to a height not to exceed one hundred and thirty feet on lots 15, 804, and 805, square 322, located on the southeast corner of Twelfth and E Streets Northwest, said building to conform in height and to be

used as an addition to the hotel building located to the east thereof on lot 18, square 322: *And further provided,* That the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of Fourteenth and F Streets Northwest, be permitted to be erected to a height not to exceed one hundred and forty feet above the F Street curb: *And provided further,* That the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, on the east by Nineteenth Street, and on the north by a property line running east and west five hundred and sixty-four feet in length, said building to cover an area not exceeding fourteen thousand square feet and to be located on said property not less than forty feet distant from the north property line, not less than three hundred and twenty feet distant from the Connecticut Avenue property line, not less than one hundred and sixty feet distant from the Nineteenth Street property line, and not less than three hundred and sixty feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of Twentieth Street meets said boundary, be permitted to be erected to a height not to exceed one hundred and eighty feet above the level of the existing grade at the center of the location above described: *And provided further,* That the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Park and Planning Commission, both of the District of Columbia: *And further provided,* That the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road Northwest in the District of Columbia, approximately opposite Thirty-ninth Street, plans for which building are on file in the office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed one hundred and ten feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building. (June 1, 1910, 36 Stat. 452, ch. 263, § 5; Dec. 30, 1910, 36 Stat. 891, ch. 8; June 7, 1924, 43 Stat. 647, ch. 340; Feb. 21, 1925, 43 Stat. 961, ch. 289; May 16, 1926, 44 Stat. 298, ch. 150; Apr. 29, 1930, 46 Stat. 258, ch. 220; Mar. 24, 1945, 59 Stat. 38, ch. 37.)

COMPILER'S NOTE

The last four proviso clauses are doubtlessly executed but they are retained for property-right purposes.

AMENDMENTS

The proviso at the end of the third paragraph was added by act of 1910, cited to the text.

The third proviso in the last paragraph was added by the 1924 amendment.

The act of 1925 further amended the third paragraph of this section by changing "eighty feet in height to the top of the highest ceiling joists" to "eight stories in height," and "eighty-five feet in height" to "ninety feet in height."

The 1926 amendment added the fourth proviso to the last paragraph.

The fifth and sixth provisos were added by act of 1930.

The act of Mar. 24, 1945, cited to text, amended section by adding last proviso.

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, §§ 5–412 to 5–428.

§ 5–406 [25: 506]. Limit for frame dwellings.

No wooden or frame building erected, altered, or converted after June 1, 1910, for use as a human habitation shall exceed three stories or exceed forty feet in height to the roof. (June 1, 1910, 36 Stat. 454, ch. 263, § 6.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, §§ 5–412 to 5–428.

§ 5–407 [25: 507]. Basis of measurement — Parapet walls.

For the purposes of sections 5–401 to 5–409 the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding four feet will be permitted above the limit of height of building permitted under sections 5–401 to 5–409. (June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124.)

AMENDMENT

The 1912 amendment added the exception in the last sentence.

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, §§ 5–412 to 5–428.

§ 5–408 [25: 508]. Violations declared nuisance—Injunction proceedings—Penalty for contempt.

Buildings erected, altered, or raised or converted in violation of any of the provisions of sections 5–401 to 5–409 are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which said court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than $10 nor more than $100 per day for each and every day such nuisance shall be permitted to continue, and shall be required by said court to abate such nuisance. The corporation counsel of the District of Columbia may maintain an action in the District Court of the United States for the District of Columbia in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not

less than $100 nor more than $500, or by imprisonment in the Washington Asylum and Jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court. (June 1, 1910, 36 Stat. 454, ch. 263, § 8.)

COMPILER'S NOTE

The last sentence of this section originally provided for imprisonment in the United States jail. The jail and asylum were merged into one institution, to be known as the Washington Asylum and Jail, by act of Mar. 2, 1911, 36 Stat. 1003, ch. 192.

RULES OF CIVIL PROCEDURE

Injunctions, Rule 65.

§ 5–409 [25: 509]. Right to alter or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 5–401 to 5–409. (June 1, 1910, 36 Stat. 455, ch. 263, § 9.)

§ 5–410 [25: 510]. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

In view of the provisions of the Constitution respecting the establishment of the seat of the national government, the duties it imposed upon Congress in connection therewith, and the solicitude shown and the efforts exerted by President Washington in the planning and development of the capital city, it is declared that such development should proceed along the lines of good order, good taste, and with due regard to the public interests involved, and a reasonable degree of control should be exercised over the architecture of private or semi-public buildings adjacent to public buildings and grounds of major importance. To this end, when application is made for permit for the erection or alteration of any building, any portion of which is to front or abut upon the grounds of the Capitol, the grounds of the White House, the portion of Pennsylvania Avenue extending from the Capitol to the White House, Lafayette Park, Rock Creek Park, the Zoological Park, the Rock Creek and Potomac Parkway, Potomac Park, The Mall Park System and public buildings adjacent thereto, or abutting upon any street bordering any of said grounds or parks, the plans therefor, so far as they relate to height and appearance, color, and texture of the materials of exterior construction, shall be submitted by the commissioners of the District of Columbia to the Commission of Fine Arts; and the said commission shall report promptly to said commissioners its recommendations, including such changes, if any, as in its judgment are necessary to prevent reasonably avoidable impairment of the public values belonging to such public building or park; and said commissioners shall take such action as shall, in their judgment, effect reasonable compliance with such recommendation: *Provided,* That if the said Commission of Fine Arts fails to report its approval or disapproval of such plans within thirty days, its approval thereof shall be assumed and a permit may be issued. (May 16, 1930, 46 Stat. 366, ch. 291, § 1; July 31, 1939, 53 Stat. 1144, ch. 400.)

AMENDMENT

The act of 1939 amended the second sentence of this section to include Lafayette Park.

CROSS REFERENCES

Issuance of building permits, § 5–422.

Powers and duties of the Zoning Commission, §§ 5–412 to 5–428.

STATUTORY REFERENCE

Commission of Fine Arts, U. S. C., title 40, §§ 104–106.

§ 5–411 [25: 511]. Plats of restricted area to be prepared.

Said commissioners of the District of Columbia, in consultation with the National Capital Park and Planning Commission, shall prepare plats defining the areas within which application for building permits shall be submitted to the Commission of Fine Arts for its recommendations. (May 16, 1930, 46 Stat. 367, ch. 291, § 2.)

CROSS REFERENCE

Issuance of building permits, § 5–422.

STATUTORY REFERENCE

Commission of Fine Arts, U. S. C., title 40, §§ 104–106.

§ 5–412 [25: 521]. Zoning Commission created—Membership—Assignment of employees.

To protect the public health, secure the public safety, and to protect property in the District of Columbia there is hereby created a Zoning Commission, which shall consist of the Commissioners of the District of Columbia, Director of the National Park Service and the Architect of the Capitol, which said commission shall have all the powers and perform all the duties hereinafter specified and shall serve without additional compensation. Such employees of the government of the District of Columbia as may be necessary to carry out the purposes of this section shall be assigned to such duty by the Commissioners of the District of Columbia without additional compensation. (Mar. 1, 1920, 41 Stat. 500, ch. 92, § 1; Feb. 26, 1925, 43 Stat. 983, ch. 339.)

AMENDMENTS

The act of 1920, cited to the text, provided that the Zoning Commission should consist of "the Commissioners of the District of Columbia, the officer in charge of public buildings and grounds of the District of Columbia, and the Superintendent of the United States Capitol Building and Grounds."

The act of 1925 abolished the Office of Public Buildings and Grounds and transferred its functions to the Office of Public Buildings and Public Parks of the National Capital.

The Office of Public Buildings and Public Parks of the National Capital was abolished and all functions and duties were transferred to National Parks, Buildings, and Reservations, by Executive Order No. 6166.

The title "Superintendent of the Capitol Building and Grounds" was changed to "Architect of the Capitol" by act of March 3, 1921, 41 Stat. 1291, ch. 124.

The act of March 2, 1934, 48 Stat. 389, ch. 38, § 1 (U. S. C., title 16, § 1), changed the name "National Parks, Buildings, and Reservations" to "National Park Service."

CROSS REFERENCES

Approval of use, construction, or repair of alley dwellings, § 5–101.

Commissioners have general authority to make building regulations, subject to the provisions of this chapter, see Compiler's Note to § 1–228.

Establishment of building lines on streets; procedure; special permits of buildings extending beyond line; parkways, §§ 5–201 to 5–205.

Powers and duties of Commissioners as to condemnation of insanitary buildings, §§ 5–601 to 5–615.

Provisions concerning alley dwellings, §§ 5–101 to 5–116.

Safety regulations, determination of location, number, material, and type of fire escapes; lighting fire escapes and hallways, guide signs, guide lights, exit lights, standpipes, fire extinguishers, alarm gongs, and striking stations, as determined by Commissioners; rules and regulations; alteration of buildings; notice of violations of safety regulations; erection of safety appliances by Commissioners; injunction; entering premises; inspection fees, §§ 5–301 to 5–317.

STATUTORY REFERENCE

Architect of the Capitol, U. S. C., title 40, § 161 et seq.

NOTES TO DECISIONS

CONSTITUTIONALITY

Act not deprivation of private property in violation of fifth amendment. *Larrabee* v. *Bell* (56 App. D. C. 121, 10 Fed. (2d) 986).

HEARINGS OF COMMISSION

Hearings of Zoning Commission; legality; conclusiveness. *Garrity* v. *District of Columbia* (66 App. D. C. 256, 86 Fed. (2d) 207); *Hazen* v. *Hawley* (66 App. D. C. 266, 86 Fed. (2d) 217. Cert. den. 299 U. S. 613, 81 L. Ed. 452, 57 Sup. Ct. 315.).

REASONABLENESS

In the absence of evidence of unreasonableness in zoning regulations, the court will not presume arbitrariness. *Golf, Inc.* v. *District of Columbia* (62 App. D. C. 309, 67 Fed. (2d) 575).

REGULATIONS NOT CONTRACTS

Zoning regulations are not contracts by the Government and may be modified by Congress. *Reichelderfer* v. *Quinn* (287 U. S. 315, 77 L. Ed 331, 53 Sup. Ct. 177, 83 A. L. R. 1429).

REMEDY AFTER REFUSAL OF PERMIT

Remedy for refusal to issue permit to erect gasoline station is by appeal first, not mandamus. *United States ex rel. Connor* v. *District of Columbia* (61 App. D. C. 288, 61 Fed. (2d) 1015).

§ 5–413 [25: 531]. Zoning regulations to be made by Zoning Commission—Uniformity.

To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital, the Zoning Commission created by section 5–412, is hereby empowered, in accordance with the conditions and procedures specified in sections 5–413 to 5–428, to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation said commission may divide the District of Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land. The said Zoning Commission shall also have power to promulgate regulations to require, with respect to buildings erected subsequent to the promulgation of such regulations, that facilities be provided and maintained either on the same lot with any such building, or on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted therein. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (June 20, 1938, 52 Stat. 797, ch. 534, § 1; Mar. 4, 1942, 56 Stat. 122, ch. 126.)

AMENDMENTS

The act of Mar. 4, 1942, cited to text, amended section by inserting the second sentence.

CROSS REFERENCES

Height of buildings, §§ 5–401 to 5–409, 5–418.
Rules and regulations in general, §§ 1–226, 1–228, 5–412.

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAW

Legislative power conferred by the act is in the Zoning Commission and not in the Commissioners of the District. *Schwartz* v. *Brownlow* (50 App. D. C. 279, 270 Fed. 1019, rev'd on other grounds 261 U. S. 216, 67 L. Ed. 620, 43 Sup. Ct. 263).

Notice of hearing by Zoning Commission not necessarily signed by individuals. *Larrabee* v. *Bell* (56 App. D. C. 121, 10 Fed. (2d) 986).

Court can not control reasonable exercise of power by Commission. *Larrabee* v. *Bell* (56 App. D. C. 121, 10 Fed. (2d) 986).

An athletic field acquired for use accessory to and a part of a high school could be located in a residential district, when the regulations permitted institutions of an educational character in residential districts. *Commissioners of District* v. *Shannon & Luchs Constr. Co.* (57 App. D. C. 67, 17 Fed. (2d) 219).

SETTING ASIDE ORDERS

Where a lot constituted the corner of less restricted zone, lot was separated on three sides by public park and on all four sides by a park or street or both, from all present and probable future housing, and owner's proposed apartment building would accommodate many more people than single dwellings which might be built on the lot, and enforcement of zoning commission's order restricting lot to single dwellings would greatly impair value of lot and would not increase value of adjoining property, zoning order was properly set aside. *Wolpe* v. *Poretsky* (App. D. C. 1946, 154 F. 2d 330, certiorari denied 67 S. Ct. 69, 329 U. S. 724, 91 L. Ed. 627).

USE OF PROPERTY

Residential zoning is not invalidated by the fact that if the property were available for business purposes it would bring the owner more revenue. *Leventhal* v. *District of Columbia* (69 App. D. C. 229, 100 Fed. (2d) 94).

§ 5–414 [25: 532]. Purposes of zoning regulations.

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein. (June 20, 1938, 52 Stat. 797, ch. 534, § 2.)

NOTES TO DECISIONS

In General

Restrictions can not be imposed on the use of property if they do not bear a substantial relation to the public health, safety, morals, or general welfare. *Bugher* v. *Gottwals* (60 App. D. C. 340, 54 Fed. (2d) 451).

Injunction

A suit to enjoin zoning commission from carrying into effect a zoning order is not an appeal on the merits of the issues presented to the commission, and hence court should not substitute its judgment for that of the commission even for reasons which appear most persuasive. *Wolpe* v. *Poretsky*, 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

Persons Bound by Decree

Where adjoining property owners had not been parties to suit to enjoin zoning commission from carrying into effect a zoning order and zoning commission had failed to appeal from final decree enjoining enforcement of order, property owners were entitled as a matter of right to intervene in the proceeding, since they would otherwise be bound by the decree. *Wolpe* v. *Poretsky*, 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. *Wolpe* v. *Poretsky*, 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

Purpose

The two purposes of §§ 5–412 to 5–425 are to preserve character of a neighborhood by excluding new business and structures prejudicial to the restricted purposes of the area and gradual elimination of such existing structures and trades, and the protection of an owner's property or existing business from impairment which would result from enforced accommodation to new restrictions. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

§ 5–415 [25: 533]. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

The regulations prior to June 20, 1938, adopted by the Zoning Commission under the authority of section 5–412 and in force on June 20, 1938, including the maps which at said date accompany and are a part of such regulations, shall be deemed to have been made and adopted and in force under sections 5–413 to 5–428 and shall be and continue in force and effect until and as they may be amended by the Zoning Commission as authorized by said sections 5–413 to 5–428. The Zoning Commission may from time to time amend the regulations or any of them or the maps or any of them. Before putting into effect any amendment or amendments of said regulations, or of said map or maps, the Zoning Commission shall hold a public hearing thereon. At least thirty days' notice of the time and place of such hearings shall be published at least once in a daily newspaper or newspapers of general circulation in the District of Columbia. Such published notice shall include a general summary of the proposed amendment or amendments of the regulation or regulations and the boundaries of the territory or territories included in the amendment or amendments of the map or maps, and the time and place of the hearing. The Zoning Commission shall give such additional notice of such hearing as it shall deem feasible and practicable. At such hearing it shall afford any person present a reasonable opportunity to be heard. Such public hearing may be adjourned from time to time and if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published. (June 20, 1938, 52 Stat. 798, ch. 534, § 3.)

Compiler's Note

D. C. 1929, title 25, § 527, provided as follows: "Maps of the districts established by said Commission and copies of all orders and regulations as to the height and area of buildings to be erected therein and as to the uses to which such buildings may be lawfully devoted, and copies of all other official orders and regulations of the Commission shall be filed in the office of the Engineer Commissioner of the District of Columbia. Copies of all orders and regulations shall be published in one or more newspapers printed in the District of Columbia for the information of all concerned. (Mar. 1, 1920, 41 Stat. 501, ch. 92, § 7.)" This section was repealed by Act of June 20, 1938, see § 5–427.

Cross References

Establishment of parking facilities, see § 40–806.

§ 5–416 [25: 534]. Majority vote required to amend zoning regulations—Maps.

Any amendment of the regulations or any of them or of the maps or any of them shall require the favorable vote of not less than a full majority of the members of the commission. (June 20, 1938, 52 Stat. 798, ch. 534, § 4.)

§ 5–417 [25: 535]. Zoning Advisory Council—Creation—Membership—Submission of amendments to zoning regulations.

A Zoning Advisory Council is hereby created to be composed of a representative designated by the National Capital Park and Planning Commission, a representative designated by the Zoning Commission of the District of Columbia, and a representative designated by the commissioners of the District of Columbia, all of whom shall be persons experienced in zoning practice and shall serve without additional compensation. No amendment of any zoning regulation or map shall be adopted by the Zoning Commission unless and until such amendment be first submitted to said Zoning Advisory Council and the opinion or report of such council thereon shall have been received by the commission: *Provided, however,* That if said council shall fail to transmit its opinion and advice within thirty days from the date of submission to it, then in such event the Zoning Commission shall have the right to proceed to act upon the proposed amendment without further waiting for the receipt of the opinion and advice of said council. (June 20, 1938, 52 Stat. 798, ch. 534, § 5.)

§ 5–418 [25: 536]. Maximum height of buildings.

The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by sections 5–401 to 5–409, regulating the height of buildings in the District of Columbia. (June 20, 1938, 52 Stat. 798, ch. 534, § 6.)

§ 5–419 [25: 537]. Use of existing buildings—Restrictions—Discretion of Zoning Commission—Extension of use.

The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of section 5–412, or, in the case of any regulation adopted after June 20, 1938, under sections 5–413 to 5–428, at the time of such adoption, may be continued although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected. The Zoning Commission may in its discretion provide, upon such terms and conditions as may be set forth in the regulations, for the extension of any such nonconforming use throughout the building and for the substitution of nonconforming uses. (June 20, 1938, 52 Stat. 798, ch. 534, § 7.)

NOTES TO DECISIONS

Abandonment of Non-Conforming Use

The discontinuance of a non-conforming use under §§ 5–412 to 5–425 results from concurrence of the intent to abandon and some overt act or failure to act which carries the implication of abandonment. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

Fact that building which was equipped as a stable, and which had been used for the non-conforming use of buying and selling horses, had been vacant for about six years before being taken over by defendant, did not establish abandonment of the non-conforming use, where building during extended period of vacancy was retained in same condition and was being advertised for lease as a stable. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

Continuance of Non-Conforming Use

Where building which was equipped as a stable had been used for non-conforming use of buying and selling horses, a subsequent use of premises for keeping horses for rent and boarding horses for others was a continuance of the prior non-conforming use. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

Decisions Under Former Law

This section does not give authority to nullify an agreement between property owners fixing building-line restrictions. *Castleman* v. *Avignone* (56 App. D. C. 253, 12 Fed. (2d) 326.)

Where first floor of building in residence district had been used for some years as garage, without permit and without objection, expenditure of large sums for remodeling, in reliance on a permit to fireproof and repair premises and on a certificate of occupancy for use as a garage, the District may not revoke certificate of occupancy. *District of Columbia* v. *Cahill* (60 App. D. C. 342, 54 Fed. (2d) 453.)

Lease Restrictions

Provision in lease requiring the tenant to use the basement for commercial purposes was a reasonable one in a residential area, as the nonconforming commercial use in a residential district enhances the value of the property and the landlord had the right to insist that this use be maintained in order that it not be lost by reason of the nonuse or abandonment. *Amos v. Cummings* (D. C. Mun. App. 1949, 67 A. 2d 87).

§ 5–420 [25: 538]. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

A Board of Zoning Adjustment is hereby created which shall be composed of five members appointed by the Commissioners of the District of Columbia, namely, one member of the National Capital Park and Planning Commission or a member of the staff thereof to be designated in either case by such commission; one member of the Zoning Commission or a member of the staff thereof to be designated in either case by such commission; and three other members, each of whom shall have been a resident of the District of Columbia for at least three years immediately preceding his appointment and at least one of whom shall own his own home.

The representative of the National Capital Park and Planning Commission may be changed from time to time by such commission in its discretion and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said commission and appointed by the Commissioners of the District of Columbia to fill said vacancy. The representative of the Zoning Commission may be changed from time to time by such commission in its discretion and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said commission and appointed by the Commissioners of the District of Columbia to fill said vacancy. The terms of the three members designated by the Commissioners of the District of Columbia shall be three years each, excepting that, in the case of the initial appointments, one shall be for a term of one year and one for a term of two years. In case of any vacancy in the position of any of the three members designated by the Commissioners of the District of Columbia, the same shall be filled for the remainder of the term.

The Zoning Commission may provide and specify in its zoning regulations general rules to govern the organization and procedure of the Board of Adjustment not inconsistent with the provisions of sections 5–413 to 5–428, and the Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in section 5–415. The Board of Adjustment shall choose its chairman and its other officers. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

The regulations adopted by the Zoning Commission may provide that the Board of Adjustment may, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. The commission may also authorize the Board of Adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

The Board of Adjustment shall not have the power to amend any regulation or map.

Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the inspector of buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or part upon any zoning regulation or map adopted under sections 5–413 to 5–428. The Commissioners of the District of Columbia may require and fix the fee to be charged for an appeal, which fee shall be paid, as directed by said commissioners, with the filing of the appeal: *Provided,* That no citizens' association, or association created for civic purposes and not for profit shall be required to pay said fee. There shall be a public hearing on appeal.

Upon appeals the Board of Adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the inspector of buildings or the Commissioners of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to sections 5–413 to 5–428.

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such board is required or authorized by the regulations to pass.

(3) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 5–413 to 5–428 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

(4) In exercising the above-mentioned powers the Board of Adjustment may, in conformity with the provisions of sections 5–413 to 5–428 reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.

The concurring vote of not less than a full majority of the members of the board shall be necessary for any decision or order.

Nothing herein contained shall prohibit the Zoning Commission from providing by regulation for appeals to it from any action of the Board of Zoning Adjustment. (June 20, 1938, 52 Stat. 799, ch. 534, § 8.)

§ 5–421 [25: 539]. Maps and regulations of Zoning Commission—To be filed—Published.

A copy of any map established by said Zoning Commission and of its zoning regulations shall be filed in the office of the engineer commissioner of the District of Columbia. A copy of any regulation or any amendment adopted after June 20, 1938, shall be published once in one or more daily newspapers printed in the District of Columbia for the information of all concerned. (June 20, 1938, 52 Stat. 800, ch. 534, § 9.)

CROSS REFERENCE

See Compiler's Note to § 5–415.

§ 5–422 [25: 540]. Building permits—Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.

It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the inspector of buildings, and said inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of sections 5–413 to 5–428 and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District and which court is hereby authorized to hear and determine such cases be punished by a fine of not more than $100 per day for each and every day such violation shall continue. The corporation counsel of the District of Columbia or any neighboring property-owner or occupant who would be specially damaged by any such violation may, in addition to

all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. (June 20, 1938, 52 Stat. 800, ch. 534, § 10.)

CROSS REFERENCES

Certain applications for building permits required to be submitted to Commissioners and Commission of Fine Arts in certain cases, §§ 5–410, 5–411.

Fees for permits, §§ 5–429, 5–430.

Powers of assistant inspector of buildings, § 1–728.

NOTES TO DECISIONS

BAR TO PROSECUTION

An acquittal on charge of using a single family dwelling without an occupancy permit between certain dates would not bar prosecution for use without a permit between subsequent dates, each information containing a continuando clause. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

An applicant who during a two year period failed to correct conditions which caused rejection of application for occupancy permit could not urge as bar to prosecution for operating without a permit that he was never given an opportunity to correct the conditions. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 a. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

DECISIONS UNDER FORMER LAW

To secure consent of owners for the building of a garage in a certain square, owners in another square separated by a street will not be considered although within the designated distance. *Hazard* v. *Blessing* (55 App. D. C. 114, 2 Fed. (2d) 916).

Commissioners having issued permit to erect garage without the necessary consent of owners may be compelled to revoke it. *Hazard* v. *Blessing* (55 App. D. C. 114, 2 Fed. (2d) 916).

When owner of garage in residential district made large expenditures to improve it after relying on the building inspector's permit, the District is estopped from revoking occupancy certificates. *District of Columbia* v. *Cahill* (60 App. D. C. 342, 54 Fed. (2d) 453).

When the corporation converted the land into a public golf course without first obtaining a certificate of occupancy, it violated the provisions of the Zoning Act. *Golf, Inc.* v. *District of Columbia* (62 App. D. C. 309, 67 Fed. (2d) 575).

INJUNCTION

A suit to enjoin zoning commission from carrying into effect a zoning order is not an appeal on the merits of the issues presented to the commission, and hence court should not substitute its judgment for that of the commission even for reasons which appear most persuasive. *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

INTERVENORS, RIGHTS OF

Adjoining property owners intervening subsequent to entry of final decree in suit to enjoin zoning commission from carrying into effect a zoning order were possessed of all rights of a party at that stage of the proceedings, including right to appeal where time for appeal had not expired. *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

The failure of zoning commission to take appeal from order enjoining commission from enforcing a zoning order constituted "inadequate representation" of interests of adjoining property owners who were not parties to the proceeding within Rule 24 (a), following section 723c of 28 U. S. C. providing for intervention in case of inadequate representation of an applicant's interests. D. C. Code 1940, § 5–422; *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

Adjoining property owners have such a vital interest in result of suit to vacate a zoning order that they should be granted permission to intervene as a matter of course unless compelling reasons against such intervention are shown. *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

An application by property owners to intervene in suit to enjoin zoning commission from carrying into effect a zoning order was timely even though final decree had been entered, where, because of failure of commission to appeal, intervention was necessary to protect property owners' right to appeal. *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

JURY TRIAL

Where accused was charged under three separate informations which were consolidated for trial, with using premises without a certificate of occupancy, operating the premises as a rooming house between certain dates without a license, and using the same premises as a rooming house without a license between certain other dates, jury trial was properly denied. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

NOTICE

An applicant for an occupancy permit under this chapter is entitled to notice of action thereon with reasons therefor, but having been given notice of rejection with reasons, applicant had duty to cease the use applied for. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

PERSONS BOUND BY DECREE

Where adjoining property owners had not been parties to suit to enjoin zoning commission from carrying into effect a zoning order and zoning commission had failed to appeal from final decree enjoining enforcement of order, property owners were entitled as a matter of right to intervene in the proceeding, since they would otherwise be bound by the decree. *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. *Wolpe* v. *Poretsky,* 1944 (144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

SETTING ASIDE ORDERS

Where a lot constituted the corner of less restricted zone, lot was separated on three sides by public park and on all four sides by a park or street or both, from all present and probable future housing, and owner's proposed apartment building would accommodate many more people than single dwellings which might be built on the lot, and enforcement of zoning commission's order restricting lot to single dwellings would greatly impair value of lot and would not increase value of adjoining property, zoning order was properly set aside.—*Wolpe* v. *Poretsky* (App. D. C. 1946, 154 F. 2d 330).

§ 5–423 [25: 541]. Enforcement of regulations—Power to adopt municipal regulations.

The commissioners of the District of Columbia shall enforce the regulations adopted under the au-

thority hereof. Nothing herein contained shall be construed to limit the authority of the commissioners of the District of Columbia to make municipal regulations which are not inconsistent with the provisions of sections 5–413 to 5–428 and the regulations adopted hereunder. (June 20, 1938, 52 Stat. 801, ch. 534, § 11.)

CROSS REFERENCE

Other provisions authorizing Commissioners to make building regulations not inconsistent with this chapter, § 1–228.

NOTES TO DECISIONS

CONFLICT OF POWERS

The commissioners may not adopt a regulation which attempts to regulate the use to which a building could be put, i. e., a drug store, since this is the chief jurisdiction conferred upon the Zoning Commission. *Schwartz* v. *Brownlow* (50 App. D. C. 279, 270 Fed. 1019, revd. on other grounds 261 U. S. 216, 67 L. Ed. 620, 43 Sup. Ct. 263).

§ 5–424 [25: 542]. Effect of regulations on future construction.

Wherever the regulations made under the authority of sections 5–413 to 5–428 require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or municipal regulations require a greater width or size of yards, courts, or other open spaces or require a lower height of buildings or smaller number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such other statute or municipal regulation shall govern. (June 20, 1938, 52 Stat. 801, ch. 534, § 12.)

§ 5–425 [25: 543]. Terms defined.

The word "amend," "amendment," "amendments," or "amended," when used in sections 5–413 to 5–428 in relation to the zoning regulations, shall be deemed to include any modification of the text or phraseology of the regulations or of any provision of the regulations or any regulations or any repeal or elimination of any regulation or regulations or part thereof or any addition to the regulations or any new regulation or any change of or in the wording or content of the regulations. The word "amend," "amendment," "amendments," or "amended," when used in said sections in relation to the zoning maps or any map, shall be deemed to include any change in the number, shape, boundary, or area of any district or districts, any repeal or abolition of any such map or any part thereof, any addition to any such map, any new map or maps, or any other change in the maps or any map. The words "administrative decision," "administrative officer," "administrative officer or body," when used in section 5–420 shall not be deemed to include the Zoning Commission. (June 20, 1938, 52 Stat. 801, ch. 534, § 13.)

§ 5–426 [25: 544]. Appropriations authorized for Zoning Commission—Authority to employ—Compensation of Board of Zoning Adjustment.

Appropriations are hereby authorized to carry out the provisions of sections 5–413 to 5–428 for the fiscal year ending June 30, 1938, and thereafter the commissioners of the District of Columbia are authorized and directed to include in their annual estimates such amounts as may be required for salaries and expenses incident to such purposes. The commissioners are authorized to employ such personal services as may be necessary to carry out the provisions of sections 5–413 to 5–428, and the salaries of such employees, other than members of the Board of Zoning Adjustment, are to be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. Code, title 5, section 673). The commissioners shall fix the compensation of the members of the Board of Zoning Adjustment, without reference to the provisions of the Classification Act (U. S. Code, title 5, section 673): *Provided, however,* That the compensation of any member shall not exceed $1,000 per annum: *And provided further,* That no compensation for service as a member of said board shall be provided for any member who holds a salaried public office or position in the District of Columbia or the federal government. (June 20, 1938, 52 Stat. 802, ch. 534, § 14.)

§ 5–427 [25: 545]. Laws repealed.

The act of March 1, 1920 (41 Stat. 500, ch. 92), excepting the provisions of section 5–412 creating the Zoning Commission, providing for its membership and service without additional compensation, are hereby repealed. All laws or parts of other laws in conflict with the provisions of sections 5–413 to 5–428 are hereby repealed. (June 20, 1938, 52 Stat. 802, ch. 534, § 15.)

COMPILER'S NOTE

Act of March 1, 1920 (41 Stat. 500) above referred to was D. C. Code, 1929 ed., title 25, §§ 521–530.

§ 5–428 [25: 546]. Federal public buildings excepted.

The provisions of sections 5–413 to 5–428 shall not apply to federal public buildings: *Provided, however,* That, in order to insure the orderly development of the national capital, the location, height, bulk, number of stories, and size of federal public buildings in the District of Columbia and the provision for open space in and around the same will be subject to the approval of the National Capital Park and Planning Commission. (June 20, 1938, 52 Stat. 802, ch. 534, § 16.)

COMPILER'S NOTE

Section 17 of the act of June 20, 1938 (52 Stat. 802, ch. 534, § 17), provided that if any provision of the act were declared invalid, such invalidity should not be deemed to impair the validity of the remainder or of any part of said act consisting of §§ 5–413 to 5–428.

§ 5–429 [10: 23]. Commissioners of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.

The commissioners of the District of Columbia are hereby authorized and directed, from time to time,

to prescribe a schedule of fees to be paid for permits, certificates, and transcripts of records issued by the inspector of buildings of the District of Columbia, for the erection, alteration, repair, or removal of buildings and their appurtenances, and for the location of certain establishments for which permits may be required under the building regulations of the District of Columbia, said fees to cover the cost and expense of the issuance of said permits and certificates and of the inspection of the work done under said permits; said schedule shall be printed and conspicuously displayed in the office of said inspector of buildings; said fees shall be paid to the collector of taxes of the District of Columbia and shall be deposited by him in the treasury of the United States to the credit of the revenues of the District of Columbia. (Mar. 3, 1909, 35 Stat. 689, ch. 250.)

CROSS REFERENCES

Disposition of fees, § 47–126.
Issuance of building permits and certificates of occupancy, § 5–422.

§ 5–430 [20: 923]. Building permits—May be canceled and tax refunded.

In any case where building permits have been issued and no work has been begun thereunder, the person who has paid the fee for said permit may return said permit for cancelation, and upon the cancelation thereof there shall be refunded to him, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of said fee less the actual expense incident to the issuance of said permit, as determined by the inspector of buildings: *Provided,* That application for such refund shall be made within six months after the issuance of said permit. (Mar. 2, 1911, 36 Stat. 967, ch. 192.)

CROSS REFERENCE

General provisions for tax refunds, §§ 47–1017, 47–1018 and notes.

Chapter 5.—UNSAFE STRUCTURES

Sec.

5–501. Structure reported unsafe, to be examined by inspector of buildings—If unsafe, notice given to make same secure—If safety requires, inspector may make secure.
5–502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.
5–503. Inspector of buildings to make structure safe if responsible person does not—Cost and expense—How assessed—Neglect of lessee—Rights of lessor.
5–504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution in police court.
5–505. Notice—Contents—How served.

§ 5–501 [25: 471]. Structure reported unsafe, to be examined by inspector of buildings—If unsafe, notice given to make same secure—If safety requires, inspector may make secure.

If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the inspector of buildings shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the inspector of buildings may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 1; Apr. 5, 1935, 49 Stat. 105, ch. 41, § 1.)

AMENDMENT

The 1935 amendment added the provisions relative to excavations.

CROSS REFERENCES

Application of this chapter to alley dwellings, § 5–101.
Building regulations, §§ 1–226, 1–228, 5–413.
Repair or removal of insanitary buildings, §§ 5–601 to 5–615.

§ 5–502 [25: 472]. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

When the public safety does not, in the judgment of the inspector of buildings, demand immediate action, if the owner, agent, or other party interested in said unsafe structure or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by three disinterested persons, one to be appointed by the commissioners of the District of Columbia, one by the owner or other person interested, and the third to be chosen by these two, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuse or neglect to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the inspector of buildings and the person chosen by the commissioners, and in case of disagreement they shall choose a third person, and the determination of a majority of the three so chosen shall be final. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 2; Apr. 5, 1935, 49 Stat. 106, ch. 41, § 2.)

§ 5–503 [25: 473]. Inspector of buildings to make structure safe if responsible person does not—Cost and expense—How assessed—Neglect of lessee—Rights of lessor.

Whenever the report of any such survey shall declare the structure or excavation to be unsafe, or shall state that structural repairs should be made in order to place the said structure or excavation in a fit condition for further occupancy or use, and the owner or other interested person shall for ten days neglect or refuse to cause such structure or excavation to be taken down or otherwise to be made safe, the inspector of buildings shall proceed to make

such structure or excavation safe or remove the same. After the expiration of the ten days in which the owner or other interested person is given to make the structure or excavation safe, or to be taken down or removed, the owner or other interested person, having failed to comply with the provision of the report of the board of survey, shall not enter, or cause to be entered, the premises for the purpose of making the repairs ordered, or razing the building, as the case may be; or in any other way to interfere with the authorized agents of the District of Columbia in making the said structure or excavation safe, or in removing same, without first having obtained the written consent of the commissioners of the District of Columbia or their duly authorized representatives. The inspector of buildings shall report the cost and expense of said work to the commissioners of the said District, who shall assess the amount thereof upon the lot or ground whereon such structure or excavation stands, or stood, or was dug, and unless the said assessment is paid within ninety days from the service of notice thereof on the agent or owner of such property, the same shall bear interest at the rate of 10 per centum per annum from the date of such assessment until paid, and shall be collected as general taxes are collected in said District; but said assessment shall be without prejudice to the right which the owner may have to recover from any lessee or other person liable for repairs. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 3; Apr. 5, 1935, 49 Stat. 106, ch. 41, § 3.)

AMENDMENT

The 1935 amendment inserted in the first sentence the following: "or shall state that structural repairs should be made in order to place the said structure or excavation in a fit condition for occupancy or use." This amendment also made the safety provisions apply to excavations as well as buildings, gave the owner 10 days instead of 3 to make the premises safe, and inserted as new matter the entire second sentence.

§ 5–504 [25: 474]. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution in police court.

The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety, and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company, owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the commissioners of the District of Columbia, after five days' notice from them to do so, shall, on conviction in the police court be punished by a fine of not exceeding $50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia, on which there exists an open well, cistern, dangerous hole, or excavation, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within one week after the expiration of such notice, the said commissioners may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, parts thereof, or miscellaneous accumulation of material or debris adversely affecting the public safety, health, comfort, and welfare, and the cost and expense thereof shall be assessed by said commissioners as a tax against the property on which such nuisance exists, and the tax so assessed shall bear interest at the rate of 10 per centum per annum until paid, and be carried on the regular tax rolls of the District of Columbia and shall be collected in the manner provided for the collection of general taxes. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 4; Apr. 5, 1935, 49 Stat. 107, ch. 41, § 4.)

AMENDMENT

The 1935 amendment omitted the word "unenclosed" before "lot"; it added as nuisances, abandoned vehicles, debris, and materials left after repairs made; it made the provision apply to the District of Columbia instead of the city of Washington; made the maximum fine $50 instead of $20; and omitted special provisions as to notice to nonresidents of the District.

§ 5–505 [25: 475]. Notice—Contents—How served.

For the purposes of this chapter any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served (a) if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; or (b) if no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or (c) if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last known address of the person to be notified and not returned by the post-office authorities; or (d) if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on three consecutive days in a daily newspaper published in the District of Columbia; or (e) if by reason of an outstanding, unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided; or (f) in case any owner be a nonresident of the District of Columbia, then after public notice by said commissioners given at least twice a week for one week in one newspaper published in the District of Columbia, by advertisement, describing the prop-

erty, specifying the nuisance to be abated. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of this chapter be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the unlawful condition to be corrected, and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so. (Mar. 1, 1899, ch. 323, as added Apr. 5, 1935, 49 Stat. 107, ch. 41, § 5.)

Chapter 6.—INSANITARY BUILDINGS

Sec.

5–601. Board for condemnation of insanitary buildings—Creation—Membership—Jurisdiction—To examine sanitary conditions, to condemn buildings, peaceably to enter—Reports.
5–602. Majority to constitute a quorum—Membership—Duties—Authority.
5–603. Powers and duties—Inspection—Notice to owner before condemnation—Hearing—Issuance of order.
5–604. Occupation of building after notice of condemnation prohibited.
5–605. Fifteen days' notice to vacate condemned buildings.
5–606. Repairs and changes — Condemnation to be revoked upon making proper repairs and changes by owner—Reasonable diligence to extend period.
5–607. Demolition of buildings when repairs cannot be made—Penalty for refusing to demolish—Demolition under direction of board—Cost assessed as tax.
5–608. Property in litigation—Notice—Court order for condemnation.
5–609. Non compos mentis or infant owner—Procedure.
5–610. Notice—Service.
5–611. Interfering with any member of board prohibited.
5–612. Destroying affixed notice prohibited.
5–613. Penalty for violations.
5–614. Repealed.
5–615. Expenses—Appropriations for.

§ 5–601 [20: 401]. Board for condemnation of insanitary buildings—Creation—Membership—Jurisdiction—To examine sanitary conditions, to condemn buildings, peaceably to enter—Reports.

There is hereby created in and for the District of Columbia a board to be known as the Board for the Condemnation of Insanitary Buildings in the District of Columbia, to consist of the assistant to the engineer commissioner in charge of buildings, the health officer, and the inspector of buildings of said District, and to have jurisdiction and authority to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and removed, as may be required by the provisions of this chapter. Said board may authorize and direct the performance of any of the ministerial duties of said board by officers, agents, employees, contractors, and employees of contractors duly detailed or employed by the commissioners of said District for that purpose. Said board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. Said board shall report its operations to the commissioners of the District of Columbia from time to time as said commissioners direct. Said commissioners shall furnish said board such assistance as may be required for the proper conduct of its work, by details from various departments and offices of the government of said District. (May 1, 1906, 34 Stat. 157, ch. 2073, § 1.)

Cross References

Alteration or removal of insanitary buildings under District of Columbia Alley Dwelling Act, §§ 5–103 to 5–116.
Building regulations, §§ 1–226, 1–228, 5–413.
Repair or removal of unsafe structures or excavation, §§ 5–501 to 5–505.

§ 5–602 [20: 402]. Majority to constitute a quorum—Membership—Duties—Authority.

A majority of the Board for the Condemnation of Insanitary Buildings shall constitute a quorum, and a majority vote of the members present shall be necessary to condemn any building under this chapter. Whenever for any reason the health officer is unable to act as a member of said board one of the deputy health officers shall act as a member thereof in place of said health officer, and whenever for any reason the inspector of buildings is unable to act as a member of said board the principal assistant inspector of buildings shall act as a member thereof in place of said inspector of buildings; but no person shall act as a member of said board who has any property interests, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration. The deputy health officer and the principal assistant inspector of buildings, when acting as members of the Board for the Condemnation of Insanitary Buildings in the District of Columbia, shall have all authority and duties which are vested by this chapter in the health officer and the inspector of buildings, respectively, when acting in the same manner. (May 1, 1906, 34 Stat. 157, ch. 2073, § 2.)

Cross Reference

Powers and duties of assistant building inspector, § 1–728.

§ 5–603 [20: 403]. Powers and duties—Inspection—Notice to owner before condemnation—Hearing—Issuance of order.

Said board for the condemnation of insanitary buildings is authorized to investigate, through per-

sonal inquiry and inspection by the members thereof, and through inquiry and inspection by officers, agents, and employees, appointed or detailed for that purpose, into the sanitary condition of any building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. If any building or part of building be found, as a result of such investigation, to be in such insanitary condition as to endanger the health or the lives of the occupants thereof or of persons living in the vicinity, said board shall cause a notice to be served on each owner or part owner of such building requiring him to show cause, within a time to be fixed by the board, why such building or part of building should not be condemned. The time to be fixed by the board shall not be less than ten days, exclusive of Sundays and legal holidays, after the date of service of said notice, unless the board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the board may fix a lesser time. If the owner or part owner of such building, within the time to show cause fixed by said board, shall in writing request a hearing before said board, said board shall fix a time and place for such hearing and shall notify the person requesting the same. If, within the time to show cause fixed by the board, or at such hearing, if the same be requested, the owner or part owners shall fail to show cause sufficient in the opinion of a majority of said board to prevent the condemnation of such building or part of building, said board shall issue an order condemning such building or part of building, and shall cause a copy of such order to be served on each owner or part owner thereof, and a copy to be affixed to the building or part of building condemned. (May 1, 1906, 34 Stat. 157, ch. 2073, § 3; Dec. 17, 1942, 56 Stat. 1054, ch. 762, § 1.)

AMENDMENTS

The act of Dec. 17, 1942, cited to text, among other changes altered provisions relating to time of showing cause, and provided for a hearing before board.

The catchline has been reworded.

§ 5–604 [20: 404]. Occupation of building after notice of condemnation prohibited.

From and after fifteen days, exclusive of Sundays and legal holidays, after a copy of any order of condemnation has been affixed to any condemned building or part of building no person shall occupy such building or part of building. (May 1, 1906, 34 Stat. 158, ch. 2073, § 4; Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 2.)

AMENDMENTS

The act of Dec. 17, 1942, cited to text, substituted "fifteen" for "thirty".

§ 5–605 [20: 405]. Fifteen days' notice to vacate condemned buildings.

No person having authority to prevent shall permit any building or part of building condemned to be occupied, except as specially authorized by the board for the condemnation of insanitary buildings in the District of Columbia under authority of section 5–606, after fifteen days, exclusive of Sundays and legal holidays, from and after the date of service of a copy of the order of condemnation on the owner of such building; or, if there be several part owners of such building, from the latest date of service on any part owner; or, if a copy of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on any owner or the latest date of service on any part owner, after fifteen days, exclusive of Sundays and legal holidays, from the date on which said copy of such order of condemnation was so affixed. (May 1, 1906, 34 Stat. 158, ch. 2073, § 5; Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 3.)

AMENDMENTS

The act of Dec. 17, 1942, cited to text, substituted "fifteen days" for "thirty days" in both instances.

The catchline has been reworded.

NOTES TO DECISIONS

CONSTITUTIONALITY

Statute under which the board of condemnation proceeded against appellant's property is constitutional and was constitutionally applied. *Keyes v. Madsen* (C. A. D. C. 1949, 179 F. 2d 40, 86 U. S. App. D. C. 24, certiorari denied, 70 S. Ct. 628, 339 U. S. 928, 94 L. Ed. 546).

§ 5–606 [20: 406]. Repairs and changes—Condemnation to be revoked upon making proper repairs and changes by owner—Reasonable diligence to extend period.

If the owner or owners of any building or part of building condemned under the provisions of this chapter shall make such changes or repairs as will remedy in a manner satisfactory to said board the conditions which led to the condemnation of such building or part of building, said board shall cancel its order of condemnation and the building may be again occupied; and if such owner or owners can not make such changes or repairs within the period within which they may lawfully permit such building or part of building to be occupied under section 5–605, but proceed with such changes or repairs with reasonable diligence during that period, said board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein and within which the owner or owners thereof may permit them so to do. (May 1, 1906, 34 Stat. 158, ch. 2073, § 6.)

§ 5–607 [20: 407]. Demolition of buildings when repairs cannot be made—Penalty for refusing to demolish—Demolition under direction of Board—Cost assessed as tax.

The owner or owners of any building or buildings condemned under the provisions of this chapter, which cannot be so changed or repaired as to remedy the condition which led to the condemnation thereof, shall demolish and remove such building or part of building within the time to be specified by said board in the order of condemnation. And if any owner or part owner shall fail or refuse to demolish and remove said building or part of building within the time so specified he shall be deemed guilty of a misdemeanor and liable to the penalties provided by section 5–613, and such building or part of building shall be demolished and removed under the direction of the board for the condemnation of insanitary buildings in the District of Columbia, and the cost of such demolition and removal, including the cost of

making good damage to adjoining premises (except such as may have resulted from carelessness or willful recklessness in the demolition or removal of such building), and the cost of publication, if any, herein provided for, less the amount, if any, received from the sale of the old material, shall be assessed by the Commissioners of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected in the same manner as general taxes are collected in the District of Columbia. (May 1, 1906, 34 Stat. 158, ch. 2073, § 7; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 4.)

AMENDMENTS

The act of May 1, 1906, provided that the costs assessed thereunder should when collected be deposited in the Treasury to the credit of the United States and the District of Columbia in equal parts. The act of February 22, 1921 (41 Stat. 1144, ch. 70, § 7), provided that "on and after July 1, 1921, all fees, fines, and other miscellaneous items of revenue theretofore required by law to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia." For proportions in various appropriation acts for expenses of the District of Columbia, see acts of June 7, 1924, 43 Stat. 539, ch. 302; Mar. 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 3, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 659. The amendment of 1935 omitted the provision, therefore, and also inserted in the first sentence the following: "where the repairs and/or alterations necessary to remedy the conditions which led to the condemnation thereof cannot be made at a cost not greater than 50 per centum of the present reproduction cost of said building as may be agreed upon by a majority of said Board."

The act of Dec. 17, 1942, cited to text, omitted limitation of cost of repairs or alterations from first sentence.

§ 5–608 [20: 408]. Property in litigation—Notice—Court order for condemnation.

Whenever said board for the condemnation of insanitary buildings is in doubt as to the ownership of any building or part of a building, the condemnation of which is contemplated, because the title thereto is in litigation, said board may notify all parties to the suit and may report the circumstances to the corporation counsel of the District of Columbia, who may bring such circumstances to the attention of the court in which such litigation is pending for the purpose of securing such order of decree as will enable said board to continue such proceedings looking toward condemnation, and such court is hereby authorized to make such decrees and orders in such pending suit as may be necessary for that purpose. (May 1, 1906, 34 Stat. 158, ch. 2073, § 8; Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 5.)

AMENDMENTS

The act of Dec. 17, 1942, cited to text, substituted "said board for the condemnation of insanitary buildings is in doubt as to the ownership of", for "the title to".

§ 5–609 [20: 409]. Non compos mentis or infant owner—Procedure.

Whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, said Board for the Condemnation of Insanitary Buildings shall report that fact to the corporation counsel of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by this chapter. And any justice of the District Court of the United States for the District of Columbia holding the equity court is hereby authorized to appoint a guardian or guardians for that purpose. (May 1, 1906, 34 Stat. 159, ch. 2073, § 9.)

§ 5–610 [20: 410]. Notice—Service.

Any notice required by this chapter to be served shall be deemed to have been served if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; or if no such residence or place of business can be found in the District of Columbia by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last-known address of the person to be notified and not returned by the post-office authorities; or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on ten consecutive days in a daily newspaper published in the District of Columbia; or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice to a corporation shall, for the purposes of this chapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notice to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia. (May 1, 1906, 34 Stat. 159, ch. 2073, § 10.)

§ 5–611 [20: 411]. Interfering with any member of board prohibited.

No person shall interfere with any member of the Board for the Condemnation of Insanitary Buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any

lawful inspection or the performance of any work authorized by this chapter to be done by or by authority and direction of said board. (May 1, 1906, 34 Stat. 159, ch. 2073, § 11.)

§ 5–612 [20: 412]. Destroying affixed notice prohibited.

No person shall, without the consent of said Board for the Condemnation of Insanitary Buildings, deface, obliterate, remove, or conceal any copy of any order of condemnation which has been affixed to any building or part of building by order of said board; and the owner and the person having custody of any building or part of building to which a copy or copies of any such order has been affixed shall, if said copy of said order has been to his knowledge defaced, obliterated, or removed, forthwith report that fact in writing to said board, unless he has good reason to believe that such copy of such an order has been removed by authority of said board and if such copy of such order has been concealed shall forthwith expose the same to view. (May 1, 1906, 34 Stat. 159, ch. 2073, § 12.)

§ 5–613 [20: 413]. Penalty for violations.

Any person violating or aiding or abetting in violating any of the provisions of this chapter shall, upon conviction thereof in the police court of the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ninety days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense. (May 1, 1906, 34 Stat. 160, ch. 2073, § 13.)

§ 5–614 [20: 414]. Repealed. Dec. 17, 1942, 56 Stat. 1056, ch. 762, § 6.

Section, Act May 1, 1906, 34 Stat. 160, ch. 2073, § 14, as amended Apr. 5, 1935, 49 Stat. 109, ch. 42, related to proceedings on vacation or modification of condemnation order.

NOTES TO DECISIONS

SCOPE OF REVIEW

Having failed to present the plea of unconstitutionality of a statute on its face to the district court, the appellant cannot urge it here since the rule is if the question is not raised in the trial court, it will not be considered on appeal. *Keyes v. Madsen* (C. A. D. C. 1949, 179 F. 2d 40, 86 U. S. App. D. C. 24, certiorari denied, 70 S. Ct. 628, 339 U. S. 928, 94 L. Ed. 546).

§ 5–615 [20: 415]. Expenses—Appropriations for.

Except as herein otherwise authorized all expenses incident to the enforcement of this chapter shall be paid from appropriations made from time to time for that purpose in like manner as other appropriations for the expenses of the District of Columbia. (May 1, 1906, 34 Stat. 161, ch. 2073, § 15; Apr. 5, 1935, 49 Stat. 110, ch. 42.)

AMENDMENT

Section 15 of the act of 1906, cited to the text, provided that the expenses of the enforcement of this act should be paid from "appropriations made from time to time for that purpose, one-half from the revenues of the District of Columbia and one-half from any money in the treasury not otherwise appropriated."

Chapter 7.—HOUSING REDEVELOPMENT

Sec.
5–701. General purposes.
5–702. Definitions.
5–703. Establishment and powers of the Agency.
5–704. Power to acquire and assemble real property.
5–705. General and project area redevelopment plans.
5–706. Transfer, lease, or sale of real property in project area for public and private uses.
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5–709. Use-value appraisals.
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5–719. Separability of provisions.

§ 5–701. General purposes.

It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its en-

virons; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5–701 to 5–719, is hereby declared to be a public use. (Aug. 2, 1946, 60 Stat. 790, ch. 736, § 2.)

SHORT TITLE

Section 1 of act Aug. 2, 1946, cited to text, provided that this chapter may be cited as the "District of Columbia Redevelopment Act of 1945."

EFFECTIVE DATE

Section 22 of act Aug. 2, 1946, cited to text, provided: "This Act shall take effect ninety days after the date of its approval."

§ 5–702. Definitions.

The following terms, whenever used or referred to in sections 5–701 to 5–719, shall, for the purposes of sections 5–701 to 5–719 and unless a different intent clearly appears from the context, be construed as follows:

(a) The term "Agency" means the District of Columbia Redevelopment Land Agency established by section 5–703.

(b) "District Commissioners" means the Board of Commissioners of the District of Columbia.

(c) "Housing" includes housing, dwelling, habitation, and residence.

(d) "Housing project" means any low-rent housing (as defined in the United States Housing Act of 1937, U. S. C., title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

(e) "Land" includes bare or vacant land, or the land under buildings, structures, or other improvements; also water and land under water. When employed in connection with "use," as for instance, "use of land" or "land use," "land" also includes buildings, structures, and improvements existing or to be placed thereon.

(f) "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

(g) "Lessee" includes the successors or assigns and successors in title of any lessee.

(h) "Planning Commission" means the National Capital Park and Planning Commission.

(i) "Proceeds" means the money proceeds of sales or transfers by the Agency; and "net proceeds" means the gross proceeds after deducting commissions or other expenses of the sales or transfers.

(j) "Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation "project area" is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7–706 (a) shall have been or are to be transferred for public uses.

(k) "Public low-rent housing" means low-rent housing, constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water, and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does not exceed the maximum net family income falling within the lowest 20 per centum by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Commissioners. At the end of one year after the enactment of sections 5–701 to 5–719 this definition shall be reexamined by the Commissioners for the District of Columbia and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing the Commissioners shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

(*l*) "Purchaser" includes the successors or assigns and successors in title of any purchaser.

(m) "Real property" includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

(n) "Redevelopment" means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5–701 to 5–719, "redevelopment" also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

(*o*) "Redevelopment company" means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any State, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or

purchaser of a project area and to conform to the provisions of this Act and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

(p) "Rentals" means the rents specified in a lease to be paid by the lessee to the Agency; "net rentals" means gross rentals after deducting taxes payable by the Agency.

(q) "Revenues" means the revenues or income received by the Agency from real property while held by it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and "net revenues" means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

(r) "Substandard housing conditions" means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia. (Aug. 2, 1946, 60 Stat. 791, ch. 736, § 3.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–703. Establishment and powers of the Agency.

(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. Two members shall be appointed by the President and three members shall be appointed by the District Commissioners, subject to confirmation by the Senate. One of the Presidential appointees may be an official of the United States Government; one appointee of the District Commissioners may be an official of the District of Columbia Government. Each nonofficial appointee shall have been a resident of the District of Columbia for at least the five next preceding years, and shall have been engaged or employed during such time in private business or industry, or the private practice of a profession, in the District of Columbia. The terms of members shall be for five years, except that the first appointment of one of the Presidential appointees shall be for three years and the other for five years; one of the first appointments of the District Commissioners shall be for four years, one for two years, and one for one year: *Provided,* That in the event any member shall cease to hold the official position held by him at the time of his designation or appointment, such cessation shall be deemed to create a vacancy in his membership on the Agency, such vacancy, as well as all vacancies from other causes, to be filled by designation or appointment by the President or District Commissioners for the unexpired term. The members shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of $20 for each day of service at meetings or on the work of the Agency.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations for the exercise of its powers under sections 5–701 to 5–719 or governing the manner in which its business may be conducted and the powers granted to it by sections 5–701 to 5–719 may be exercised and enjoyed, including the selection of its chairman and other officers, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by sections 5–701 to 5–719, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under sections 5–701 to 5–719. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–704. Power to acquire and assemble real property.

(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5–701 to 5–719, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5–706 (i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16–619 to 16–644. The title to properties acquired under sections 5–701 to 5–719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–705. General and project area redevelopment plans.

(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia,

including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

(b) For the exercise of the powers granted to the Agency by sections 5–701 to 5–719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the Federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5–701 to 5–719 for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by the District Commissioners in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy. (Aug. 2, 1946, 60 Stat. 794, ch. 736, § 6.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–706. Transfer, lease, or sale of real property in project area for public and private uses.

(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Justice of the District Court of the United States for the District of Columbia.

(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. In the instrument, or instruments, of lease or sale, the

Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of any other obligations of the lessee or purchaser and the lease or sale and of conformance to the plan over also assurance of the financial and legal ability of the lessee or puchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reasonably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee or mortgagee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. Any such sale or lease of a part or parts of a project area shall be fully subject to the provisions of subsections (c), (d), and (e) of this section.

(g) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any responsible private sources (eligible as purchasers or lessees under sections 5–701 to 5–719) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private redevelopment company, individual, or partnership shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: *Provided,* That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

(i) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may arrange with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes. (Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–707. Housing for displaced families.

(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5–705 (b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

(b) Families displaced by slum clearance or redevelopment under sections 5–701 to 5–719 shall be given preference as tenants to fill vacancies occurring in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies until appropriate housing is available to such families. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 8.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–708. Acquisition of property from prospective lessee or purchaser.

As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 9.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–709. Use-value appraisals.

After the Agency shall have assembled and acquired the real property [1] of a project area, it shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon each piece or tract of land within the area which, in accordance with the plan, is to be used for private uses or for low-rent housing, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose; but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

The aggregate use value placed, for purposes of lease or sale, upon all land, within a particular project area, leased or sold by the Agency pursuant to sections 5–701 to 5–719 shall be not less than one-third of the aggregate cost to the Agency of acquiring all such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof). (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–710. Protection of redevelopment plan.

(a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficiaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of section 5–711; and no action of stockholders, officers, directors, bondholders, creditors, partners or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation of any redevelopment company, partnership, or individual in any litigation or proceeding in any Federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

(b) Redevelopment corporations may be organized under the provisions of chapter 2 of title 29; and said corporations shall have the power to be redevelopment companies under sections 5–701 to 5–719 and to acquire and hold real property for the purposes set forth in sections 5–701 to 5–719 and to exercise all other powers granted to redevelopment companies in sections 5–701 to 5–719 subject to the provisions, limitations, and obligations set forth in sections 5–701 to 5–719.

(c) A redevelopment company, individual, or partnership to which any project area or part thereof is leased or sold under sections 5–701 to 5–719 shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, or partnership incurred for or in relation to any property or enterprise outside of said area. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 11.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–711. Modification of redevelopment plans.

An approved project area redevelopment plan may be modified at any time or times: *Provided,* That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further,* That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area

[1] So in original.

boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–712. Limitation upon tax exemption.

Nothing contained in sections 5–701 to 5–719 shall be construed to authorize or require the exemption of any real property from taxation. No real property acquired by the Agency under sections 5–701 to 5–719 shall be exempt from taxation by reason of such acquisition or by reason of the holding thereof by the Agency; and, in the case of any piece of real property, which, under the project area redevelopment plan, is designated to be used for Federal or District or other tax-exempt uses, the exemption of such real property from taxation granted by or in sections 47–801a to 47–801b, or other statute, shall not commence until title thereto shall have been transferred from the Agency to the United States or the District of Columbia or to a Federal or District public agency as provided in section 5–706 or sold or leased to a public redevelopment company or other public corporation or tax-exempt agency and may thereby become exempt from taxation by reason of the provisions of statutes other than sections 5–701 to 5–719; the intention being that ownership or operation by the Agency in the exercise of its power under sections 5–701 to 5–719 shall not, in and of itself, produce tax exemption. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–713. Administrative expenditure and employment.

The Agency is hereby authorized and empowered—

(a) to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than $100;

(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to the Classification Act of 1923, and to section 3709 of Revised Statutes, as amended: *Provided,* That this exemption shall not apply to persons employed by the Agency on a permanent basis;

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5–701 to 5–719 and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and the Classification Act of 1923, as amended; and

(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of sections 5–701 to 5–719. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–714. Annual report.

On or before the last day of September of each year the Agency shall make an annual report to Congress of its operations and expenditures for the immediately preceding fiscal year, said report to include a financial balance sheet of its entire operations hereunder, and a recital in such particularity as is feasible of what the Agency proposes to do during the next succeeding fiscal year. The Agency shall make such other and further reports, in such form and at such times as the Congress by concurrent resolution shall require. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 15.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–715. Appropriations authorized.

(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in sections 5–701 to 5–719, and other administrative expenses in connection therewith. The Commission is also authorized to receive any grants that the Congress may appropriate for said purposes to the various States and municipalities and the District of Columbia.

(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by sections 5–701 to 5–719. The Agency shall from time to time submit to the District Commissioners estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Commissioners shall be available from the said special trust fund for such expenses.

(c) As of the last day of the tenth fiscal year beginning after approval of sections 5–701 to 5–719, or as of such later date as may be fixed by the Congress,

there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting (a) such amount as may be necessary for the completion of any approved project the acquisition of which has been begun and (b) such amount for operating expenses of the Agency for one year as may be approved by the District Commissioners. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to paragraph (b) of this section, then an amount equal to 50 per centum of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of ten years. The District Commissioners shall include in their annual estimates of appropriations items for the payment of such installments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to (a) the fund transferred and credited to miscellaneous receipts of the United States, (b) the cost to the Agency of the real property owned by it on said date, and (c) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 16.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–716. Acquisition under District of Columbia Alley Dwelling Act.

From and after the termination of the period of one year, beginning with the date of the approval of sections 5–701 to 5–719, all authority granted by sections 5–103 to 5–116, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by sections 5–701 to 5–719. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Commissioners: *Provided, however,* That failure of the Planning Commission or the District Commissioners to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in sections 5–103 to 5–116 or in sections 5–701 to 5–719 shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of sections 5–701 to 5–719. Any real property acquired by the Agency under the authority of sections 5–103 to 5–116 may be transferred or may be sold or leased by the Agency as provided in sections 5–701 to 5–719 for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of sections 5–701 to 5–719. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to annual audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–717. Encouragement and aid to private lending institutions.

(a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwithstanding any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: *Provided,* That no such loan without security shall be made in a sum in excess of $2,000.

(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in sections 5–701 to 5–719. Any life-insurance company organized under the laws of the District or formed or organized under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: *Provided,* That no such loan or advance shall be made in a sum in excess of $2,000: *And provided further,* That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 19.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–717a. Acceptance of financial assistance authorized.

(a) As an alternative method of financing its authorized operations and functions under the provisions of this chapter (in addition to that provided in section 5–715), the Agency is hereby authorized and empowered to accept financial assistance from the Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator), in the form of advances of funds, loans,

and capital grants pursuant to title I of the Housing Act of 1949, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under this chapter for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Administrator pursuant to title I of the Housing Act of 1949, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

(b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from the Administrator advances of funds for surveys and plans in preparation of a project or projects authorized by this chapter which may be assisted under title I of the Housing Act of 1949, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under this chapter with respect to the project or projects to be assisted under title I of the Housing Act of 1949.

(c) The District Commissioners are authorized to include in their annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

(d) Notwithstanding the limitation contained in the last sentence of section 110 (d) or in any other provision of title I of the Housing Act of 1949, the Administrator is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said section 110 (d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under title I of the Housing Act of 1949. In the event such local grants-in-aid as are so allowed by the Administrator are not sufficient to meet the requirements for local grants-in-aid pursuant to title I of the Housing Act of 1949, the District Commissioners are hereby authorized to enter into agreements with the Agency, upon which agreements the Administrator may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Commissioners shall include items for such cash payments in their annual estimates of appropriations, and there are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Administrator pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

(e) All receipts of the Agency in connection with any project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, whether in the form of advances of funds, loans, or capital grants made by the Administrator to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of this chapter with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Administrator or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under title I of the Housing Act of 1949—

(1) sections 5–702 (f), 5–702 (k), and 5–706 (g), and the last sentence of section 5–705 (b) (2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(2) the site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to section 5–705 (b) (2) shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(3) notwithstanding any other provisions of this chapter, the Agency, pursuant to section 5–706 (a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capital Housing Authority those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of section 107 of the Housing Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, the Agency is also authorized to borrow money from the Administrator or from private sources as contemplated by title I of the Housing Act of 1949, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans, and the interest thereon, the property, income, revenues, and other assets acquired in connection with

the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

(h) Nothing contained in this section or in any other section of this chapter shall relieve the Administrator of his responsibilities and duties under section 105 (c) or any other section of the Housing Act of 1949. The Administrator shall not enter into any contract of financial assistance under title I of this chapter with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress. (July 15, 1949, 63 Stat. 441, ch. 338, § 609.)

COMPILER'S NOTE

Section 609 of act July 15, 1949 (the "Housing Act of 1949"), cited to text, stated the purpose of the section hereby added to be "To make available to the District of Columbia, and to authorize the appropriate agencies operating therein to accept, the benefits provided by titles I and III" of said act.

Section 608 of said act provided: "Notwithstanding any other provisions of law, the National Capital Housing Authority is hereby authorized to acquire sites within the District of Columbia for low-rent public housing projects assisted under the provisions of the United States Housing Act of 1937, as amended."

§ 5–718. Effect upon existing statutes.

(a) In the making and approval of project area redevelopment plans, the Planning Commission and the District Commissioners shall not be limited or bound by the provisions of sections 7–108, 7–117, 7–122, and 7–301 relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Commissioners in accordance with the provisions of section 5–711 or unless the modification or departure be approved by Act of Congress.

(b) Any power granted the District Commissioners or any District or Federal agency by the District of Columbia Code or by any statute, may, in addition to the purposes now specified, be exercised in furtherance of the protection or carrying out of any redevelopment plan or modification made and approved under sections 5–701 to 5–719. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 20.)

EFFECTIVE DATE

See note under § 5–701.

§ 5–719. Separability of provisions.

If any provisions of sections 5–701 to 5–719 or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of sections 5–701 to 5–719 and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 21.)

EFFECTIVE DATE

See note under § 5–701.

Chapter 8.—PRESERVATION OF HISTORIC PLACES AND AREAS IN THE GEORGETOWN AREA

Sec.

5–801. Old Georgetown district created and defined.
5–802. Restrictions imposed on alteration of buildings.
5–803. Review board established.
5–804. Survey of district authorized.
5–805. Construction with other laws.

§ 5–801. Old Georgetown district created and defined.

There is hereby created in the District of Columbia a district known as "Old Georgetown" which is bounded on the east by Rock Creek and Potomac Parkway from the Potomac River to the north boundary of Dumbarton Oaks Park, on the north by the north boundary of Dumbarton Oaks Park, Whitehaven Street and Whitehaven Parkway to Thirty-fifth Street, south along the middle of Thirty-fifth Street to Reservoir Road, west along the middle of Reservoir Road to Archbold Parkway, on the west by Archbold Parkway from Reservoir Road to the Potomac River, on the south by the Potomac River to the Rock Creek Parkway. (Sept. 22, 1950, 64 Stat. 903, ch. 984, § 1.)

§ 5–802. Restrictions imposed on alteration of buildings.

In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years, the Commissioners of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown district described in section 5–801 shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Commissioners of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown district. The said Commissioners shall take such actions as in their judgment are right and proper in the circumstances: *Provided,* That, if the said Commission of Fine Arts fails to submit a report on such plans within forty-five days, its approval thereof shall be assumed and a permit may be issued. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 2.)

§ 5–803. Review board established.

In carrying out the purpose of this chapter, the Commission of Fine Arts is hereby authorized to appoint a committee of three architects, who shall serve as a board of review without expense to the United States and who shall advise the Commission

of Fine Arts, in writing, regarding designs and plans referred to it. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 3.)

§ 5–804. Survey of district authorized.

Said Commissioners of the District of Columbia, with the aid of the National Park Service and of the National Park and Planning Commission, shall make a survey of the "Old Georgetown" area for the use of the Commission of Fine Arts and of the building permit office of the District of Columbia, such survey to be made at a cost not exceeding $8,000, which amount is hereby authorized. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 4.)

§ 5–805. Construction with other laws.

Nothing contained in this chapter shall be construed as superseding or affecting in any manner any Act of Congress heretofore enacted relating to the alteration, repair, or demolition of insanitary or unsafe dwellings or other structures. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 5.)

TITLE 6.—HEALTH AND SAFETY

Chap.		Sec.
1.	Health Department—Organization	6–101
2.	Blindness in infants—Prevention	6–201
3.	Vital statistics	6–301
4.	Drainage of lots	6–401
5.	Garbage	6–501
6.	Manufacture, renovation, and sale of mattresses	6–601
7.	Privies	6–701
8.	Smoke prevention	6–801
9.	Weeds and plant diseases	6–901
10.	Black-Outs in War Time	6–1001
11.	Federal Government Restaurants	6–1101
12.	Office of Civil Defense	6–1201

Chapter 1.—HEALTH DEPARTMENT—ORGANIZATION

Sec.

6–101. Director of public health—Appointment of duties.
6–102. Director of public health to enforce vital statistics regulations.
6–103. Commissioners to prescribe fees for copies from health records.
6–104. Sanitary inspectors, appointment, qualifications—Removal of subordinates.
6–105. Reports by sanitary inspectors.
6–106. Report by director of public health.
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6–108. Chief clerk and chief inspector of health department not to act as deputy.
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6–111. Certain ordinances of Board of Health legalized.
6–112. Certain ordinances, rules, and regulations of Board of Health legalized and made valid.
6–113. Certain health ordinances to have force and effect of Acts of Congress—Exception—Industries established August 7, 1894.
6–114. Commissioners authorized to make health regulations and alter, amend, or repeal certain legalized ordinances.
6–115. Director of public health to provide containers for reception, burial, and identification of ashes of certain cremated indigent persons.
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6–117. Tuberculosis Sanatoria under direction of health department.
6–118. Commissioners to promulgate regulations to prevent spread of diseases.
6–119. "Communicable disease" defined.
6–119a. Removal of persons believed to be carriers.
6–119b. Authority for detention—Expiration of order—Hearing—Minors.
6–119c. Examination and diagnosis—Discharge or detention for quarantine—Application for discharge—Hearing.
6–119d. Unlawful leave.
6–119e. Warrant for arrest—Affidavit—Service and execution of warrant—Records.
6–119f. Access to buildings by director of public health.
6–119g. Interference unlawful.
6–119h. Penalties—Prosecutions—Imposition of conditions by Court.
6–119i. Persons relying on spiritual cures of disease.
6–119j. "Director of Public Health" defined.
6–119k. Construction of provisions.

§ 6–101 [20:981]. Director of public health—Appointment of duties.

The Commissioners of the District of Columbia shall appoint a physician as director of public health, whose duty it shall be, under the direction of the said commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said commissioners. (June 11, 1878, 20 Stat. 107, ch. 180, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

COMPILER'S NOTE

Act of Aug. 1, 1950 (64 Stat. 393, ch. 513, § 1), provided: "That the Health Officer of the District of Columbia shall be known as the Director of Public Health and the Assistant Health Officer of the District of Columbia shall be known as the Assistant Director of Public Health." Sec. 2 of said act provided: "This Act shall take effect thirty days after its enactment."

CROSS REFERENCES

Alteration or removal of buildings under District of Columbia Alley Dwelling Act, §§ 5–103 to 5–116.

Certification of necessity for connection of vacant lots to public sewers, § 6–401.

Certifying necessity for opening, extension, widening, or straightening of alley or minor street, § 7–301.

Criminal penalty for impersonating inspector of health department, § 22–1305.

Designation of hospital for detention of insane persons, § 21–329.

Designation of medical inspector to certify to fitness of minor for work permit, §§ 36–210, 36–211.

Duties as to interment or disinterment of dead bodies, §§ 27–116 to 27–125.

Duties concerning persons found guilty under laws against prostitution, § 22–2703.

Duties of health officer in the prevention of blindness of new-born infants, §§ 6–201 to 6–204.

Duty to adopt and enforce rules and regulations to prevent adulteration of food and drugs, investigation of violations, §§ 33–104, 33–105.

Enforcement of laws and regulations governing manufacture, renovation, and sale of mattresses, §§ 6–601 to 6–608.

Enforcement of smoke-prevention laws and regulations, § 6–804.

Examination of food and drugs, §§ 33–106, 33–108.

Examination of teacher to determine retirement, § 31–704.

Ex officio member of Anatomical Board, § 2–201.

Ex officio secretary and treasurer of Commission on Licensure to Practice the Healing Art, § 2–103.

General limitation on power of Commissioner, § 1–801.

Inspection and enforcement of rules and regulations for private hospital and asylums, § 32–302.

Issuance of permits to maintain privies, § 6–702.

Jurisdiction and control over production and sale of milk, cream, and ice cream, permits, rules and regulations, § 33–301 et seq.

Licensing of business of operating abattoirs and slaughterhouses to be approved by health officer, § 47–2316.

Member of Board for Condemnation of Insanitary Buildings, § 5–601.

Member of Board of Podiatry Examiners, § 2–701.

Notice for removal of weeds, § 6–901.

Register of dental hygienists, § 2–324.

Register of dentists, § 2–309.

Register of podiatrists, § 2–706.

Rules and regulations by Commissioners, §§ 6–114, 6–118.

Rules and regulations generally, § 1–226.
Sanitary regulations in beauty shops and manicuring establishments, § 2–1321.
Sanitary regulations under Barber Law, § 2–1103.
Sending contagious disease cases to Providence Hospital and Garfield Memorial Hospital, § 32–316.

§ 6–102 [20: 982]. Director of public health to enforce vital statistics regulations.

It shall be the duty of the director of public health of the District of Columbia to enforce regulations to secure a full and correct record of vital statistics, including the registration of deaths and the interment of the dead in said District. (June 23, 1874, 18 Stat. 283, ch. 490; June 11, 1878, 20 Stat. 107, ch. 180, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

COMPILER'S NOTE

See note following § 6–101.

AMENDMENT

This section is from the Act of June 23, 1874, 18 Stat. 283, ch. 490. As enacted it read: "It shall be the duty of the Board of Health of the District of Columbia * * *." The act of June 11, 1878, 20 Stat. 107, provided that in lieu of the Board of Health the Commissioners of the District should appoint a physician as health officer, and abolished the Board of Health, see § 6–101.

CROSS REFERENCES

Other provisions requiring health officer to keep record of vital statistics, § 6–112.
Provisions for promulgation of rules and regulations by Health Department, § 6–101 and notes.
Record of marriages, §§ 30–114, 30–115.
Report of births, §§ 6–301 to 6–304.
Report of deaths, § 27–120.

NOTES TO DECISIONS

DEATH CERTIFICATE AS EVIDENCE

Death certificate is public record and admissible in evidence. *Labofish* v. *Berman* (60 App. D. C. 397, 55 Fed. (2d) 1022).

Effect of this section is to make death certificates, public records, and not mere police regulations, and, being such public records, we think they may be offered in evidence for the purpose of proving, prima facie, the time, place, and cause of death. *Labofish* v. *Berman* (60 App. D. C. 397, 55 Fed. (2d) 1022).

§ 6–103 [10: 24]. Commissioners to prescribe fees for copies from health records.

The commissioners of the District of Columbia are authorized and directed to collect a fee of fifty cents, to be paid to the collector of taxes, and by him to be deposited in the United States Treasury to the credit of the District of Columbia for each transcript from the records of births, deaths, and marriages in the health department of said District: *Provided,* That no one transcript shall be made so as to apply to more than one birth, death, or marriage: *And provided further,* That no fee shall be charged for transcripts furnished the various departments of the United States government for official purposes. (Mar. 3, 1897, 29 Stat. 695, ch. 393.)

COMPILER'S NOTE

This section is probably obsolete so far as marriage records are concerned, since such records are now kept in the clerk's office, §§ 30–114, 30–115.

CROSS REFERENCE

Disposition of fees, § 47–126.

§ 6–104 [20: 983]. Sanitary inspectors, appointment, qualifications—Removal of subordinates.

There may be appointed by the commissioners of the District of Columbia, on the recommendation of the director of public health, a reasonable number of sanitary inspectors for said District, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

COMPILER'S NOTE

See note following § 6–101.

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

§ 6–105 [20: 984]. Reports by sanitary inspectors.

Said inspectors shall be respectively required to make, at least once in two weeks, a report to said health officer, in writing, of their inspections, which shall be preserved on file. (June 11, 1878, 20 Stat. 107, ch. 180, § 9.)

§ 6–106 [20: 985]. Report by director of public health.

Said director of public health shall report in writing annually to said commissioners of the District of Columbia, and so much oftener as they shall require. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

COMPILER'S NOTE

See note following § 6–101.

Act of Jan. 12, 1895, 28 Stat. 614, ch. 23, § 73, provided for the printing of 1,500 copies of the report of the health officer of the District; 100 for the Senate, 360 for the House, and 1,040 for distribution by the health officer.

U. S. C., title 44, § 131 provides for the printing of the "usual number" of documents and fixes the "usual number" of documents at 1,682 and provides that when a special number of a document or report is ordered printed, the usual number shall also be printed, unless already ordered. See also U. S. C., title 44, § 85, as amended, and repealing U. S. C., title 44, § 131 to the extent of any inconsistency only.

§ 6–107 [20: 986]. Clerks to director of public health—Appointment.

The commissioners may appoint, on the like recommendation of the director of public health, a reasonable number of clerks, but no greater number shall be appointed, and no more persons shall be employed under said director of public health, than the public interests demand and the appropriation shall justify. (June 11, 1878, 20 Stat. 107, ch. 180, § 10; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

COMPILER'S NOTE

See note following § 6–101.

CROSS REFERENCE

General limitation on power of Commissioners, § 1–801.

§ 6–108 [20: 987]. Chief clerk and chief inspector of health department not to act as deputy.

After April 2, 1938, neither the chief clerk nor the chief inspector of the Health Department of the District of Columbia shall act as a deputy to the director of public health of said District. (July 14, 1892, 27

Stat. 162, ch. 171, § 1; April 2, 1938, 52 Stat. 153, ch. 60; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

Act of 1892 provided: "The chief clerk shall hereafter act as a deputy to the health officer."

COMPILER'S NOTE

See note following § 6–101.

§ 6–109 [20: 988]. Assistant director of public health to be physician and discharge duties of health officer during his absence or disability.

The assistant director of public health shall be a physician, and during the absence of or disability of the director of public health shall act as director of public health and discharge the duties incident to that position. (Mar. 4, 1913, 37 Stat. 961, ch. 150; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

COMPILER'S NOTE

See note under § 6–101 respecting change of designation of Assistant Health Officer to Assistant Director of Public Health.

§ 6–110 [20: 989]. Duties and authority of inspectors of fish and marine products vested in sanitary and food inspectors.

The duties and the authority conferred by law upon the inspector of fish and other marine products on May 26, 1908, are hereby vested in each of the sanitary and food inspectors. (May 26, 1908, 35 Stat. 299, ch. 198.)

COMPILER'S NOTE

The duties and authority of the inspector of fish and other marine products are set out in the ordinance of September 12, 1871 (Health Reg., p. 27).

§ 6–111 [20: 990]. Certain ordinances of Board of Health legalized.

The ordinances of the late Board of Health of the District of Columbia, as revised, amended, and adopted, November 19, 1875, entitled "An ordinance to revise, consolidate, and amend the ordinances of the board of health, to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof," as printed in the report of said late Board of Health made to the first session of the Forty-Fourth Congress, being Executive Document Number 1, part 8, are hereby legalized; and the respective penalties therein prescribed for violations thereof may be imposed and enforced for the respective offenses therein described, excepting the sections of said ordinance following, namely: Sections 7, 9, and 14, which said sections are not hereby legalized. (Apr. 24, 1880, 21 Stat. 304, Res. No. 25, § 1.)

CROSS REFERENCE

Provisions for promulgation of rules and regulations by Health Department, § 6–101 and notes.

§ 6–112 [20: 991]. Certain ordinances, rules, and regulations of Board of Health legalized and made valid.

The ordinances, rules, and regulations of said late Board of Health contained in the report mentioned in section 6–111 and printed in the said executive document therein mentioned, namely:

First. "An ordinance to amend an ordinance to prevent domestic animals from running at large within the cities of Washington and Georgetown, passed by the board of health May nineteenth, eighteen hundred and seventy-one";

Second. "An ordinance to prevent the sale of unwholesome food, in the cities of Washington and Georgetown";

Third. "An ordinance to provide for the inspection of streets, food, live stock, fish and other marine products, in the cities of Washington and Georgetown, and to define the duties of inspectors and other officers of the board of health";

Fourth. "An ordinance to amend section ten of the code so as to read";

Fifth. "An ordinance to amend an ordinance passed May thirteenth, eighteen hundred and seventy-three, to read as follows";

Sixth. "An ordinance to prevent committing or creating nuisances in or about public urinal or urinals located within the cities of Washington and Georgetown";

Seventh. "Rules and regulations in regard to smallpox";

Eighth. "Regulations to secure a full and correct record of vital statistics, including the registration of marriages, births, and deaths, the interment, disinterment, and removal of the dead in the District of Columbia," are hereby legalized and made valid; and the penalties therein provided respectively for violations thereof, may be imposed and enforced for the violations of the same respectively, as provided by section 27 of the ordinances passed November 19, 1875. (Apr. 24, 1880, 21 Stat. 305, Res. No. 25, § 2.)

CROSS REFERENCES

Other provisions requiring health officer to keep record of vital statistics, § 6–102.

Provisions for promulgation of rules and regulations by Health Department, § 6–101 and notes.

NOTES TO DECISION

EFFECT OF RECORDS

Effect of this act is to make death certificates public records, and not mere police regulations, and, being such public records, they may be offered in evidence for the purpose of proving, prima facie, the time, place, and cause of death. *Labofish* v. *Berman* (60 App. D. C. 397, 55 Fed. (2d) 1022).

§ 6–113 [20: 992]. Certain health ordinances to have force and effect of Acts of Congress—Exception—Industries established August 7, 1894.

Except as provided in section 6–112, the ordinances of the late Board of Health of the District of Columbia, as legalized by sections 6–111, 6–112, are hereby declared to have the same force and effect within the District of Columbia as if enacted by Congress in the first instance, and the powers and duties imposed upon the late Board of Health, in and by the said ordinances, are hereby conferred upon the director of public health of said District, and all prosecutions for violations of said ordinances and regulations shall be in the police court of the District of Columbia in the name of the said District: *Provided,* That said regulations shall not be enforced against industries established on Aug. 7, 1894, which are not a nuisance in fact. (Aug. 7, 1894, 28 Stat. 257, ch. 232; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note following § 6–101.

§ 6–114 [20: 993]. Commissioners authorized to make health regulations and alter, amend, or repeal certain legalized ordinances.

The Commissioners of the District of Columbia are hereby authorized and empowered, in making regulations under the authority conferred by Congress, to alter, amend, or repeal any of the ordinances of the late Board of Health of said District which were legalized by sections 6–111, 6–112, whenever in their judgment the public interest requires it. (Feb. 28, 1889, 30 Stat. 1390, Res. No. 21.)

CROSS REFERENCE

Provisions for promulgation of rules and regulations by Health Department, § 6–101 and notes.

NOTES TO DECISIONS

CONSTITUTIONALITY

Generally, health laws and ordinances are liberally construed, but when they appear to violate a constitutional right, courts must carefully weigh value of the end accomplished. When abatement of a nuisance is provided for only after notice and hearing, health officers cannot inspect, when challenged, without the ordinary preliminary steps for search in the absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d, 13, 85 U. S. App. D. C. 242, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

POLICE POWER

It is within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse and filth, and in so doing they may provide for the inspection of premises as a health measure but must not unduly infringe upon individual rights in absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

SEARCH AND SEIZURE

When abatement of a nuisance is provided for only after notice and hearing, health officers, when challenged, cannot inspect without the ordinary preliminary step for search in the absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

SUMMARY ACTION

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their power in taking any summary action. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

§ 6–115 [20: 994]. Director of public health to provide containers for reception, burial, and identification of ashes of certain cremated indigent persons.

The director of public health is authorized to provide and furnish proper containers for the reception, burial, and identification of the ashes of all human bodies of indigent persons that are cremated at the public crematorium, which ashes remain unclaimed after twelve months from date of such cremation. (May 21, 1928, 45 Stat. 669, ch. 659; July 3, 1930, 46 Stat. 975, ch. 848; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note following § 6–101.

§ 6–116 [20: 996]. Dairy inspectors may act as inspectors of live stock.

Any inspector of dairies and dairy farms may act as inspector of livestock when directed by the director of public health. (Mar. 2, 1911, 36 Stat. 993, ch. 192; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note following § 6–101.

§ 6–117 [20: 997]. Tuberculosis Sanatoria under direction of Health Department.

The following hospital and sanatoria, on and after July 1, 1937, shall be under the direction and control of the health department of the District of Columbia and subject to the supervision of the Board of Commissioners: Tuberculosis Sanatoria. (June 29, 1937, 50 Stat. 376, ch. 403, § 1.)

COMPILER'S NOTE

The tuberculosis sanatoria was formerly under jurisdiction and supervision of the Board of Public Welfare, § 3–106.

CROSS REFERENCE

Commissioners may regulate admission of paying patients to tuberculosis hospital, § 32–310.

§ 6–118 [20: 998]. Commissioners to promulgate regulations to prevent spread of diseases.

The Commissioners of the District of Columbia are hereby authorized and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon probable cause, to be carriers of communicable disease. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 1; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 1.)

AMENDMENTS

The act of Aug. 8, 1946, cited to text, added the words "including the authority and power," etc.

CROSS REFERENCES

Authority to make regulations for protection of life, health, and property, § 1–226.

Commissioners may make rules and regulations to govern small-pox hospitals, § 32–306.

Providence and Garfield Hospitals to accept contagious disease cases sent by Commissioners, § 32–316.

Provisions for promulgation of rules and regulations by Health Department, § 6–101 and notes.

NOTES TO DECISIONS

BURDEN OF PROOF

Where a person is charged with being one suspected of being infected with a communicable disease and refusing to submit to an examination and accuracy of charged or reasonableness of suspicion is put in issue, except in the case of a common prostitute, the burden is upon health officer and not upon person suspected. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See also *District of Columbia* v. *Huffman* (D. C. Mun. App. 1945, 42 A. 2d 502).

CONSTITUTIONALITY

This section authorizing commissioners of District of Columbia to promulgate and enforce reasonable rules and regulations to prevent and control spread of communicable and preventable disease is not objectionable as con-

taining language too broad in its delegation of power to commissioners. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See also *District of Columbia* v. *Huffman* (D. C. Mun. App. 1945, 42 A. 2d 502).

Legislation designed to prevent the spread of communicable disease will be upheld so long as it is not oppressive, arbitrary, or unreasonable. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See also *District of Columbia* v. *Huffman* (D. C. Mun. App. 1945, 42 A. 2d 502).

EXAMINATION OF PERSONS

Where defendant's attorney offered to prove to health officer that his client was free from all infection with communicable disease and offered to submit client for additional examination by any doctor in city selected at random by health department, there was no basis for a reasonable suspicion that defendant was infected so as to sustain a charge that defendant, a person suspected of being infected with a communicable disease, refused to submit to an examination. *Huffman* v. *District of Columbia* (D. C. Munn. App. 1944, 39 A. 2d 558). See also *District of Columbia* v. *Huffman* (D. C. Mun. App. 1945, 42 A. 2d 502).

Evidence which disclosed that health department physician had no reasonable suspicion that defendant was infected with venereal disease was insufficient to sustain conviction of charge that defendant was a person suspected by health department of being infected and refused to submit to an examination. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See also *District of Columbia* v. *Huffman* (D. C. Mun App. 1945, 42 A. 2d 502).

POLICE POWER

This section authorizing commissioners of District of Columbia to promulgate and enforce reasonable rules and regulations to prevent and control spread of communicable and preventable diseases constitutes a legitimate exercise of the police power. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See also *District of Columbia* v. *Huffman* (D. C. Mun. App. 1945, 42 A. 2d 502).

§ 6–119. "Communicable disease" defined.

The words "communicable disease" when hereinafter used shall mean such communicable diseases as the Commissioners by regulation shall denominate as such. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2.)

AMENDMENTS

Sec. 2 of the act of Aug. 8, 1946, cited to text, struck out former § 6–119 and "in lieu thereof and by way of addition" substituted the language of the present section and sections 6–119a to 6–119k.

The catchline has been reworded.

§ 6–119a. Removal of persons believed to be carriers.

Whenever the director of public health has probable cause to believe that any person is affected with any communicable disease or is a carrier of communicable disease and that the continuance of such person in the place where he may be is likely to be dangerous to the lives or health of other persons, or that by reason of the noncooperation or carelessness of such person the public health is likely to be endangered, the director of public health may by written order direct the removal of any designated officer or employee of the Health Department or by any member of the Metropolitan Police force of such person to and the detention of such person in any place or institution in the District of Columbia designated by the director of public health, or any institution located without the District of Columbia which may be designated by the director of public health and which is under the supervision of the government of the District of Columbia or any agency thereof. Such officer, employee, or member so designated in such order shall take such person into his custody and shall remove such person to such place or institution as may be designated in such order. Such officer, employee, or member shall immediately make known to such person the contents of such order, and also shall deliver to such person a true copy of such order. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENTS

See notes under §§ 6–101 and 6–119.

§ 6–119b. Authority for detention—Expiration of order—Hearing—Minors.

A copy of the order provided for in section 6–119a hereof shall be delivered to the person in charge of such place or institution to which the person taken into custody may be removed and shall constitute the authority for the detention of such person in such place or institution until such order expires or until such person is discharged in the manner set forth in this section or section 6–119c. Such order shall expire forty-eight hours (exclusive of Sundays and holidays) after such officer, employee, or member shall take into his custody such person as provided in section 6–119a, unless it shall be continued in force and effect by a judge of the Municipal Court for the District of Columbia, or unless such detained person shall stipulate in writing that the order be continued in force and effect. Such order shall be continued in force and effect if it shall appear to said judge by affidavit that the probable cause, required by section 6–119a, exists. If the judge continue in force and effect the order of the director of public health, the judge at that time shall set a date for a hearing upon the question of whether the person detained is at the time of such hearing affected with any communicable disease or is a carrier of communicable disease and, if so affected, upon the further question whether his release would be likely to endanger the lives or health of any other person. If such person be not sooner discharged such hearing shall be had within ten days of the date of the order of the court continuing in force and effect the order of the director of public health unless such hearing be continued by the court, or unless the detained person shall, in writing, waive such hearing, which waiver shall be filed with the court. Such hearing shall be in or out of the presence of the detained person, in the discretion of the court. If, after such hearing, the court shall find that the detained person is not affected with any communicable disease and is not a carrier of communicable disease, or that the discharge of such person, even though affected with, or a carrier of, a communicable disease is not likely to endanger the lives or health of any other person the court shall order such detained person to be discharged, otherwise the court shall continue in force and effect the order of the director of public health until such person be discharged in the manner set forth in

section 6–119c. If a minor is detained pursuant to this section or section 6–119e hereof, or is found guilty and sentence is suspended as provided in section 6–119g hereof, and such minor is in need of treatment for the communicable disease with which he is affected or of which he is a carrier, the court is empowered to authorize the director of public health to administer such treatment or cause the same to be administered. No person under eighteen years of age detained under sections 6–119a, 6–119b, 6–119c or 6–119e, shall be detained in a room in which a person over that age is so detained. (Aug. 11, 1939, 53 Stat. 1408, ch. 591, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENTS

See note following §§ 6–101 and 6–119.

§ 6–119c. Examination and diagnosis—Discharge or detention for quarantine — Application for discharge—Hearing.

It shall be the duty of the director of public health to make or cause to be made by a physician such examination or examinations of such person as may be necessary to determine the existence or nonexistence of such communicable disease in such person or whether such person is a carrier of communicable disease. The diagnosis resulting from such examination or examinations shall be reduced to writing and signed by such examining physician within ten days after the removal of such person to such place or institution and a copy thereof shall be filed in the office of the person in charge of such place or institution and a copy in the office of the director of public health. If such diagnosis does not disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, such person shall be discharged from such place or institution forthwith. If the diagnosis does disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, the person in charge of the place or institution to which the infected person has been removed shall, subject to the provisions of section 6–119b, detain such person for such reasonable time as may be fixed by regulation under the authority of sections 6–118, 6–119 to 6–119k as is deemed necessary in the interest of public health and safety for the isolation, quarantine, and restriction of movement of persons affected by the particular communicable disease or of persons found to be carriers of the particular communicable disease, unless sooner discharged by the director of public health or the municipal court. A person so detained, however, may apply at any time to the person in charge of such place or institution for his discharge, and the person in charge of such place or institution shall deliver the application for discharge to the director of public health, who shall give to such person an opportunity to be heard before the director of public health. If after hearing held by the director of public health, the director of public health be of the opinion that such person is not affected with such communicable disease and that such person is not a carrier of communicable disease, then such person shall be discharged. If denied his discharge such detained person may apply to the Municipal Court for the District of Columbia for such discharge and the hearing on such application shall be in or out of the presence of the detained person, in the discretion of the court. Only such persons as have a direct interest in the case and their representatives shall be admitted to any hearing held pursuant to this section or section 6–119b: *Provided,* That if the detained person shall request a public hearing then the general public shall be admitted thereto. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 920, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENTS

See note following §§ 6–101 and 6–119.

§ 6–119d. Unlawful leave.

It shall be unlawful for a person detained in a place or institution pursuant to an order of the director of public health to leave said place or institution unless discharged in the manner provided in sections 6–119b or 6–119c. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENTS

See note following §§ 6–101 and 6–119.

§ 6–119e. Warrant for arrest—Affidavit—Service and execution of warrant—Records.

(a) In aid of the powers vested in the director of public health to cause the removal to and detention in a place or institution of a person who is affected or is believed, upon probable cause, to be affected with any communicable disease or is or is believed, upon probable cause, to be a carrier of communicable disease as provided in sections 6–118, 6–119 to 6–119k, the Municipal Court for the District of Columbia, or any judge thereof, is authorized to issue a warrant for the arrest of such person and his removal to a place or institution as defined in section 6–119a, which warrant shall be directed to the Major and Superintendent of Police. When such person has been removed to such place or institution under authority of a warrant issued pursuant to this section, such person shall not be discharged from such place or institution except in the manner provided in section 6–119c.

(b) No such warrant of arrest and removal shall be issued except upon probable cause supported by affidavit or affidavits particularly describing the person to be taken, which said affidavit or affidavits shall set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(c) A warrant may in all cases be served by the Major and Superintendent of Police or by any officer or member of the Metropolitan Police, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(d) The officer may break open any outer or inner door or window of a house, or any part of a house,

or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(e) A warrant must be returned to the court within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(f) It shall be the duty of the said court to maintain and keep records of all warrants issued and the returns thereon. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note following §§ 6–101 and 6–119.

§ 6–119f. Access to buildings by director of public health.

The director of public health may, without fee or hindrance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of this Act and the regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of sections 6–118, 6–119 to 6–119j. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note under § 6–119.

§ 6–119g. Interference unlawful.

It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of sections 6–118, 6–119 to 6–119k or any regulation promulgated thereunder. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2.)

AMENDMENT

See note under § 6–119.

§ 6–119h. Penalties—Prosecutions—Imposition of conditions by court.

Any person who violates any of the provisions of section 6–119d, 6–119f or 6–119g shall be punished by a fine of not more than $300 or by imprisonment for not longer than ninety days, or both such fine and imprisonment, in the discretion of the court. The Commissioners of the District of Columbia shall have power to prescribe penalties of fine not to exceed $300 or imprisonment not to exceed ninety days, or both, in the discretion of the court for the violation of any regulation promulgated under section 6–119d, 6–119f or 6–119g. All prosecutions for violations of section 6–119d, 6–119f or 6–119g or the regulations promulgated thereunder shall be in the Criminal Division of the Municipal Court for the District of Columbia, in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. The court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period vacate such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities or by any licensed physician approved by the court, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The director of public health of the District of Columbia, the Metropolitan Police force, and employees of the Board of Public Welfare are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note following §§ 6–101 and 6–119.

§ 6–119i. Persons relying on spiritual cures of disease.

With respect to all persons who, either on behalf of themselves or their minor children or wards, rely in good faith upon spiritual means or prayer in the free exercise of religion to prevent or cure disease, nothing in sections 6–118, 6–119 to 6–119k shall have the effect of requiring or giving any health officer or other person the right to compel any such person, minor child or ward, to go to or be confined in a hospital or other medical institution unless no other place for quarantine of such person, minor child or ward can be secured, nor to compel any such person, child or ward to submit to any medical treatment. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2.)

AMENDMENT

See note under § 6–119.

§ 6–119j. "Director of public health" defined.

Wherever the term "director of public health" is used in sections 6–118, 6–119 to 6–119k it shall mean the director of public health of the District of Columbia and his duly authorized agents. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

See note following §§ 6–101 and 6–119.

§ 6–119k. Construction of provisions.

Each and every provision of sections 6–118, 6–119 to 6–119k shall be construed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation. (Aug. 11,

1939, 53 Stat. 1408, ch. 691, § 2, as amended and renumbered Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2.)

AMENDMENTS

See note under § 6–119.

Chapter 2.—BLINDNESS IN INFANTS—PREVENTION

Sec.

6–201. Prevention of blindness in infants born in the District of Columbia—Prophylactic to be provided.
6–202. Information of eye inflammation transmitted to health officer—Duties—Hospital care.
6–203. Treatment by other than registered physician.
6–204. Penalty.

§ 6–201 [20: 1202]. Prevention of blindness in infants born in the District of Columbia—Prophylactic to be provided.

The health officer of the District of Columbia shall cause to be provided in suitable containers a 1 per centum solution of silver nitrate or other preparation which in his opinion is suitable for use as a prophylactic against inflammation of the eyes of the new-born child, the contents of each container being the exact quantity necessary for the treatment of one eye and two such containers shall be furnished for use in each case of childbirth. It shall be the duty of each physician, midwife, or other person in attendance upon any case of childbirth to administer immediately upon delivery such solution as a prophylactic against inflammation of the eyes of said new-born child. It shall be the duty of each midwife or other person, except licensed physicians, to secure containers of such solution from the health officer for use in each case of childbirth. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 1.)

§ 6–202 [20: 1203]. Information of eye inflammation transmitted to health officer—Duties—Hospital care.

Whenever any physician, midwife, or other person in attendance upon any case of childbirth finds that the new-born child has inflammation of the eyes, attended by a discharge therefrom, such physician, midwife, or other person shall communicate such fact in writing to the health officer within six hours after the existence of such discharge becomes known to such physician, midwife, or other person. Upon receipt of such communication the health officer, unless he finds such report to be incorrect, shall issue an order directing the parents of such child (or other person charged with its care) either to (1) place such child in the care of a registered physician or (2) submit immediately satisfactory proof of inability to pay for such medical service. If the health officer finds that the parents or such other person are unable to pay for such medical treatment, he shall order the parents (or such other person) to place the child in a hospital to be designated by the Board of Public Welfare and at the expense of said board. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 2.)

§ 6–203 [20: 1204]. Treatment by other than registered physician.

No person other than a registered physician shall treat any case of inflammation of the eyes, attended by a discharge therefrom, of a new-born child for any period longer than may be necessary to obtain the services of a registered physician. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 3.)

§ 6–204 [20: 1205]. Penalty.

Any person convicted of violating any provision of sections 6–201 to 6–203 or any order or regulation issued pursuant to the provisions of said sections, shall be fined not more than $100 or imprisoned not more than thirty days, or both. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 4.)

Chapter 3.—VITAL STATISTICS

Sec.

6–301. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child.
6–302. False reports of births prohibited—Certificates not to be altered—False or fictitious transcript of record of birth or marriage prohibited.
6–303. Reports to be part of records—Records open to persons interested—Health officer custodian of reports—Abstracts and analysis of data to be published annually.
6–304. Penalties—Prosecutions—Evidence.

§ 6–301 [20: 1001]. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child.

Any physician or midwife who attends at the birth of any child within the District of Columbia, and any person whosoever who, in the absence of a physician or midwife, performs any of the offices usually rendered by such shall execute or cause to be executed and shall file with the health officer of said District not later than the Saturday first ensuing after the expiration of three secular days immediately following the date of such birth a proper report thereof, written in ink, on a blank furnished by said health officer, embodying all such data as may be necessary for the purposes of the Bureau of the Census of the Department of Commerce, and such other data, if any, as the commissioners of said District deem needful. So far as relates to any data aforesaid not based upon the personal observation of the physician, midwife, or other person by whom report is made, every such report shall show the name and address of the informant and the relationship of said informant to the child born: *Provided, however,* That if the child born be illegitimate it shall in no case be necessary for any physician, midwife, or other person to indicate on any report required by sections 6–301 and 6–302 any fact or facts whereby the identity of the father or of the mother or of the child born will be disclosed: *And provided further,* That no report need be made of stillbirths when the fetus delivered has apparently not passed the fifth month of utero-gestation.

Upon receipt of any report aforesaid, said health officer shall forward to the father of the child, or, if his address be unknown, to the mother, an acknowledgment of the receipt of such report, and if the infant delivered be not stillborn, and such report does not contain the given name of the child born, a blank form on which the father or mother may certify over his or her signature the name of such child, which form, if thus executed and returned to

said health officer within three months next following the date of birth, shall be a part of the official record of such birth. (Mar. 1, 1907, 34 Stat. 1010, ch. 2280, § 1.)

CROSS REFERENCES

Duty of health officer to secure full and correct record of vital statistics, § 6–102.

Report and records of adoption proceedings, § 16–204.

§ 6–302 [20: 1002]. False reports of births prohibited—Certificates not to be altered—False or fictitious transcript of record of birth or marriage prohibited.

No person shall, in the District of Columbia, wilfully or negligently certify falsely to any fact whatsoever upon any report of a birth. And after any such report has been received by the health officer of said District no person shall alter the same otherwise than by amendments written independently of the body of the report and properly dated, signed, and witnessed. No person shall in said District make any false or fictitious report of a birth or any false or fictitious transcript of any record of a birth or of a marriage. (Mar. 1, 1907, 34 Stat. 1010, ch. 2280, § 2.)

§ 6–303 [20: 1003]. Reports to be part of records—Records open to persons interested—Health officer custodian of reports—Abstracts and analysis of data to be published annually.

The reports required by sections 6–301 to 6–304 shall, when duly filed with the health officer of the District of Columbia, be a part of the public records of said District, and any person having an interest in any particular matter contained or reasonably believed to be contained therein, shall be permitted to inspect such certificates and reports, during all reasonable hours, without charge, so far as can be done without interfering with the official use of such certificates by employees of the health department. The health officer aforesaid shall be the custodian of all reports filed under the provisions of sections 6–301, 6–302 and annually, and at such other times as the commissioners of said District may direct, shall make and publish abstracts and analysis of the data therein contained. (Mar. 1, 1907, 34 Stat. 1011, ch. 2280, § 3.)

CROSS REFERENCE

Fees for copies of records, § 6–103.

§ 6–304 [2: 1004]. Penalties—Prosecutions—Evidence.

Any person violating any of the provisions of sections 6–301 to 6–303 or aiding or abetting in any violation thereof shall be punished by a fine not exceeding two hundred dollars or by imprisonment for a period not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. And if any report required by sections 6–301, 6–302 to be made within a specified time be not made within the time so specified each week or part of a week thereafter during which such report has not been made shall constitute a separate and distinct offense: *Provided, however,* That no report aforesaid nor any information which has been obtained by the prosecuting officer on the basis of such report shall be receivable in evidence against the person filing the same in any prosecution of such person for failure to file such report within the time allowed by law. Prosecutions under sections 6–301 to 6–303 shall be in the police court of the District of Columbia on informations signed by the corporation counsel of said District or by one of his assistants. (Mar. 1, 1907, 34 Stat. 1011, ch. 2280, § 4.)

Chapter 4.—DRAINAGE OF LOTS

Sec.

6–401. Buildings to be connected with water-mains and lots drained into public sewers.
6–402. Notice to connect with water-mains and sewers to be given by Commissioners.
6–403. Penalty for failure to connect with water-main and sewer.
6–404. Notice to nonresident—How given—Upon failure of owner, Commissioners to make such connections—Cost of connections by Commissioners' lien on property.

§ 6–401 [20: 1311]. Buildings to be connected with water-mains and lots drained into public sewers.

Each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer shall be connected with said sewer in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer; and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and water-main, such original lot or subdivisional lot shall be connected with said sewer and also with said water-main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer: *Provided,* That the connections required to be made by this section shall be made under the following conditions: When there is on any such original lot or subdivisional lot aforesaid any building used or intended to be used as a dwelling, or in which persons are employed or intended to be employed in any manufacture, trade, or business, or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer and water main or with a public sewer, as may be required with this section; and whenever there is no such building, stable, shed, pen, or place, as aforesaid, on such original lot or subdivisional lot, then such lot shall be required to be connected with a public sewer only when it has been certified by the health officer of said District that such connection is necessary to public health. (May 19, 1896, 29 Stat. 125, ch. 206, § 1.)

CROSS REFERENCE

Drainage of burial lots, § 27–105.

NOTES TO DECISIONS

CONSTITUTIONALITY

This section is not unconstitutional as depriving nonresident owners of property without due process of law nor does it deny them equal protection of the laws although different methods are used for enforcing the law against nonresident and resident owners. *District of Columbia* v. *Brooke* (214 U. S. 138, 53 L. Ed. 941, 29 Sup. Ct. 560).

WHO MAY CHALLENGE VALIDITY

Owner of improved property can not challenge validity of provision affecting only owners of unimproved property. *District of Columbia* v. *Brooke* (214 U. S. 138, 53 L. Ed. 941, 29 Sup. Ct. 560).

§ 6–402 [20: 1312]. Notice to connect with water-mains and sewers to be given by Commissioners.

It shall be the duty of the commissioners of said District to notify the owner or owners of every lot required by section 6–401 to be connected with a public sewer or water-main, as the case may be, to so connect such lot, the work to be done in accordance with the regulations governing plumbing and house drainage in said District. (May 19, 1896, 29 Stat. 125, ch. 206, § 2.)

CROSS REFERENCE

Power of Commissioners to make regulations governing plumbing and house drainage, § 1–725.

§ 6–403 [20: 1313]. Penalty for failure to connect with water-main and sewer.

If the owner or owners of any such lot neglect or refuse to make such connections as are required by section 6–401 within thirty days after the receipt of such notice, such owner or owners shall be deemed guilty of a misdemeanor, and shall, on conviction in the police court of said District, be punished by a fine of not less than one dollar nor more than five dollars for each day he, she, or they fail or neglect to make such connections. (May 19, 1896, 29 Stat. 126, ch. 206, § 3.)

§ 6–404 [20: 1314]. Notice to nonresident — How given—Upon failure of owner, Commissioners to make such connections—Cost of connections by Commissioners' lien on property.

In case the owner or owners of any such lot be a nonresident or nonresidents of the District of Columbia, or can not be found therein, then, and in that case, the said commissioners shall give notice, by publication twice a week for two weeks in some daily newspaper published in the city of Washington, to such owner, directing the connection of such lot with such public sewer or with such public sewer and water-main, as the case may be: *Provided, however,* That if the residence or place of abode of the said nonresident lot owner be known or can be ascertained on reasonable inquiry, then, and in that case, a copy of the aforesaid notice shall be mailed to said nonresident, addressed to him in his proper name at his said place of residence or abode, with legal postage prepaid; and in case such owner or owners shall fail or neglect to comply with the notice aforesaid within thirty days it shall be the duty of said commissioners to cause such connection to be made, the expense to be paid out of the emergency fund; such expense, with necessary expense of advertisement, shall be assessed as a tax against such lot, which tax shall be carried on the regular tax roll of the District of Columbia, and shall be collected in the manner provided for the collection of other taxes. (May 19, 1896, 29 Stat. 126, ch. 206, § 4.)

NOTES TO DECISIONS

CONSTITUTIONALITY

This section is not unconstitutional as depriving nonresident owners of property without due process of law nor does it deny them equal protection of the laws although different methods are used for enforcing the law against nonresident and resident owners. *District of Columbia* v. *Brooke,* 214 U. S. 138, 53 L. Ed. 941, 29 Sup. Ct. 560.

APPLICATION OF ACT

Test of the application of this section is whether the property owner can be found in the District. *District of Columbia* v. *Brooke,* 214 U. S. 138, 53 L. Ed. 941, 29 Sup. Ct. 560.

Chapter 5.—GARBAGE

Sec.

6–501. Regulations for the collection and disposal of garbage to be made by Commissioners—Penalties.
6–502. Commissioners may contract for collection and disposal of garbage and refuse.
6–503. Disposition by feeding to live stock.
6–504. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.
6–505. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.
6–506. Construction of incinerator authorized.
6–507. Commissioners to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.
6–508. Penalties.
6–509. Machinery and personnel authorized.
6–510. Appropriation authorized—Abandonment of leased plant.
6–511. Use of incinerator by certain Maryland and Virginia municipalities authorized.

§ 6–501 [20: 1291]. Regulations for the collection and disposal of garbage to be made by Commissioners—Penalties.

The Commissioners of the District of Columbia are hereby authorized to make necessary regulations for the collection and disposition of garbage in the District of Columbia, and to annex to said regulations such penalties as will secure the enforcement thereof. (Mar. 2, 1895, 28 Stat. 758, ch. 176.)

CROSS REFERENCES

Construction and operation of incinerators for combustible refuse, §§ 6–505 to 6–511.

Cleaning streets and alleys declared to be a municipal function, sale of sweepings, §§ 1–235, 1–236.

Duty of police to enforce garbage regulations, § 4–119.

Rules and regulations generally, § 1–226 and notes.

NOTES TO DECISIONS

CONSTITUTIONALITY

Generally, health laws and ordinances are liberally construed but when they appear to violate a constitutional right, court must carefully weigh value of the end accomplished. When abatement of a nuisance is provided for only after notice and hearing, health officers cannot inspect, when challenged, without the ordinary preliminary step for search in the absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

POLICE POWER

It is within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse and filth, and in so doing, they may provide for the inspection of premises as a health measure but must not unduly infringe upon individual rights, in absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

SUMMARY ACTION

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their power in taking any summary action. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

§ 6–502 [20: 1292]. Commissioners may contract for collection and disposal of garbage and refuse.

The Commissioners of the District of Columbia are authorized to enter into contract or contracts for the collection and disposal of garbage, miscellaneous refuse, ashes, night soil, and dead animals, for periods not exceeding five years, subject to annual appropriations by Congress, under such conditions and specifications as they may prescribe. Night soil may be collected and disposed of by any process satisfactory to the commissioners. (May 18, 1910, 36 Stat. 389, ch. 248; Mar. 3, 1915, 38 Stat. 904, ch. 80.)

AMENDMENT

The last sentence of this section was added by the act of 1915.

CROSS REFERENCE

Contracting power of Commissioners in general, §§ 1–801 to 1–819.

§ 6–503 [20: 1293]. Disposition by feeding to live stock.

Should the Commissioners of the District of Columbia find that the garbage in the District can be disposed of in a sanitary manner and as economically by feeding it to pigs, live stock, and poultry on the land of the Home for the Aged and Infirm, located at Blue Plains, District of Columbia, or on the land of the workhouse and reformatory, of the District of Columbia, located at Occoquan and Lorton, Virginia, or both, or on such other land as the said commissioners may be able to acquire by purchase or lease in the States of Virginia or Maryland, the said commissioners are authorized to use either or all of said designated lands, or to purchase or lease land in the States of Virginia or Maryland for the purpose, and to adopt the pig, live stock, or poultry feeding method of disposal. (May 6, 1918, 40 Stat. 541, ch. 67, § 6.)

§ 6–504 [20: 1294]. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.

The commissioners are authorized, if in their opinion such action shall be to the best interests of the District of Columbia, after July 11, 1919, to conduct any or all of the operations involved in the collection and disposal of city refuse of every kind as municipal functions, and for that purpose to purchase or lease the necessary plants, buildings, and land, to purchase or hire horses and horse-drawn vehicles, passenger-carrying and other motor-propelled vehicles, equipment, and machinery, and to employ expert and other personal services, and labor, and to pay traveling, maintenance, incidental, and contingent expenses: *Provided,* That products arising from such operations conducted as authorized herein may be sold and the proceeds arising therefrom shall be paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia: *Provided further,* That any or all operations herein authorized to be conducted as municipal functions may be put into effect as such upon the expiration of any of the contracts existing July 11, 1919, for the collection and disposal of city refuse or upon the failure of any of the contractors existing July 11, 1919 to properly perform the work covered by their contracts existing July 11, 1919: *Provided further,* That it shall be unlawful for any employee of the District of Columbia engaged in the removal of garbage, ashes, miscellaneous refuse, dead animals, or night soil, or for any employee of a contractor doing such work for the District of Columbia, to accept any gift, except from his employer, in money or any other thing of value for any service performed in connection with the removal of city refuse as hereinbefore described; and it shall be unlawful for any person, firm, or corporation, except such employer, to pay or offer to pay, any money or to make any gift to any such employee for such service; that any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in a sum of not less than $5 nor more than $40 for each such offense. (July 11, 1919, 41 Stat. 39, ch. 6; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

COMPILER'S NOTE

The second proviso is probably executed and obsolete.

AMENDMENT

In the act of 1919, the first proviso read as follows: "That products arising from such operations conducted as authorized herein may be sold and the proceeds arising therefrom shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts."

CROSS REFERENCES

Cleaning streets and alleys declared to be a municipal function, sale of sweepings, §§ 1–235, 1–236.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

NOTES TO DECISIONS

COLLECTION GOVERNMENTAL FUNCTION

The collection of garbage by the District of Columbia is a function governmental in nature, and the District was not liable for damages sustained by passenger in street car which collided with garbage truck. *Loube* v. *District of Columbia* (67 App. D. C. 322, 92 Fed. (2d) 473).

§ 6–505 [20: 1298]. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.

The Commissioners of the District of Columbia are authorized to acquire, by purchase at such price or prices as, in their judgment, they may deem reasonable and fair, or in the discretion of the commissioners, by condemnation, in accordance with the provisions of sections 16–601 to 16–611, under a proceeding or proceedings in rem instituted in the District Court of the United States for the District of Columbia, two suitable and properly located sites in the District of Columbia, one in the southeastern section

not exceeding one hundred thousand square feet in area, and one in Georgetown, not exceeding forty-nine thousand square feet in area: *Provided,* That the location of said sites shall be approved by the National Capital Park and Planning Commission before purchase or the institution of proceedings for condemnation thereof: .*Provided,* That if the said sites or any part thereof be condemned the said commissioners shall be entitled to enter immediately into possession of any property for which an award shall have been made by paying the amount of such award into the registry of the District Court of the United States for the District of Columbia: *Provided further,* That authority is hereby granted to occupy in addition to the site to be acquired in the southeastern section, such public highways and alleys or parts of public highways and alleys as abut or fall within said site, but the owners of abutting property shall not be denied the use of such highways or parts of highways for ingress and egress. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 1.)

COMPILER'S NOTES

The Appropriation Act of March 26, 1930 (46 Stat. 97, ch. 92), contained the following appropriation: "For the acquisition of sites for, and beginning the construction of, high-temperature incinerators for the destruction of combustible refuse, under and in accordance with the provisions of the Act entitled 'An Act authorizing the acquisition of land in the District of Columbia and the construction thereon of two modern high-temperature incinerators for the destruction of combustible refuse, and for other purposes,' approved March 4, 1929 (45 Stat., p. 1549), including not to exceed $25,000 for the employment by contract or otherwise, of such expert and other personal services as may be required in connection with the preparation of plans for the construction of said incinerators and as shall be approved by the commissioners and without reference to the Classification Act of 1923, as amended, fiscal years 1930 and 1931, $550,000: *Provided,* That the respective areas of the sites to be acquired hereunder are hereby increased from not to exceed one hundred thousand square feet to not to exceed one hundred and twenty thousand square feet and from not to exceed forty-nine thousand square feet to not to exceed seventy thousand square feet: *Provided further,* That the commissioners are authorized to enter into contract or contracts for the construction and equipment of such incinerators at a cost which, together with other expenditures authorized by said Act, shall not exceed $850,000."

The First Deficiency Act of 1932 (47 Stat. 18, ch. 12), provided: "Not to exceed $260,000 of the unexpended balance of the appropriation of $550,000 provided for sites and construction, incinerators for refuse, contained in the First Deficiency Act, fiscal year 1930, is hereby made available for the same purpose until June 30, 1933, and the commissioners are authorized to enter into contract or contracts for the construction and equipment of such incinerators at a cost which, together with other expenditures authorized by the Act approved March 4, 1929 (45 Stat. 1549), including a resident engineer at not to exceed the rate of $3,800 per annum, shall not exceed $760,000: *Provided,* That the limitation of $25,000, contained in the First Deficiency Act, fiscal year 1930, for the employment by contract or otherwise of such expert and other personal services as may be required for the preparation of plans for the construction of said incinerators is hereby increased to $35,000, to enable the commissioners to pay for services not exceeding $10,000 in addition to the amount of $25,000 for such services as set forth in the existing contract of June 13, 1930."

The District of Columbia Appropriation Act for 1934 (June 16, 1933, 48 Stat. 232, ch. 93) provided: "No part of the funds appropriated in this Act shall be available for the operation of a high-temperature incinerator for the disposal of combustible refuse in the southeast section of the District of Columbia."

§ 6–506 [20: 1299]. Construction of incinerator authorized.

The said commissioners are authorized to erect upon each of said sites a modern, high-temperature refuse incinerator and the necessary equipment for its efficient operation, the combined capacity of such incinerators to be sufficient to consume the entire production of combustible refuse, including street sweepings, in the District of Columbia; and the said commissioners are further authorized to do such grading and fencing of the sites as may be necessary, and to construct buildings for the storage of equipment. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 2.)

§ 6–507 [20: 1300]. Commissioners to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.

The said commissioners shall give reasonable public notice thereof and shall fix a date after which all combustible refuse collected by public or private agencies in the District of Columbia shall be delivered at the incinerators herein provided for, for disposal, except that hotels, apartment houses, business houses, or residences may dispose of their own refuse in their own incinerators: *Provided,* That such incinerators are inspected and approved for use by the proper agency of the District of Columbia; and after such date it shall be unlawful for any person, firm, company, or corporation to dispose of any combustible refuse in any other manner or at any other place than that prescribed by the said commissioners: *Provided, however,* That nothing in sections 6–505 to 6–510 shall prohibit or prevent the sale of salvageable material by the owners thereof or by the commissioners of the District of Columbia. The said commissioners are hereby empowered and authorized to make and enforce such regulations as they may deem necessary and proper to carry out the purposes of sections 6–505 to 6–510. (Mar. 4, 1929. 45 Stat. 1549, ch. 688, § 3.)

CROSS REFERENCES

Authority of Commissioners to make health and safety regulations, § 1–226.

Cleaning streets and alleys declared to be a municipal function, sale of sweepings, §§ 1–235, 1–236.

§ 6–508 [20: 1301]. Penalties.

From and after the date when the incinerators herein authorized to be constructed shall be in operation it shall be unlawful for any person, firm, company, or corporation to burn or in any way dispose of combustible refuse in any manner or at any place other than that prescribed by the said commissioners, except as hereinbefore designated. A violation of the provisions of sections 6–505 to 6–510 shall be a misdemeanor; and, upon conviction thereof, the person, firm, company, or corporation so charged shall be fined not more than $100 for each and every offense, or confined in the District of Columbia jail for a period not exceeding sixty days, or both, in the discretion of the courts. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 4.)

§ 6–509 [20: 1302]. Machinery and personnel authorized.

In order to dispose of combustible refuse in the manner provided by sections 6–505 to 6–510, the commissioners are authorized to purchase motor trucks and trailers and other means of transportation, to install additional equipment, buildings, and machinery, and to employ personal services and labor. (Mar. 4, 1929, 45 Stat. 1550, ch. 688, § 5.)

§ 6–510 [20: 1303]. Appropriation authorized — Abandonment of leased plant.

A sum not exceeding $850,000 is hereby authorized to be appropriated, in like manner as other appropriations, for the expenses of the District of Columbia, for sites, buildings, equipment, and other construction work authorized by sections 6–505 to 6–510, of which amount $25,000 or so much thereof as may be necessary may be expended for the employment of one or more experts for engineering for preparation of plans and specifications; and, upon completion of the incinerators herein provided for, the said commissioners shall abandon the use of the leased plant at Montello Avenue and Mount Olivet Road northeast. (Mar. 4, 1929, 45 Stat. 1550, ch. 688, § 6.)

§ 6–511 [20: 1304]. Use of incinerator by certain Maryland and Virginia municipalities authorized.

The commissioners of the District of Columbia are authorized to enter into agreement with the Board of County Commissioners of Montgomery County, state of Maryland; the Board of County Commissioners of Prince Georges County, state of Maryland; the Board of Supervisors of Arlington County, state of Virginia, and/or with the several municipalities, taxing areas, and communities within the counties aforesaid having power and authority to enter into such agreements, said agreements to permit said counties, municipalities, taxing areas, and communities to dispose of combustible material in the incinerators built by the District of Columbia under authority of section 6–506, in such kind and quantities, at such times, and for such fees as the said commissioners of the District of Columbia shall specify: *Provided;* That said counties, municipalities, taxing areas, and communities shall make collections of such material with their own equipment and shall obtain permits from the District of Columbia for hauling or transporting the material over routes within the District of Columbia to be designated by the said commissioners. The commissioners shall have the right to suspend or revoke such agreements if found necessary for the proper and successful operation of these incinerators, or for any other reason. (May 15, 1930, 46 Stat. 334, ch. 286.)

Cross Reference

Agreements with State of Maryland for the use of District sewers, § 1–817.

Chapter 6.—MANUFACTURE, RENOVATION, AND SALE OF MATTRESSES

Sec.

6–601. Definitions.
6–602. Sale without label—False label—Use of materials from mattress used in hospital, sanitarium or by person with contagious disease forbidden—Offering renovated mattress for sale as new—Removing, defacing, or concealing label.
6–603. Tag requirements.
6–604. Guaranty from manufacturer to protect dealer—Prosecution of manufacturer outside the District of Columbia.
6–605. Penalties, prosecutions.
6–606. Administration by health officer—Commissioners to make regulations.
6–607. Investigation of supposed violations—Authority to enter buildings—Evidence.
6–608. Seizure and destruction of mattresses—Order.

§ 6–601 [19: 41]. Definitions.

As used in sections 6–601 to 6–608—

(a) The term "mattress" includes any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes.

(b) The term "person" means individual, partnership, corporation, or association.

(c) The term "commissioners" means the Board of Commissioners of the District of Columbia. (July 3, 1926, 44 Stat. 838, ch. 768, § 1.)

Cross Reference

License required, additional definitions, § 47–2318.

§ 6–602 [19: 42]. Sale without label—False label—Use of materials from mattress used in hospital, sanitarium or by person with contagious disease forbidden—Offering renovated mattress for sale as new—Removing, defacing, or concealing label.

No person in the District of Columbia—

(a) Who is a manufacturer or renovator of, or dealer in, mattresses shall sell, exchange, give away, or offer or have in his possession for sale, exchange, or gift, any mattress which bears any false or misleading label, statement, design, or device, in respect of its material or processes of manufacture or renovation, or which is not labeled as provided in § 6–603.

(b) Who is a renovator of mattresses shall use in whole or in part, in the renovation of any mattress, material which has formed part of any mattress theretofore used in or about any sanitarium or hospital, or used by any individual having an infectious or contagious disease.

(c) Who is a manufacturer of mattresses shall use in whole or in part any second-hand material in the manufacture of mattresses sold, exchanged, or given away, or to be offered for sale, exchange, or gift, as new mattresses.

(d) Shall knowingly sell, exchange, give away, or offer or have in his possession for sale, exchange, or gift, (1) any mattress which has been used, or is composed in whole or in part from material which has formed part of any mattress theretofore used in any sanitarium or hospital or by any individual having an infectious or contagious disease, or (2) any mattress which is composed in whole or in part of second-hand material which has not been thoroughly sterilized and disinfected by a process approved by the health officer of the District of Columbia.

(e) Who is a manufacturer or renovator of, or a dealer in, mattresses, shall remove, conceal, or deface, or cause or permit to be removed, concealed, or defaced, any label placed, in accordance with the provisions of sections 6–601 to 6–608, upon any mattress. (July 3, 1926, 44 Stat. 838, ch. 768, § 2.)

§ 6–603 [19: 43]. Tag requirements.

The label required by section 6–602 shall consist of a tag which shall be sewed or otherwise securely attached to the mattress. In case the mattress has not been renovated the label shall contain in plain, legible print in the English language a statement showing (a) the name and address of the manufacturer, (b) a description of the materials used in the manufacture of such mattress, and (c) whether such materials are in whole or in part second-hand. In case the mattress has been renovated the label shall contain in such print the word "Renovated" and a statement of (1) the name and address of the renovator, and (2) a description of the materials used in the renovated mattress. For the purposes of sections 6–601 to 6–608 the materials so used shall be described in such manner as the commissioners shall by regulation prescribe. (July 3, 1926, 44 Stat. 839, ch. 768, § 3.)

CROSS REFERENCE

Authority of Commissioners to make health and safety regulations, § 1–226 and notes.

§ 6–604 [19: 44]. Guaranty from manufacturer to protect dealer—Prosecution of manufacturer outside the District of Columbia.

No dealer shall be prosecuted under the provisions of sections 6–601 to 6–608 when he can establish a guaranty signed by the manufacturer residing in the United States from whom he purchases mattresses to the effect that the statements contained on the labels attached to such mattresses are true. Such guaranty, to afford protection, shall contain the name and address of the manufacturer making the sale of such mattresses to the dealer, and in such case the manufacturer shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of sections 6–601 to 6–608. In case the manufacturer resides outside the District of Columbia it shall be the duty of each district attorney to whom the health officer of the District of Columbia shall report the violation to cause appropriate proceedings to be commenced and prosecuted against the manufacturer without delay in the proper courts of the United States. (July 3, 1926, 44 Stat. 839, ch. 768, § 4.)

§ 6–605 [19: 45]. Penalties, prosecutions.

Any person violating any provision of section 6–602 or section 6–607 shall, upon conviction thereof, be punished by a fine of not more than $500, or by imprisonment for not more than six months, or both. All prosecutions under sections 6–601 to 6–608, except as provided in section 6–604, shall be in the police court of the District of Columbia upon information by the corporation counsel or one of his assistants. (July 3, 1926, 44 Stat. 839, ch. 768, § 5.)

§ 6–606 [19: 46]. Administration by health officer—Commissioners to make regulations.

Except as provided in section 6–605, the administration of sections 6–601 to 6–608 shall be in charge of the health officer of the District of Columbia under the supervision of the commissioners. The commissioners are authorized to make such regulations as may be necessary for the efficient administration of this chapter. (July 3, 1926, 44 Stat. 839, ch. 768, § 6.)

CROSS REFERENCE

Authority of Commissioners to make health and safety regulations, § 1–226.

§ 6–607 [19: 47]. Investigation of supposed violations—Authority to enter buildings—Evidence.

It shall be the duty of the health officer of the District of Columbia, whenever he has reason to believe that any provision of sections 6–601 to 6–608 is being or has been violated, to cause an investigation to be made. For the purpose of such investigation the health officer, or any of his assistants designated by him in writing, shall have authority at all times during the ordinary business hours to enter any building or other place in the District of Columbia where mattresses are manufactured, renovated, or held for sale, exchange, or gift, or delivery in pursuance thereof. No person shall refuse or obstruct such inspection. Evidence obtained by the health officer or his assistants of any violations of sections 6–601 to 6–608 shall be furnished the corporation counsel. (July 3, 1926, 44 Stat. 839, ch. 768, § 7.)

§ 6–608 [19: 48]. Seizure and destruction of mattresses—Order.

If on inspection the health officer or his assistants find in the District of Columbia any mattress held for sale, exchange, or gift, or delivery in pursuance thereof, which has been used or is composed in whole or in part of materials which have formed part of any mattress used in or about any sanitarium or hospital or by any individual having an infectious or contagious disease, or is composed in whole or in part of second-hand material which has not been thoroughly sterilized and disinfected by a process approved by the health officer, or if the health officer or his assistants find in the District of Columbia any such materials held for use in the manufacture or renovation of any mattress, the health officer shall, after first making and filing in the public records of his office a written order stating the reason therefor, thereupon without further notice cause such mattress or material intended to be used in the manufacture of any mattress to be seized, removed, and destroyed by summary action. (July 3, 1926, 44 Stat. 839, ch. 768, § 8.)

Chapter 7.—PRIVIES

Sec.

6–701. Water-closets required where public sewer and water available.
6–702. Permit to maintain privy—When required.
6–703. Regulation of construction and maintenance.
6–704. Penalty for violation.

§ 6–701. Water-closets required where public sewer and water available.

It shall be unlawful for any person or persons to maintain, upon any original lot or any subdivisional lot, situated on any street in the District of Columbia, where there is a public sewer and water-main available for the use of such lot, any system of disposal of human excreta except by means of water-closets connected with such sewer and water-main. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 2.)

REPEAL

Section 1 of the act of April 22, 1940, ch. 131, § 1, 54 Stat. 155, provided: "The Acts of Congress entitled 'An Act to regulate, in the District of Columbia, the disposal of certain refuse, and for other purposes,' approved January 25, 1898 (30 Stat. 231, ch. 8, §§ 1–18; D. C., 1929, title 20, §§ 1321–1336), and 'An Act to amend an Act entitled "An Act to regulate, in the District of Columbia, the disposal of certain refuse, and for other purposes," approved January 25, 1898,' approved March 20, 1902 (32 Stat. 74, ch. 229, §§ 1–3; D. C., 1929, title 20, §§ 1337, 1338), are hereby repealed."

§ 6–702. Permit to maintain privy—When required.

No person shall, in the District of Columbia, erect or maintain a privy, or other means or system for the disposal of human excreta, except by means of water-closets connected with a sewer and water-main, without having secured from the health officer a permit so to do. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 3.)

§ 6–703. Regulation of construction and maintenance.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce any such regulations as they deem necessary to regulate the design, construction, and maintenance of any system of disposal of human excreta, and the handling, storage, treatment, and disposal of human body wastes. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 4.)

CROSS REFERENCE

Authority of Commissioners to make health and safety regulations, § 1–226.

§ 6–704. Penalty for violation.

Any person who shall violate or aid or abet in violating any of the provisions of sections 6–701 to 6–703 or of the regulations promulgated by the Commissioners of the District of Columbia under said sections shall be punished by a fine of not more than $50 or by imprisonment for not exceeding fifteen days. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 5.)

Chapter 8.—SMOKE PREVENTION

Sec.

6–801. Emission of smoke and other foreign substances—Liability—Removal of debris to prevent accumulation—Escape and discharge of material and odors.
6–802. Commissioners to make regulations.
6–803. Penalty.
6–804. Enforcement—Appropriations for.

§ 6–801 [19: 66]. Emission of smoke and other foreign substances—Liability—Removal of debris to prevent accumulation—Escape and discharge of material and odors.

No person shall cause, suffer, or allow dense smoke to be discharged from any building, stationary or locomotive engine, or motor vehicle, place, or premises within the District of Columbia. All persons participating in any violation of this provision, either as proprietors, owners, tenants, managers, superintendents, captains, engineers, firemen, or motor-vehicle operators, or otherwise, shall be severally liable therefor. The owners, lessees, tenants, occupants, and managers of every building, or place in or upon which a locomotive or stationary engine, furnace, or boiler is used shall cause all ashes, cinders, rubbish, dirt, and refuse to be removed to some proper place, so that the same shall not accumulate, nor shall any person cause, suffer, or allow cinders, dust, gas, steam, or offensive nor noisome odors to escape or to be discharged from any such building, or place, to the detriment or annoyance of any person or persons not being therein or thereupon engaged. (Aug. 15, 1935, 49 Stat. 653, ch. 549, § 1.)

§ 6–802 [19: 67]. Commissioners to make regulations.

The Commissioners of the District of Columbia are hereby authorized and directed to make and promulgate reasonable classifications and regulations for the installation and operation of combustion and all other devices susceptible for use in such manner as to violate the purposes of sections 6–801 to 6–804, and the said commissioners may from time to time alter, amend, or rescind such regulations and promulgate such amended or additional regulations as they may in their discretion deem necessary. (Aug. 15, 1935, 49 Stat. 653, ch. 549, § 2.)

COMPILER'S NOTE

D. C. Code, 1929 edit., Title 19, § 65 provided as follows: "No discrimination shall be made against any method or device which may be used for the prevention of smoke and which accomplishes the purpose of this chapter." (Feb. 2, 1899, 30 Stat. 812, ch. 79, § 5.)

CROSS REFERENCE

Authority of Commissioners to make health, safety, and welfare regulations, § 1–226.

§ 6–803 [19: 68]. Penalty.

Enforcement of sections 6–801 to 6–804 shall be upon information by the corporation counsel in the police court of the District of Columbia. Any person convicted of violating sections 6–801 to 6–804 or any regulation of the commissioners made hereunder shall be punished by a fine not to exceed $500 for each and every such offense. (Aug. 15, 1935, 49 Stat. 654, ch. 549, § 3.)

NOTES TO DECISIONS

REVIEW OF CONVICTION

A conviction by a police court of the District for a violation of this act, affirmed by the Court of Appeals of the District, can not be reviewed by writ of error to the Supreme Court under act of March 3, 1901. *Sinclair* v. *District of Columbia,* 192 U. S. 16, 48 L. Ed. 322, 24 Sup. Ct. 212.

§ 6–804 [19: 69]. Enforcement—Appropriations for.

The Commissioners of the District of Columbia shall be responsible for the enforcement of sections 6–801 to 6–804 and may direct the police department, the health department, or any officer or employee of the government of the District of Columbia to perform such service as necessary in connection with such enforcement. Appropriations are hereby authorized to be made to carry out the purposes of sections 6–801 to 6–804, and the commissioners of the District of Columbia are authorized to include in their annual estimates provision for the expenses incident to such purposes and for personnel subject to the limitations of the Personnel Classification Act of 1923 (U. S. Code, Title 5, ch. 13). (Aug. 15, 1935, 49 Stat. 654, ch. 549, § 4.)

COMPILER'S NOTE

Section 5 of the act of Aug. 15, 1935, repealed all the provisions of the act of Feb. 2, 1899 "(30 Stat. 812, ch. 79,

§ 5)" inconsistent therewith. The repealed law was set out in the code of 1929 as §§ 61–65 of title 19. See note to § 6–802 hereof.

Chapter 9.—WEEDS AND PLANT DISEASES

Sec.

6–901. Weeds four or more inches high to be cut by person in charge of property—Notice—Penalty.
6–902. Removal of weeds by Commissioners.
6–903. Prosecutions.
6–904. Plant diseases and insect pest control.
6–905. Penalty.

§ 6–901 [20: 1351]. Weeds four or more inches high to be cut by person in charge of property—Notice—Penalty.

It shall be the duty of the owner, occupant, or agent in charge of any land in the city of Washington, or in the more densely populated suburbs of said city to remove from such land any weeds thereon of four or more inches in height within seven days (Sundays and legal holidays excepted) after notice from the health officer so to do, and upon failure to comply with such notice he or she shall, on conviction thereof, be punished by a fine of not more than ten dollars for each day said notice is not complied with. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 1.)

§ 6–902 [20: 1352]. Removal of weeds by Commissioners.

Whenever there are upon any unoccupied land aforesaid weeds of four or more inches in height, and no person can be found in the District of Columbia who either is or claims to be the owner thereof, or who either represents or claims to represent such owner as aforesaid, the commissioners of said District shall give notice, by publication twice a week in one daily newspaper published in the city of Washington aforesaid, requiring their removal. Said notice shall specify the land from which such weeds are to be removed, the character of the work to be done, and the time allowed for doing the same; and if such weeds be not removed within the time so specified it shall be the duty of said commissioners to cause their removal; and the cost of such removal, including the cost of advertising, shall be a lien upon and shall be assessed by said commissioners as a tax against the property on which said weeds were located, and the said tax so assessed shall bear interest at the rate of ten per centum per annum till paid, and shall be carried on the regular tax rolls of said District and be collected in the manner provided for the collection of general taxes. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 2.)

CROSS REFERENCE

Authority of Commissioners to make health, safety, and welfare regulations, § 1–226.

§ 6–903 [20: 1353]. Prosecutions.

Prosecutions under sections 6–901 to 6–903 shall be in the police court of said District, upon information filed by the corporation counsel for said District or one of his assistants. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 3; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENTS

The corporation counsel was formerly known as the attorney for the District.

§ 6–904. Plant diseases and insect pest control.

In order further to control and eradicate and to prevent the dissemination of dangerous plant diseases and insect infections and infestations no plant or plant products for or capable of propagation, including nursery stock, hereinafter referred to as plants and plant products, shall be moved or allowed to be moved, shipped, transported, or carried by any means whatever into or out of the District of Columbia, except in compliance with such rules and regulations as shall be prescribed by the Secretary of Agriculture as hereinafter provided. Whenever the Secretary of Agriculture, after investigation, shall determine that any plants and plant products in the District of Columbia are infested or infected with insect pests and diseases and that any place, articles, and substances used or connected therewith are so infested or infected, written notice thereof shall be given by him to the owner or person in possession or control thereof, and such owner or person shall forthwith control or eradicate and prevent the dissemination of such insect pest or disease and shall remove, cut, or destroy such infested and infected plants, plant products, and articles and substances used or connected therewith, which are hereby declared to be nuisances, within the time and in the manner required in said notice or by the rules and regulations of the Secretary of Agriculture. Whenever such owner or person can not be found, or shall fail, neglect, or refuse to comply with the foregoing provisions of this section, the Secretary of Agriculture is hereby authorized and required to control and eradicate and prevent dissemination of such insect pest or disease and to remove, cut, or destroy infested or infected plants and plant products and articles and substances used or connected therewith, and the United States shall have an action of debt against such owner or persons for expenses incurred by the Secretary of Agriculture in that behalf. Employees of the Plant Quarantine and Control Administration are hereby authorized and required to inspect places, plants, and plant products and articles and substances used or connected therewith whenever the Secretary of Agriculture shall determine that such inspections are necessary for the purposes of this section. For the purpose of carrying out the provisions and requirements of this section and of the rules and regulations of the Secretary of Agriculture made hereunder, and the notices given pursuant thereto, employees of the Plant Quarantine and Control Administration shall have power with a warrant to enter into or upon any place and open any bundle, package, or other container of plants or plant products whenever they shall have cause to believe that infections or infestations of plant pests and diseases exist therein or thereon, and when such infections or infestations are found to exist, after notice by the Secretary of Agriculture to the owner or person in possession or control thereof and an opportunity by said owner or person to be heard, to destroy the infected or infested plants or plant products contained therein. The police court or the municipal court of the District of Columbia shall have power, upon information supported by oath or af-

firmation showing probable cause for believing that there exists in any place, bundle, package, or other container in the District of Columbia any plant or plant product which is infected or infested with plant pests or disease, to issue warrants for the search for and seizure of all such plants and plant products.

It shall be the duty of the Secretary of Agriculture, and he is hereby required, from time to time, to make and promulgate such rules and regulations as shall be necessary to carry out the purposes of this section, and any person who shall move or allow to be moved, or shall ship, transport, or carry, by any means whatever, any plant or plant products from or into the District of Columbia, except in compliance with the rules and regulations prescribed under this section, shall be punished, as is provided in section 6–905. (Aug. 20, 1912, ch. 308, § 15, as added May 31, 1920, 41 Stat. 726, ch. 217; May 16, 1928, 45 Stat. 565, ch. 572.)

COMPILER'S NOTE

The Plant Quarantine and Control Administration was formerly known as Federal Horticultural Board.

STATUTORY REFERENCE

This section is contained in U. S. C., Title 7, § 167.

§ 6–905. Penalty.

Any person who shall violate any of the provisions of Title 7, chapter 8 of the United States Code, or who shall forge, counterfeit, alter, deface, or destroy any certificate provided for therein, or in the regulations of the Secretary of Agriculture, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court: *Provided,* That no common carrier shall be deemed to have violated the provisions of sections of Title 7, chapter 8 of the United States Code on proof that such carrier did not knowingly receive for transportation or transport nursery stock or other plants or plant products as such from one State, Territory, or District of the United States into or through any other State, Territory, or District; and it shall be the duty of the United States attorneys diligently to prosecute any violations of Title 7, chapter 8 of the United States Code which are brought to their attention by the Secretary of Agriculture or which come to their notice by other means. (August 20, 1912, 37 Stat. 318, ch. 308, § 10.)

STATUTORY REFERENCE

This section is set forth in U. S. C., title 7, §§ 163, 164.

Chapter 10.—BLACK-OUTS IN WAR TIME

Sec.

6–1001. Commissioners authorized to order black-outs—Regulations.
6–1002. Cooperation with Maryland and Virginia.
6–1003. Secretary of War to assist and cooperate.
6–1004. Municipality not liable for damages sustained as result of black-out.
6–1005. Increase of statutory punishment for crimes committed during black-out.
6–1006. Appointment of special police during war.
6–1007. Volunteer services for government of District during war.
6–1008. Evacuation from District during war.
6–1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.
6–1010. Penalties for violation of chapter.
6–1011. Liability—Damage to volunteer workers.
6–1012. Same; damage to other persons and property.
6–1013. Extent of power and duties of Commissioners.
6–1014. Limitation on expenditures.
6–1015. Services to veterans and war workers.

§ 6–1001. Commissioners authorized to order black-outs—Regulations.

The Commissioners of the District of Columbia are authorized and directed, whenever a state of war exists between the United States and any foreign country or nation, to order black-outs in the District of Columbia at such times and for such periods of time as they may deem desirable, subject to the approval of the Secretary of War, to regulate and prohibit the movement of vehicular traffic on the highways during such periods and to make such regulations as they may deem necessary to insure the success of the black-outs and to protect life and property during said periods. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 1.)

§ 6–1002. Cooperation with Maryland and Virginia.

The Commissioners are authorized to negotiate with the proper authorities of the States of Maryland and Virginia with a view to effecting a synchronization of black-outs in the District of Columbia and such parts of those States as may be necessary to carry out the intent and purpose of this chapter. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 2.)

§ 6–1003. Secretary of War to assist and cooperate.

The Secretary of War is authorized to assist and cooperate with the Commissioners of the District of Columbia in the execution of black-outs in the District of Columbia and the metropolitan area. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 3.)

§ 6–1004. Municipality not liable for damages sustained as result of black-out.

The municipality of the District of Columbia shall not be liable for any damages sustained to person or property during, or as the result of, an authorized black-out. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 4.)

§ 6–1005. Increase of statutory punishment for crimes committed during black-out.

The statutory penalty upon conviction of any crime, other than those punishable by life imprisonment or death, committed during any authorized black-out shall be doubled. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 5.)

§ 6–1006. Appointment of special police during war.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners may appoint, for specified times, as many special police, without pay, from among residents of the District of Columbia as they may deem advisable. During the terms of service of such special police they shall possess all the powers and perform all the duties of privates of the

standing police force of the District of Columbia, and such special police shall wear an emblem to be provided by the Commissioners. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 6.)

§ 6–1007. Volunteer services for government of District during war.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized to accept volunteer service for the government of the District of Columbia. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 7.)

§ 6–1008. Evacuation from District during war.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia, subject to the approval of the Secretary of War, are authorized to prepare for the evacuation from the District of Columbia or from any part thereof of all such persons as they shall determine, and for this purpose shall negotiate with the proper authorities of any State of the United States or of any subdivision thereof to provide for the reception, housing, maintenance, and care of evacuees, shall prepare all necessary plans for the conduct of such evacuation, and may when in their judgment the public interest or the safety of such persons creates the necessity therefor order and compel, subject to the approval of the Secretary of War, the evacuation from the District of Columbia of any such persons to such place or places as they may designate. The Commissioners of the District of Columbia are authorized and empowered to obligate the District of Columbia for the payment of all necessary costs and to make such regulations as they may deem necessary to carry out the provisions of this section, and, for the purpose of compelling evacuation, may authorize custody by the regular or special police of any person or persons, which custody shall be effective until the point of destination has been reached, and the powers of such police for such purpose are hereby declared to extend to any point within the United States that the Commissioners of the District of Columbia may designate. There are hereby authorized to be appropriated out of any money in the Treasury to the credit of the United States not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 8.)

§ 6–1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized and empowered, without regard to the provisions of any other law, to take such measures as they may deem necessary for the adequate protection of persons and property in the District of Columbia and to make such orders, rules, and regulations as they may deem necessary to carry out the foregoing authority. The power hereby granted shall include but not be limited to the following:

(a) To establish, in the government of the District of Columbia, units and organizations for civilian defense, and to utilize any or all existing voluntary units or organizations together with their personnel or any part or parts thereof; to vest members thereof with authority to carry out such functions as may be necessary to effectuate the purposes of this chapter including such powers and duties of the standing police force of the District of Columbia as the Commissioners may designate; and to make such orders and regulations as they may deem necessary to govern the establishment, maintenance, and operation of such units and organizations and the discipline of the members thereof.

(b) To use, for the purposes of this chapter, such regular employees of the government of the District of Columbia as they deem necessary.

(c) To temporarily requisition, enter upon, take possession of, and use private property of every kind and nature and any rights therein as may in their opinion be necessary for the location, installation, maintenance, and operation of facilities and devices suitable for defense purposes, and to ascertain and pay just compensation for such use of private property, and if the amount of compensation so determined be not satisfactory to the person entitled to receive the same such property may nevertheless be used immediately and such person shall be paid 50 per centum of the amount so determined and shall be entitled to sue the District of Columbia to recover such further sum as, added to said 50 per centum, will make up such amount as will be just compensation for such use.

(d) To accept from the United States and from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer.

(e) To borrow money from the Treasury of the United States, not exceeding $2,000,000, and to expend the same for defense purposes. In addition thereto, in the event of an emergency, to obligate the District of Columbia for the payment of any and all supplies, equipment, materials, food, and whatever else may be necessary for the purpose of preventing and alleviating suffering to persons and preventing the spread of disease in said District.

(f) Within the limits of money borrowed as herein provided, and of money appropriated, to store, maintain, operate, use, purchase and rent equipment, materials, and supplies of all kinds and to employ such personnel as the Commissioners may deem necessary.

(g) From the money herein authorized to be borrowed, to expend in the discretion of the Commissioners for hospital and other medical expenses for the treatment of members of civilian defense units and organizations injured in line of duty not to exceed $100,000.

(h) To accept the use of private property, and during such periods of time that any privately

owned motor vehicle is used by the District of Columbia under the authority of this section the operator thereof shall not be deemed or held to be the agent of the owner of such vehicle within the meaning of sections 40–401 to 40–416.

The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by this section, and there is hereby appropriated for this purpose $1,000,000 out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 9; Aug. 6, 1942, 56 Stat. 740, ch. 548, § 1.)

AMENDMENTS

First paragraph of section was amended in its entirety by act Aug. 6, 1942, cited to text. First paragraph originally gave Commissioners right to borrow and expend $1,000,000 and to use regular employees of District of Columbia.

ADDITIONAL APPROPRIATION

Section 3 of act Aug. 6, 1942, cited to text, provided as follows: "The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by the first paragraph of said section 9, as amended, and in addition to amounts heretofore appropriated there is hereby appropriated for this purpose the further sum of $1,000,000, out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated."

REPAYMENT OF LOANS

Section 4 of act Aug. 6, 1942, cited to text, provided as follows: "The Secretary of the Treasury shall be repaid moneys loaned under authority of section 9 of the Act of December 26, 1941, as amended by this Act, in annual installments over a period of not to exceed ten years, with interest thereon beginning July 1, 1943, for the period of amortization: *Provided,* That such interest shall be at such rate as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia on the date of the approval of this Act were said District authorized by law to issue and sell obligations to the public, at the par value thereof, in a sum equal to the repayable amounts of such advances, maturing serially over a period of ten years in approximately equal annual installments, including both principal and interest, and secured by a first pledge of and lien upon all the general-fund revenues of said District: *Provided further,* That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners, the first reimbursement to be made on July 1, 1944."

§ 6–1010. Penalties for violation of chapter.

The Commissioners shall have the power to prescribe reasonable penalties for violation of any regulation promulgated pursuant to this chapter, not exceeding a fine of $300 or ninety days' imprisonment, or both. Prosecution for such violations shall be on information in the police court by the corporation counsel or his assistants. (Dec. 26, 1941, 55 Stat. 860, ch. 625, § 10.)

§ 6–1011. Liability—Damage to volunteer workers.

Neither the District of Columbia nor any officer, agent, or employee of said District shall be liable to any person who has heretofore or who may hereafter volunteer for service with said District or with any agency for civilian defense in the District of Columbia or elsewhere for any damage sustained by such person in the course of or arising out of any such volunteer service. (Dec. 26, 1941, ch. 625, § 11, as added Aug. 6, 1942, 56 Stat. 741, ch. 548, § 2.)

NOTES TO DECISIONS

EVIDENCE, ADMISSIBILITY

In prosecution for violating municipal blackout regulations when it was not sought to charge principal with actions of agent admitting testimony of defendant's admission that he was person in charge of property where violation occurred was not error. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

EVIDENCE, SUFFICIENCY

Evidence that defendant was the manager and person in charge of premises where light was displayed in violation of municipal blackout regulations, was sufficient to sustain conviction for violating regulations although there was evidence that engineers were in charge of lighting arrangements. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

In prosecution for violating blackout regulations, evidence established that plaintiff failed to extinguish the offending light as promptly as possible or within 15 minutes as required by ordinance, and failed to establish any excuse for such violation. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

JUDICIAL NOTICE

In prosecution for violating ordinance regulating blackouts, the ordinance was not required to be introduced in evidence, since the municipal court would take notice of the ordinance. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

§ 6–1012. Same—Damage to other persons and property.

Neither the District of Columbia nor any officer, agent, employee, or regularly appointed volunteer worker in the service of said District, nor any individual, receiver, firm, partnership, corporation, association, or trustee, or any of the agents thereof, in good faith and without willful or gross negligence carrying out, complying with, enforcing or attempting to carry out, comply with, or enforce this chapter or any order, rule, or regulation issued or promulgated pursuant to this chapter, shall be liable for any damage sustained to any persons or property as the result of such activity. (Dec. 26, 1941, ch. 625, § 12, as added Aug. 6, 1942, 56 Stat. 741, ch. 548, § 2.)

§ 6–1013. Extent of power and duties of Commissioners.

The power and duties conferred upon the Commissioners of the District of Columbia by this chapter or any other Act shall not affect, impair, limit, or interfere with the powers of the military or naval authorities with respect to the control and disposition of military or naval personnel or of civilians, or with respect to any other military or naval activity or duty. (Dec. 26, 1941, ch. 625, § 13, as added Aug. 6, 1942, 56 Stat. 741, ch. 548, § 2.)

§ 6–1014. Limitation on expenditures.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized to expend, in their discretion, from the money authorized by section 6–1009 of this chapter to be borrowed, for personal services, supplies, and other expenses in connection with the coordination of nonprotective volunteer civilian services, not exceeding $25,000 per year. (Dec. 26, 1941, ch. 625, § 14, as added July 13, 1943, 57 Stat. 560, ch. 234.)

§ 6–1015. Services to veterans and war workers.

Up to and including December 31, 1947, the Commissioners of the District of Columbia are authorized and empowered, in their discretion, to provide services to veterans and war workers and to expend any moneys otherwise available for expenditure under this chapter for all necessary expenses, including personal services without regard to civil service or classification laws. (Dec. 26, 1941, ch. 625, § 15, as added May 9, 1946, 60 Stat. 169, ch. 249, § 1.)

APPROPRIATIONS AUTHORIZED

Sec. 2 of the act of May 9, 1946, cited to text, provided: "SEC. 2. There is hereby authorized to be appropriated out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated such sums as may be necessary to carry out the provisions of this amendment."

Chapter 11.—FEDERAL GOVERNMENT RESTAURANTS

Sec.
6–1101. Health regulations applicable to federal government restaurants—Exceptions.

§ 6–1101. Health regulations applicable to federal government restaurants—Exceptions.

The regulations now or hereafter adopted or promulgated by the Commissioners of the District of Columbia for the protection of health, including the penalty provisions of such regulations, shall extend and apply to all restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, soda fountains, and all other eating and drinking establishments, operated within the District of Columbia on premises owned or held under lease by the Government of the United States or any Federal department or agency, irrespective of whether such establishments are operated by the United States or any Federal department or agency or by any other person, firm, association, or corporation, and also irrespective of whether such establishments are operated for profit or otherwise.

This section shall not apply to the United States Senate and House of Representatives restaurants. (Dec. 20, 1944, 58 Stat. 826, ch. 613.)

Chapter 12.—OFFICE OF CIVIL DEFENSE

Sec.
6–1201. Declaration of intent.
6–1202. Office of civil defense authorized—Director and other personnel—Compensation.
6–1203. Powers and duties.
6–1204. Limitation of liability.
6–1205. Appropriations authorized.
6–1206. Yearly report of activities and expenditures.

§ 6–1201. Declaration of intent.

Because of the existing possibility of the occurrence of disaster of unprecedented destructiveness resulting from enemy attack, sabotage, or other hostile action, it is the intent of Congress that plans and programs to provide necessary protection, relief, and assistance for persons and property in the District of Columbia in the event such disaster shall occur or become imminent so as to require such protection, relief, and assistance, should be developed. As used in this chapter, the term "civil defense" shall mean all activities necessary for the development and execution of such plans and programs, unless the context indicates a different meaning. (Aug. 11, 1950, 64 Stat. 438, ch. 686, § 1.)

§ 6–1202. Office of civil defense authorized—Director and other personnel—Compensation.

To carry out the purposes of this chapter, the Commissioners of the District of Columbia are authorized to establish in the municipal government of such District an Office of Civil Defense to consist of a Director and such other personnel as may be needed. Such Director shall be the executive head of such office.

Notwithstanding the limitation of any law, there may be employed in such Office of Civil Defense any person who has been retired from any of the Armed Forces of the United States or any office or position in the Federal or District governments, and while so employed in such Office of Civil Defense any such retired person may receive the compensation authorized for such employment or the retired pay, retirement compensation, or annuity, whichever he may elect, and upon the termination of his employment in such Office of Civil Defense, he shall be restored to the same status as a retired officer or employee with the same retired pay, retirement compensation, or annuity to which he was entitled before having been employed in such Office of Civil Defense. (Aug. 11, 1950, 64 Stat. 438, ch. 686, § 2.)

§ 6–1203. Powers and duties.

The Office of Civil Defense is authorized and directed, subject to the direction and control of the Commissioners of the District—

(a) to prepare a comprehensive plan and program for civil defense, such plan and program to be integrated into and coordinated with the civil defense plans of the Federal Government, and of nearby States and appropriate political subdivisions thereof;

(b) to institute training programs and public information programs; to organize, equip, and train volunteers and other civil defense units, and to utilize volunteers and regularly employed personnel of the government of the District of Columbia for service in and within such civil defense units and to train such personnel for such service; to expand existing agencies of the District government concerned with civil defense; and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster;

(c) to make such studies and surveys of the resources and capabilities of the District for civil defense, and to plan for the most efficient emergency use thereof;

(d) to develop and enter into mutual aid agreements with States or political subdivisions thereof for reciprocal civil defense aid and mutual assistance in case of disaster too great to be dealt with unassisted. Such agreements may include the exchange of food, clothing, medicines, and other supplies; emergency housing; engineering services; police services; medical and nursing services; firefighting, rescue, transportation, and construction

services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed. Such agreements shall be consistent with the national civil defense plan and program. In time of emergency it shall be the duty of each agency and organization to render assistance in accordance with the provisions of such mutual aid agreements;

(e) in accordance with the civil service laws and regulations to employ such technical, clerical, stenographic, and other personnel and fix their compensation in accordance with the Classification Act of 1949 and make such expenditures within appropriations therefor or from other funds made available for purposes of civil defense, as may be necessary to carry out the purposes of this Act: *Provided,* That no person shall be employed pursuant to this paragraph until the Federal Bureau of Investigation shall have made an investigation and a report to the Director concerning the loyalty of such person, and the Director, in accordance with such regulations as he shall issue, shall make a finding on the basis of the report of the Federal Bureau of Investigation, whether the employee is suitable for employment;

(f) to cooperate with governmental and nongovernmental agencies, organizations, associations, and other entities, and coordinate the activities of all organizations for civil defense within the District;

(g) to accept from the United States or from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer;

(h) to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the District to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and supply such equipment, supplies, and facilities to the said Director upon request;

(i) to perform such other functions as may be assigned by the Commissioners of the District of Columbia. (Aug. 11, 1950, 64 Stat. 439, ch. 686, § 3.)

§ 6–1204. Limitation of liability.

Neither the District of Columbia nor any volunteer agency in the service of said District nor, except in cases of willful misconduct or gross negligence, any officer, agent, or employee of the District of Columbia or volunteer agency, or any regularly appointed volunteer worker, engaged in civil defense activities, while complying with or attempting to comply with any provision of this chapter or of any rule, regulation, or order issued pursuant to this chapter, shall be liable to any person, whether or not such person is engaged in civil defense, for death, injury, or property damage resulting therefrom. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under any workmen's compensation law, or under any pension, retirement, or disibility law, nor the right of any such person to receive any benefits or compensation under any other Act of Congress. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 4.)

§ 6–1205. Appropriations authorized.

Appropriations for carrying out the purposes of this chapter are hereby authorized. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 5.)

§ 6–1206. Yearly report of activities and expenditures.

The Office of Civil Defense, through the Commissioners of the District of Columbia, shall submit to the Senate and House of Representatives on the first day of each regular session of the Congress a report of its activities and expenditures under this chapter. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 6.)

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chap.		Sec.
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2.	Land for streets	7–201
3.	Alleys and minor streets	7–301
4.	Closing streets, alleys, or highways	7–401
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Chapter 1.—HIGHWAY PLANS

Sec.

7–101. Commissioners to have control of streets—Power to make regulations for repairs.
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7–126. District of Columbia authorized to use certain land owned by United States for street purposes.
7–127. Relocation of Michigan Avenue—Relocation authorized.
7–128. Use of part of Soldiers' Home.
7–129. Portion of Michigan Avenue abandoned.
7–130. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.
7–131. Right-of-way to Washington Railway and Electric Co.

§ 7–101 [12: 1]. Commissioners to have control of streets—Power to make regulations for repairs.

The commissioners of the District of Columbia shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the Congress. (R. S., D. C., § 77; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

AMENDMENTS

The act of 1874 provided that the Commissioners were to exercise all the power and authority formerly vested in the governor or Board of Public Works of the District.

The act of 1878 made new provisions respecting the appointment, qualifications, and duties of the Commissioners.

CROSS REFERENCES

Cleaning streets and repair and cleaning of sewers declared to be municipal objects, § 1–235.

General limitation on power of Commissioners, § 1–801.

Repair of streets sought to be abandoned, § 7–114.

Rules and regulations in general, § 1–226.

See notes to § 7–102.

§ 7–102 [12: 2]. Commissioners to have jurisdiction over public roads and bridges—Exceptions.

The Commissioners of the District of Columbia shall have the care and charge of, and the exclusive jurisdiction over, all the public roads and bridges, except such as belong to and are under the care of the United States, and except such as may be otherwise specially provided for by Congress. (R. S., D. C., § 247; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

AMENDMENTS

The act of 1874 provided that the Commissioners were to exercise all the power and authority formerly vested in the governor or Board of Public Works of the District.

The act of 1878 made new provisions respecting the appointment, qualifications, and duties of the Commissioners.

CROSS REFERENCES

Changing names of streets or highways, §§ 7–106, 7–107, 7–112.

Closing alleys or streets in municipal center, § 9–201.

Conduits and overhead wires, §§ 7–1232, 43–1101 to 43–1108, 43–1301 to 43–1304, 43–1401 to 43–1417.

Construction and repair of streets, sidewalks, and sewers, §§ 7–601 to 7–634.

Construction, type of rails, and removal of street railway tracks, §§ 44–206, 44–209, 44–211.

Criminal penalties for obstructing public highways, §§ 22–3120 to 22–3122.

Designation of streets and sidewalks for business use; parking, § 7–1205.

Duty to obtain street right-of-way through burial grounds, § 1–615.

General limitation on power of Commissioners, § 1–801.

Highway plans, §§ 7–108 to 7–131.

Jurisdiction and control of Commissioners over bridges, § 7–501 et seq.

Jurisdiction and control of streets, avenues, and sidewalks in public parks and playgrounds, § 8–108 et seq.

Jurisdiction over Conduit Road transferred to Commissioners from Secretary of War, § 7–1201.

Laying water mains and sewers, § 43–1501 et seq.

Miscellaneous provisions concerning jurisdiction and control of Commissioners over public roadways, §§ 7–1201 to 7–1234.

No street to be opened, widened, or extended which will permanently diminish flow of Rock Creek, § 8–151.

Permanent appropriation abolished, § 47–109.

Permits to maintain barbed-wire fence, removal of illegal barbed-wire fences, §§ 7–1102 to 7–1105.

Permit to widen roads or establish sidewalks adjacent to public parks and playgrounds, § 8–127.

Power of Administrator of Alley Dwelling Act over streets and alleys, § 5–104.

Power of Commissioners to close public highways under Street Readjustment Act, §§ 7–401 to 7–410.

Power of Federal Government over certain streets, §§ 7–1204, 7–1207 to 7–1210, 7–1217 to 7–1220.

Power to condemn land for streets, §§ 7–201 to 7–221.

Power to establish and condemn land for alleys and minor streets; closing or abandoning alleys or minor streets, §§ 7–301 to 7–331.

Public intoxication in street, alley or park, § 25–128.

Regulations concerning gas mains for street lighting, § 7–706.

Removal of ice and snow from sidewalks and streets, §§ 7–614, 7–801 to 7–806.

Traffic regulation for vehicular traffic, §§ 40–601 to 40–617.

Transfer of certain lands from public park system to Commissioners for streets and alleys, § 8–118.

NOTES TO DECISIONS

NATURE OF POWERS

District of Columbia is a municipal corporation and is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks, as resulted in personal injuries to individuals. *District of Columbia* v. *Woodbury* (136 U. S. 450, 34 L. Ed. 472, 10 Sup. Ct. 990).

Under this section, the powers of the Board of Public Works have been vested in the Commissioners of the District of Columbia. *Bauman* v. *Ross* (167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. 966).

The Commissioners have the right to make reasonable regulations for the use of driveways across sidewalks, but the right to regulate is one thing, and prohibition is another. The right of access is a property right, though subject to regulation, which can not be taken away without just compensation. *Brownlow* v. *O'Donoghue* (51 App. D. C. 114, 276 Fed. 636).

§ 7–103 [12: 2a]. Abutment of Highway Bridge under control of Commissioners.

The abutment into which the second pier from the south end of Highway Bridge was converted, and the roadway built to replace the two south spans of said bridge, shall be maintained and controlled by the commissioners of the District of Columbia. (Apr. 3, 1930, 46 Stat. 139, ch. 102.)

CROSS REFERENCES

Other provisions concerning jurisdiction and control of Highway Bridge, § 7–507.

Provisions concerning control and repair of bridges generally, §§ 7–501, 7–502.

§ 7–104 [12: 3]. Certain recorded public roads declared public highways.

All public roads within said District, outside the limits of Washington and Georgetown, which were duly laid out or declared and recorded as such on June 22, 1874, are public highways. (R. S., D. C., § 246.)

CROSS REFERENCES

Establishment of new roads in the subdivision of land, § 1–614.

Georgetown, as a separate and distinct city, abolished and made part of the city of Washington, § 1–107.

§ 7–105 [12: 4]. Boundaries of public highways to be permanently marked.

The boundaries of every public highway shall be permanently marked and fixed by the erection of stones or posts at the different angles thereof. (R. S., D. C., § 249.)

§ 7–106 [12: 5]. Commissioners may change names of streets when two streets have same name.

The Commissioners of the District of Columbia shall have the power and authority to change the name of any street, road, avenue, or other highway, whenever any two of such highways have the same name. (June 30, 1898, 30 Stat. 532, ch. 540.)

COMPILER'S NOTE

This section is partially superseded by § 7–107.

CROSS REFERENCES

Certain streets named or renamed by acts of Congress, § 7–107 and notes.

Naming new streets, § 7–112.

§ 7–107 [12: 6]. Commissioners to name streets outside of city limits.

The Commissioners of the District of Columbia are authorized and directed to name or rename streets, avenues, alleys, highways, and reservations in that part of the District of Columbia lying outside of the city of Washington, under such system of naming as they shall see fit to adopt, and such names when recorded in the office of the surveyor of the District of Columbia shall thereafter be the official names of such streets, avenues, alleys, highways, and reservations. (Feb. 16, 1904, 33 Stat. 14, ch. 159.)

COMPILER'S NOTE

This section partially supersedes § 7–106.

CROSS REFERENCE

Naming new streets, § 7–112.

CHANGES IN STREET NAMES BY CONGRESS

ABBEY PLACE

The name of the street not yet cut through, but now on record as Third Place Northeast, be, and the same is hereby, changed to Abbey Place, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (Feb. 21, 1925, 43 Stat. 960, ch. 285.)

AVENUE OF THE PRESIDENTS

Hereafter Sixteenth Street Northwest shall be known and designated as "Avenue of the Presidents." (Mar. 4, 1913, 37 Stat. 938, ch. 150.)

CATHEDRAL AVENUE

The name of the street now known as Jewett Street west of Wisconsin Avenue be, and the same is hereby,

changed to Cathedral Avenue, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (May 27, 1924, 43 Stat. 177, ch. 201.)

CHEVY CHASE PARKWAY

The name of the street now known as Thirty-seventh Street between Chevy Chase Circle and Reno Road be, and the same is hereby, changed to Chevy Chase Parkway, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (May 3, 1924, 43 Stat. 115, ch. 148.)

COMMODORE BARNEY CIRCLE

From and after the passage of this act the circle located at the eastern end of Pennsylvania Avenue Southeast, in the District of Columbia, now known as public reservations numbered fifty-five and fifty-six, shall be officially known and designated "Commodore Barney Circle." (Aug. 19, 1911, 37 Stat. 29, ch. 34.)

FAIRLAWN AVENUE

The name of the street now known as Railroad Avenue, between Nichols Avenue and Massachusetts Avenue, part of which is not yet cut through, but now on record as Railroad Avenue Southeast, be, and the same is hereby, changed to Fairlawn Avenue, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (May 29, 1928, 45 Stat. 997, ch. 905.)

FIFTEENTH STREET

McPherson Place Northwest, between I and K Streets, on the west side of McPherson Square, is hereby designated Fifteenth Street, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (June 5, 1920, 41 Stat. 846, ch. 234.)

GREENWICH PARKWAY

The name of the street not yet cut through, between Forty-fourth Street and Foxhall Road, but now on record as Dent Place Northwest, be, and the same is hereby, changed to Greenwich Parkway, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (July 3, 1926, 44 Stat. 809, ch. 736.)

LOGAN CIRCLE

The name of the circle known on December 11, 1930, as "Iowa Circle," in the city of Washington, is hereby changed to "Logan Circle" in recognition of the services rendered the United States by General John A. Logan during the Civil War and in civil life, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (Dec. 11, 1930, 46 Stat. 1026, ch. 8.)

MAINE AVENUE

In honor of the State of Maine that part of Water Street Southwest, in the District of Columbia, lying between Fourteenth Street Southwest and P Street Southwest, is hereby renamed "Maine Avenue" and shall hereafter bear the name of "Maine Avenue." (June 11, 1938, 52 Stat. 641, ch. 339.)

MILITARY ROAD

The name of the street known as Keokuk Street Northwest, extending from Military Road at Twenty-seventh Street to Wisconsin Avenue, be, and the same shall henceforth be known as Military Road. And the Commissioners of the District of Columbia are hereby directed to cause the name of Military Road from Military Road at Twenty-seventh Street to Wisconsin Avenue Northwest to be placed upon the plats and maps of the District of Columbia. (June 7, 1924, 43 Stat. 593, ch. 304.)

MONTGOMERY BLAIR PORTAL

The portion of Sixteenth Street and the adjacent park reservation lying within the District of Columbia at the intersection of Sixteenth Street, North Portal Drive, Eastern Avenue, and the District line, shall be known as Montgomery Blair Portal, in commemoration of the public service of the late Montgomery Blair, Postmaster General in the Cabinet of President Lincoln. (April 14, 1932, 47 Stat. 81, ch. 101.)

MOZART PLACE

The street now known and designated as Messmore Place and extending from Euclid Street to Columbia Road shall hereafter be designated Mozart Place, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (Mar. 4, 1911, 36 Stat. 1347, ch. 250.)

OREGON AND CONCORD AVENUES

The name of Oregon Avenue be restored to the street lying between New Hampshire Avenue and Eighteenth Street Northwest, in the District of Columbia, and said avenue shall be extended so as to include Cedar Place, and shall hereafter be known and designated as Oregon Avenue: *Provided,* That the name of the highway leading from North Capitol Street to Rock Creek Park, now known as Oregon Avenue, shall hereafter be known and designated as Concord Avenue. (February 15, 1912, 37 Stat. 65, ch. 39.)

OREGON AVENUE

In honor of the State of Oregon, Daniel Road Northwest, in the District of Columbia, is hereby renamed "Oregon Avenue" and shall hereafter bear the name of "Oregon Avenue." (June 11, 1938, 52 Stat. 641, ch. 340, § 1.)

SWANN STREET

The street in the District of Columbia running through squares 132 and 152, known as "Oregon Avenue" prior to the enactment of this section is hereby renamed "Swann Street" and shall be a part of the street heretofore designated as "Swann Street." (June 11, 1938, 52 Stat. 641, ch. 340, § 2.)

WALBRIDGE PLACE

The part of Twentieth Street Northwest, in the District of Columbia, beginning at Park Road and extending north along the west side of square 2617 to the north end of said square, shall hereafter be designated Park Road; and the part of said Twentieth Street beginning at Park Road and extending south along square 2604 to Adams Mill Road shall hereafter be designated Walbridge Place. (Act of March 4, 1913, 37 Stat. 938, ch. 150.)

WILLIAMSBURG LANE

The name of that portion of the street in the District of Columbia now known as Twenty-fourth Street Northwest, which begins at Porter Street and extends one block in a northerly direction to Rock Creek Park, is hereby changed to Williamsburg Lane. (Apr. 22, 1940, 54 Stat. 156, ch. 134.)

§ 7–108 [12: 7]. Permanent highway plan—Preparation by Commissioners—Width of streets.

The commissioners of the District of Columbia are hereby authorized and directed to prepare a plan for the extension of a permanent system of highways over all that portion of said District not included within the limits of the cities of Washington and Georgetown. Said system shall be made as nearly in conformity with the street plan of the city of Washington as the commissioners may deem advisable and practicable. The highways provided in such plans shall not in any case be less than ninety feet nor more than one hundred and sixty feet wide, except in cases of existing highways, which may be established of any width not less than their existing width and not more than one hundred and sixty feet in width. (Mar. 2, 1893, 27 Stat. 532, ch. 197, § 1.)

CROSS REFERENCES

Appropriations made under this chapter may be used in closing public highways under Street Readjustment Act, § 7–406.

Duties of Surveyor, § 1–601 et seq.

Georgetown, as a separate and distinct city, abolished and made a part of the city of Washington, § 1–107.

New plan, § 7–122.

NOTES TO DECISIONS

DUTIES OF COMMISSIONERS

Under this act the Commissioners were required to prepare a plan for a permanent system of highways throughout the District, exclusive of the cities of Washington and Georgetown, and to cause to be prepared a map of the same showing the boundaries, and the dimensions of the streets, avenues, and roads, established by them with authority to name all streets, avenues, alleys, and reservations laid out or adopted under the provisions of the act. *Rudolph* v. *Warwick* (56 App. D. C. 128, 10 Fed. (2d) 993).

EXISTING PLANS

In an act authorizing Commissioners of District to prepare new highway plans, they were not limited to previous plans subject to above section. *Wilkinson* v. *Dougherty* (58 App. D. C. 81, 24 Fed. (2d) 1007).

§ 7–109 [12: 8]. Permanent highway—Plans to be prepared in sections—Conformity to subdivisions—Plans to be submitted to National Capital Park and Planning Commission—Recordation—Landowners to submit plat of proposed highways.

The said plans shall be prepared from time to time in sections, each of which shall cover such an area as the commissioners may deem advisable to include therein, and it shall be the duty of the commissioners in preparing such plan by sections, as far as may be practicable, to select first such areas as are covered by existing suburban subdivisions not in conformity with the general plan of the city of Washington. The commissioners in making such plans shall adopt and conform to any then existing subdivisions which shall have been made in compliance with the provisions of the Act of Congress approved August 27, 1888, entitled "An act to regulate the subdivision of land within the District of Columbia" (25 Stat. 451), or which shall, in the opinion of the commissioners, conform to the general plan of the city of Washington: *Provided, however,* That no place or street extending no farther than from one principal street to another, which has been opened under the direction of the commissioners, or in conformity with any subdivision approved by them prior to August 27, 1888, and recorded, and which was on March 2, 1893, paved with asphalt or other sheet pavement, shall be altered, affected, or interfered with by any plan adopted or anything done under or by virtue of sections 7–108 to 7–112. Whenever the plan of any such section shall have been adopted by the commissioners they shall cause a map of the same to be made showing the boundaries and dimensions of and number of square feet in the streets, avenues, and roads established by them therein; the boundaries and dimensions of and number of square feet in each, if any, of the then existing highways in the area covered by such map, and the boundaries and dimensions of and number of square feet in each lot of any then existing subdivision owned by private persons; and containing such explanations as shall be necessary to a complete understanding of such map. In making such maps the commissioners are further authorized to lay out at the intersections of the principal avenues and streets thereof circles or other reservations corresponding in number and dimensions with those existing on March 2, 1893, at such intersections in the city of Washington. A copy of such map, duly certified by the commissioners, shall be delivered to the National Capital Park and Planning Commission, who shall make such alterations, if any, therein, as it shall deem advisable, keeping in view the intention and provisions of sections 7–108 to 7–112, and the necessity of harmonizing as far as possible the public convenience with economy of expenditure; and if such commission shall see fit, they may cause to be made a new map in place of the one submitted to them. When such commission, or a majority thereof, shall have come to a final determination in the matter, they shall approve in writing the map which they shall adopt, and shall deliver it to said commissioners of the District of Columbia, and the same shall at once be filed and recorded in the office of the surveyor of the District of Columbia, and after any such map shall have been so recorded no further subdivision of any land included therein shall be admitted to record in the office of the surveyor of said District, or in the office of the recorder of deeds thereof, unless the same be first approved by the commissioners and be in conformity to such map. Nor shall it be lawful when any such map shall have been so recorded for the commissioners of the District of Columbia, or any other officer or person representing the United States or the District of Columbia, to thereafter improve, repair, or assume any responsibility in regard to any abandoned highway within the area covered by such map, or to accept, improve, repair, or assume any responsibility in regard to any highway that any owner of land in such area shall thereafter attempt to lay out or establish, unless such landowner shall first have submitted to the commissioners a plat of such proposed highway and the commissioners shall have found the same to be in conformity to such map, and shall have approved such plat and caused it to be recorded in the office of said surveyor. (Mar. 2, 1893, 27 Stat. 532, ch. 197, § 2; Apr. 30, 1926, 44 Stat. 374, ch. 198.)

COMPILER'S NOTE

This section is largely temporary and executed.

AMENDMENT

The National Capital Park and Planning Commission was created by act of April 30, 1926, cited to the text. The act of 1893 originally provided for a commission "composed of the Secretary of War, the Secretary of the Interior, and the Chief of Engineers."

CROSS REFERENCE

Recording maps and plats, § 1–606.

NOTES TO DECISIONS

FURTHER SUBDIVISION

It was clearly within the authority of Congress to provide that after the recording of the map under this section, no further subdivision not in accordance with the map should be admitted of record, and such provision did not constitute the taking of land. *Bauman* v. *Ross* (167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. 966).

PROPERTY OWNER'S RIGHTS

Provision in this section forbidding commissioners to improve, repair, or assume any responsibility in regard to highways not in conformity with map filed under this section did not affect the rights of owners of the land. *Bauman* v. *Ross* (167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. 966).

§ 7–110 [12: 9]. Adoption of subdivision by reference in will or deed.

When any such map shall have been recorded as aforesaid in the office of the surveyor of the District it shall be lawful for the owner of any land included within such map to adopt the subdivision thereby made by a reference thereto and to this section in any deed or will which he shall thereafter make, and when any deed or will containing any such reference shall have been made and recorded in the proper office it shall have the same effect as though the grantor or grantors in such deed or the maker of such will had made such subdivision and recorded the same in compliance with law. (Mar. 2, 1893, 27 Stat. 533, ch. 197, § 3.)

NOTES TO DECISIONS

REFERENCE IN DEED OR WILL

Provision of this section giving to any deed or will duly recorded, which referred to subdivision made by map filed under § 7–109, the same effect as if subdivision had been made and recorded by the testator or grantor, benefited rather than injured the land. *Bauman* v. *Ross* (167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. 966).

§ 7–111 [12: 10]. Entry upon property authorized for purposes of survey.

For the purpose of making surveys for such plans and maps the commissioners and their agents and employees necessarily engaged in making such surveys are authorized to enter upon any lands through or on which any projected highway or reservation may run or lie. (Mar. 2, 1893, 27 Stat. 534, ch. 197, § 4.)

§ 7–112 [12: 11]. Commissioners authorized to name streets.

The Commissioners of the District of Columbia are authorized to name all streets, avenues, alleys, and reservations laid out or adopted under the provisions of sections 7–108 to 7–112. (Mar. 2, 1893, 27 Stat. 534, ch. 197, § 5.)

CROSS REFERENCES

Altering or renaming streets, §§ 7–106, 7–107.
Certain streets named or renamed, § 7–107, and notes.

§ 7–113 [12: 12]. Abandonment or readjustment of streets to provide ground for educational, religious, or similar institutions.

In order to provide grounds for educational, religious, or similar institutions, the Commissioners of the District of Columbia be and they are hereby, authorized to abandon or readjust streets or proposed streets affecting localities that may be or that have been purchased for such purposes: *Provided*, That under the authority hereby conferred no changes shall be made in existing subdivisions or in avenues or in important lines of travel.

The plat of such readjustment, after being duly certified by said commissioners, shall be forwarded to the National Capital Park and Planning Commission, and when approved by said commission or a majority thereof the change shall be recorded in the office of the surveyor of the District of Columbia and become a part of the permanent system of highways, and take the place of any part inconsistent therewith. (June 28, 1898, 30 Stat. 520, ch. 519, § 3; Apr. 30, 1926, 44 Stat. 374, ch. 198.)

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COMPILER'S NOTE

This section is probably temporary and obsolete in part. The words "existing subdivisions" should probably be "subdivisions existing June 28, 1898."

AMENDMENT

The National Capital Park and Planning Commission was created by act of April 30, 1926, cited to the text. The act of 1898 originally referred to "the Commission consisting of the Secretary of War, the Secretary of the Interior, and the Chief of Engineers of the United States Army."

CROSS REFERENCES

Closing or abandoning alleys or minor streets, §§ 7–302 to 7–312.
Closing streets, alleys, or highways; Street Readjustment Act, §§ 7–401 to 7–410.
Exchange of certain lands belonging to Columbia Institution for the Deaf, § 31–1021 and notes.
Provisions of Street Readjustment Act for the closing of public highways did not repeal similar provisions of this chapter, § 7–409.

§ 7–114 [12: 13]. Use of property by owner until condemnation.

The owner or owners of land over or upon which any highway or reservation shall be projected upon any map filed under sections 7–108 to 7–112 shall have the free right to the use and enjoyment of the same for building or any other lawful purpose, and the free right to transfer the title thereof, until proceedings looking to the condemnation of such land shall have been authorized and actually begun. And as to any highway or part of highway which by any such map is to be abandoned neither the right of those occupying or owning land abutting thereon or adjacent thereto, nor the right of the public to use such highway or part of highway, shall be affected by the filing of such map until condemnation proceedings looking to the ascertainment of the damages resulting from such proposed abandonment shall have been authorized and actually begun; nor shall the obligation of the municipal authorities to keep the same in repair be affected until they are rendered useless by the opening and improvement of new highways, to be evidenced by public notice by the commissioners of the District of Columbia. (June 28, 1898, 30 Stat. 520, ch. 519, § 5.)

§ 7–115 [12: 14]. Public notice to owners of plan—Opportunity to be heard.

Said commissioners shall not submit for approval to the National Capital Park and Planning Commission any map or plan thereunder until the owners of the land within the territory embraced within such map shall have been given an opportunity to be heard in regard thereto by said commissioners, after public notice to that effect for not less than fourteen consecutive days, excluding Sundays. (June 28, 1898, 30 Stat. 520, ch. 519, § 6; Apr. 30, 1926, 44 Stat. 374, ch. 198.)

AMENDMENT

The National Capital Park and Planning Commission was created by act of Apr. 30, 1926, cited to text. The act of 1898 originally referred to "the commission consisting of the Secretary of War, the Secretary of the Interior, and the Chief of Engineers of the United States Army."

§ 7–116 [12: 15]. Powers may be exercised through Beatty and Hawkins's addition to Georgetown.

All the powers given to the commissioners and others under sections 7–108 to 7–112 shall apply to and be capable of being exercised upon and through Beatty and Hawkins's addition to Georgetown, where it may be necessary to connect streets in parts of the District lying outside of cities, or to connect any street in the city with streets in the District of Columbia. (Apr. 12, 1904, 33 Stat. 587, Res. No. 21.)

§ 7–117 [12: 16]. Acceptance of dedicated streets—Building restrictions—Right-of-way for sewers and water-mains.

In order to facilitate the extension of streets and encourage the donation of land in accordance with the plans for the permanent system of highways, the Commissioners of the District of Columbia are authorized, whenever in their judgment it may seem proper, to accept the dedication of streets shown on said plans, and record same, under the following conditions, namely: Streets which are shown as ninety feet in width on said plans may be accepted with a width of not less than sixty feet: *Provided,* That the parties dedicating same agree to establish building restriction lines to agree with the street lines as shown on said plans; and streets shown on said plans as one hundred and twenty feet or more in width may be accepted with a width of not less than ninety feet: *Provided,* That the parties dedicating same agree to establish building restriction lines to agree with the street lines as shown on said plans: *And provided further,* That the space between the street lines, as established under the terms hereof, and the building restriction lines shall be considered as private property set aside and to be used for parking purposes: *But provided further,* That the parties so dedicating shall agree that said parking shall be subject to the regulations of said commissioners in regard to height of parking and the projection of buildings beyond the building line, and that the District of Columbia shall have a right of way through said parking for sewers and water-mains free of cost, and to lay thereon sidewalks, if, in the judgment of said commissioners, the space between street lines is not sufficient to admit the construction of such sidewalks within said lines. (May 31, 1900, 31 Stat. 248, ch. 599, § 2.)

CROSS REFERENCES

Building lines, §§ 5–201 to 5–206.
Dedication of streets, § 1–614.
Refusal to dedicate streets in conformity with highway plan, power of Commissioners to condemn, §§ 7–216, 7–217.

NOTES TO DECISIONS

EMINENT DOMAIN

Commissioners have no authority to widen street 60 feet in width to 120 feet since 15 foot space of the street though dedicated to certain purposes, does not constitute a part of the street for all purposes. *Dougherty* v. *Galliher,* (58 App. D. C. 166, 26 Fed. (2d) 538).

It is not error to allow credit in assessment for benefit of land previously dedicated for street purposes, as well as value of land condemned. *Nealy* v. *Hazen* (63 App. D. C. 239, 71 Fed. (2d) 692).

WIDENING OF STREETS

Where a street is 60 feet wide with a mere building restriction on an additional 15 feet, the widening of the street by 45 feet is not authorized, since such widening will not make a 120-foot street. *Dougherty* v. *Galliher* (58 App. D. C. 166, 26 Fed. (2d) 538).

§ 7–118 [12: 17]. Streets abandoned under highway plan to revert to abutting owners.

Upon the abandonment of any street, avenue, road, or highway, or part thereof, under the provisions of sections 7–108 to 7–112, the title to the land contained in such abandoned portion shall revert to the owners of the land abutting thereon. (Feb. 16, 1904, 33 Stat. 14, ch. 159, § 2.)

COMPILER'S NOTE

This section is probably superseded by § 7–123.

CROSS REFERENCES

Closing alleys or minor streets, §§ 7–302 to 7–312.
Closing public highways under Street Readjustment Act, §§ 7–401 to 7–410.
Consent of property owners, § 7–123.
Ownership or reversion of lands on abandonment of public ways, §§ 7–123, 7–302 to 7–309, 7–401.
Provisions of Street Readjustment Act for the closing of public highways do not repeal similar provisions of this chapter, § 7–409.

§ 7–119 [12: 18]. Resubdivision of property affected by highway plan pending condemnation.

Where any proposed street of the permanent system of highways affects any lot or block of a subdivision recorded in the office of the surveyor of the District of Columbia, the commissioners of the District of Columbia may, in their discretion, allow the resubdivision of such lot or block in a manner conforming to the original subdivision until such time as condemnation proceedings are begun for the opening of the proposed street affecting the land to be subdivided. (Feb. 26, 1904, 33 Stat. 51, ch. 164.)

§ 7–120 [12: 19]. Street, avenue, or public thoroughfare within 1,000 feet of Naval Observatory.

No street, avenue, or public thoroughfare in the neighborhood of the buildings erected upon the United States Naval Observatory grounds, Georgetown Heights, District of Columbia, shall extend within the area of a circle described with a radius of one thousand feet from the center of the building known as the clock room of the said observatory. (Aug. 1, 1894, 28 Stat. 588, Res. No. 40, § 1.)

§ 7–121 [12: 20]. Extension of Massachusetts Avenue.

Massachusetts Avenue, as laid down in conformity with section 7–120 upon the maps of the engineer department of the District of Columbia, through the grounds of the United States Naval Observatory is declared to be a public street in all respects as the other public streets of the District of Columbia. (Aug. 1, 1894, 28 Stat. 588, Res. No. 40, § 2.)

§ 7–122 [12: 37]. New highway plans authorized.

The commissioners of the District of Columbia are hereby authorized, whenever in their judgment the public interests require it, to prepare a new highway plan for any portion of the District of Columbia, and submit the same for approval, after public hearing, to the National Capital Park and Planning Commission; such highway plans shall be prepared under sections 7–108 to 7–115, and upon approval and re-

cording of any such new highway plan it shall take the place of and stand for any previous plan for the portion of the District of Columbia affected. (Mar. 4, 1913, 37 Stat. 949, ch. 150; Apr. 30, 1926, 44 Stat. 376, ch. 198.)

COMPILER'S NOTE

The amendment made by the 1898 act deleted sections 6 to 19 of the 1893 act, which sections, being repealed, are not carried in this code. It did not purport to amend the remaining sections which appear herein as §§ 7–113 to 7–115.

AMENDMENT

The National Capital Park and Planning Commission was created by act of 1926. The act of 1913 originally referred to the "highway commission, created by act of Congress approved March second, 1893, entitled, 'An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities.' "

STATUTORY REFERENCES

New plan for Barry Farm, act of March 3, 1917, 39 Stat. 1014, ch. 160.

New plan for lands lying between Mount Pleasant Street, Irving Street, Adams Mill Road, Quarry Road, and Columbia Road; extension of Lanier Place and Eighteenth Street, act of March 2, 1911, 36 Stat. 978, ch. 192.

New plan for lands lying north of Evarts Street North, east of North Capitol Street, south of Michigan Avenue, and west of Glenwood Cemetery, act of February 25, 1909, 35 Stat. 652, ch. 201.

New plan for lands lying north of Ordway Street, south of Rodman Street, east of Reno Road, and west of Connecticut Avenue Highlands subdivision, act of June 30, 1906, 34 Stat. 800, ch. 3924.

New plan for lands lying north of Sheriff Road and southeast of Alexandria branch of the Baltimore and Ohio Railroad Company, act of February 1, 1905, 33 Stat. 628, ch. 290.

New plan for lands lying north of Tilden Street, south of Albemarle Street, east of Reno Road, and west of Connecticut Avenue, act of March 2, 1907, 34 Stat. 1130, ch. 2510.

New plan for lands lying west of Mills Avenue, north of Franklin Street, east of Twentieth Street, and south of Rhode Island Avenue Northeast; and for lands lying east of Mills Avenue, north of Franklin Street, west of South Dakota Avenue, and south of Rhode Island Avenue Northeast, act of February 25, 1909, 35 Stat. 650, ch. 196.

New plan for lands lying west of Rock Creek Park, north of Klingle Road, east of Connecticut Avenue, and south of Ellicott Street Northwest, act of February 21, 1910, 36 Stat. 201, ch. 54.

New plan "for that portion of the first section of the permanent system of highways plan lying between Georgia Avenue on the east, Sixteenth Street on the west, Kalmia Street on the north, and Butternut Street on the south," act of March 23, 1910, 36 Stat. 241, ch. 108.

New plan "for that portion of the third section of the permanent system of highways plan lying west of Rock Creek, north of Massachusetts Avenue and the Observatory Circle, east of Thirty-sixth Street West, south of Cathedral Avenue, southwest of Cleveland Avenue, south of Calvert Street, and southwest of Connecticut Avenue," act of February 19, 1910, 36 Stat. 197, ch. 41.

New plan "for that triangular portion of the District of Columbia lying north of Rittenhouse Street, west of Thirty-third Street, and southeast of the District line," act of February 20, 1911, 36 Stat. 924, ch. 134.

NOTES TO DECISIONS

EFFECT OF PRIOR ACTS

The Commissioners in establishing highways are not limited to plans prepared under act of March 2, 1893, and act of June 28, 1898. *Wilkinson* v. *Dougherty* (58 App. D. C. 81, 24 Fed. (2d) 1007, cert. den. 278 U. S. 603, 73 L. Ed. 531, 49 Sup. Ct. 10).

NOTICE OF HEARING—DUE PROCESS

Assessment of benefits against property owners without notice of hearing held to deny due process of law. *Wilkinson* v. *Dougherty* (58 App. D. C. 81, 24 Fed. (2d) 1007, cert. den. 278 U. S. 603, 73 L. Ed. 531, 49 Sup. Ct. 10).

§ 7–123 [12: 39]. Commissioners of the District of Columbia to close certain streets, roads, or highways in the District of Columbia rendered useless or unnecessary by the highway plan—Consent of owners.

The Commissioners of the District of Columbia be, and they are hereby, authorized to close Broad Branch Road between Jocelyn and Thirty-first Streets, Piney Branch Road between Spring Road and Blair Road, Pierce Mill Road between Tilden Street and Wisconsin Avenue, Belt Road between Wisconsin Avenue and Chevy Chase Circle, Colfax Street through square 712, Queen's Chapel Road between Bladensburg Road and Irving Street, Grant Road between Wisconsin Avenue and Connecticut Avenue, and such other streets, roads, or highways or parts of streets, roads, or highways, as may, in the judgment of the commissioners of the District of Columbia, become useless or unnecessary by reason of the opening, extension, widening, or straightening, in accordance with the highway plan of a street, road, or highway in the District of Columbia by dedication, purchase, or condemnation; the title to the part or parts of the streets, roads, or highways so closed to revert to the abutting property-owners: *Provided,* That the written consent of the owners of all the property abutting on the street, road, or highway or a part of street, road, or highway proposed to be closed be obtained. (Jan. 30, 1925, 43 Stat. 799, ch. 116, § 1.)

COMPILER'S NOTE

This section may supersede § 7–118.

CROSS REFERENCES

Closing alleys or minor streets, §§ 7–302 to 7–312.

Closing or altering streets under Alley Dwelling Act, § 5–103.

Closing public highways under Street Readjustment Act, §§ 7–401 to 7–410.

Closing streets for McKinley Technical High School and Langley Junior High School buildings, § 31–1108.

Ownership or reversion of land on abandonment of public ways, §§ 7–118, 7–302 to 7–309, 7–401.

Provisions of the Street Readjustment Act for the closing of public highways did not repeal similar provisions of this chapter, § 7–409.

ABANDONMENT OR CLOSING OF CERTAIN STREETS OR WAYS UNDER ACTS OF CONGRESS

CANAL, FIFTH, AND N STREETS AND GEORGIA AVENUE

Upon the acquirement by the United States of title to all property abutting on Canal, Fifth, and N Streets, and Georgia Avenue, between the south building line of M Street south and the eastern branch of the Potomac River, and between the east building line of Fourth Street east and the west wall of the navy yard in the city of Washington, District of Columbia, all portions of Canal, Fifth, and N Streets, and Georgia Avenue lying within such boundaries shall be abandoned and closed, and the Secretary of the Navy is authorized to take possession thereof, and said portions of said streets, together with Government reservations numbered two hundred and forty-nine and two hundred and fifty lying within the same boundaries, shall be regarded as set apart and reserved for naval purposes. (Mar. 3, 1903, 32 Stat. 1186, ch. 1010.)

CEDAR ROAD (PART OF)

The commissioners are hereby authorized to close Cedar Road between Quincy Street and Shepherd Street Northwest, in the District of Columbia. (Mar. 3, 1921, 41 Stat. 1251, ch. 121.)

ELEVENTH STREET SOUTHEAST

That portion of Eleventh Street Southeast lying south of the south line of O Street Southeast and west of the west face of the new Anacostia Bridge is hereby abandoned and closed, and said portion of said street, together with such land owned by the United States as is bounded on the north by the south line of O Street; on the east by the west face of the new Anacostia Bridge; on the south by the waters of the Anacostia River; and on the west by the west line of Eleventh Street, extending in a southerly direction from its point of intersection with the south line of O Street and prolonged to its intersection with the waters of the Anacostia River, is hereby set apart and reserved for naval purposes and placed under the control and jurisdiction of the Secretary of the Navy: *Provided,* That at all times the proper authorities of the District of Columbia shall be permitted to have access to the area above described for the purpose of making examinations of, and repairs to, the said bridge; *And provided further,* That all leases heretofore granted by the Commissioners of the District of Columbia to parties occupying said above-described area are hereby, in accordance with the terms of such leases, terminated. (July 1, 1918, 40 Stat. 724, ch. 114.)

FORTY-FIRST STREET

Abandonment of part of Forty-first Street, reservation of easement for educational or religious purposes. (Apr. 8, 1910, 36 Stat. 292, ch. 145.)

GRANT ROAD

Abandonment of part of Grant Road upon acquisition of certain other land for streets. (Mar. 4, 1923, 42 Stat. 1446, ch. 247, § 1.)

JEFFERSON STREET

Abandonment of part of Jefferson Street upon dedication of certain other lands. (Mar. 23, 1910, 36 Stat. 240, ch. 107.)

M STREET (SOUTH OF) AND WEST OF ELEVENTH STREET

Upon the acquisition of the land hereby authorized, all portions of public streets on which any squares so taken over shall abut and lying between the same, and all public alleys within said squares together with such portions of streets and public alleys as lie between the present navy yard and the land so acquired, are hereby abandoned and closed and said portions of said streets and public alleys shall be regarded as set apart and reserved for naval purposes. (July 1, 1918, 40 Stat. 724, ch. 114.)

NEW HAMPSHIRE AVENUE

Abandonment of part of New Hampshire Avenue. (Mar. 3, 1913, 37 Stat. 729, ch. 111, § 3.)

NORTH DAKOTA AVENUE

Abandonment of part of North Dakota Avenue. (Aug. 24, 1912, 37 Stat. 503, ch. 375.)

QUINTANA PLACE

The Commissioners of the District of Columbia are hereby authorized, on condition that the expense of moving and relocating the water-main now existing be borne by the adjoining property-owner, and without other expense to the District of Columbia, to close Quintana Place, between Seventh Street and Seventh Place Northwest, running through square 3160 in the District of Columbia, dedicated as a public highway by plat recorded December 23, 1925, and recorded in book numbered 80, page 173, of the records of the surveyor of the District of Columbia: *Provided,* That the title to the land lying within the area hereby closed shall revert to the proprietor of the adjoining blocks, the land in the said dedication never having been improved or used as a highway. (June 17, 1932, 47 Stat. 319, ch. 267.)

RENO SUBDIVISION

Upon the acquisition by either the United States or the District of Columbia, or by both, of all the land in the subdivision of Reno lying within the territory bounded by Thirty-eighth Place, Fessenden Street, Howard Street, and the alley running east and west through squares 1762 and 1846 from the east line of Thirty-eighth Place extended to Howard Street, the Commissioners of the District of Columbia be, and they are hereby, authorized to close Emery Place, Vincent Street, Donaldson Place, McPherson Street, and the public alleys, lying within the above-described limits, or any portion or portions thereof: *Provided,* That upon the closing of said streets or alleys, or any part thereof, the title to the land lying within the portion of the streets or alleys so closed shall revert to the District of Columbia. (June 26, 1930, 46 Stat. 816, ch. 615.)

R STREET AND CERTAIN ALLEYS

The Commissioners of the District of Columbia are authorized to close, vacate, and abandon R Street Northwest, between the west line of Thirty-eighth Street and the east line of Thirty-ninth Street, and the alleys in squares 1307 and south of 1311, the property so vacated and abandoned to be used as part of the said athletic field. (July 3, 1930, 46 Stat. 970, ch. 848.)

SQUARES 1093, 1107 AND SPECIFIC STREETS

The Commissioners of the District of Columbia are hereby authorized and directed to close all the alleys in square 1107, and all the alleys in that part of square 1093 lying east of Seventeenth Place; to close Eighteenth Street Northeast for its full width between the north line of B Street and the south line of C Street; and to close Eighteenth Place Northeast between the north line of B Street and the south line of C Street, the title to the land abutting on said alleys and streets to be closed being in the District of Columbia: *Provided,* That the title to the land lying within the alleys and streets hereby closed shall revert to the District of Columbia for public-school purposes. (May 13, 1930, 46 Stat. 269, ch. 250.)

W STREET NORTHEAST

Abandonment of part of W Street Northeast. (Apr. 12, 1904, 33 Stat. 174, ch. 1250.)

§ 7–124 [12: 40]. Plat to be filed—Assessment.

Whenever a street, road, or highway, or any part of a street, road, or highway is sought to be closed in accordance with the provisions of section 7–123, a plat showing the street, road, or highway or part of the street, road, or highway to be closed by the said commissioners, as provided herein, shall be prepared by the surveyor of the District of Columbia and approved by the Commissioners of the District of Columbia and ordered by the said commissioners to be recorded in the office of the surveyor of the District of Columbia, and the area to be apportioned to each property owner abutting on the street, road, or highway or part of street, road, or highway closed by the said commissioners, as provided herein, shall be determined by the said commissioners and shall be shown by plats and computations prepared by the surveyor of the District of Columbia, and said apportioned areas shall be assessed on the books of the assessor of the District of Columbia the same in all respects as other private property in the District of Columbia. (Jan. 30, 1925, 43 Stat. 800, ch. 116, § 2.)

§ 7–125 [12: 41]. Subdivision to conform to plan of Washington—Approval of Commissioners.

No subdivision of land in the District of Columbia without the limits of the city of Washington shall be recorded in the office of the surveyor or in the office of the recorder of deeds unless the same shall have been first approved by the Commissioners of the District of Columbia and be in conformity with

the recorded plans for a permanent system of highways. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1604.)

CROSS REFERENCES

General provision for approval of subdivisions by Commissioners, § 1–613.

Refusal to dedicate streets in conformity with highway plan, power of Commissioners to condemn, §§ 7–216, 7–217.

§ 7–126 [12: 42]. District of Columbia authorized to use certain land owned by United States for street purposes.

The Commissioners of the District of Columbia are authorized to use for street purposes one thousand six hundred and fifty-one square feet of a tract of land known as parcel 17/93, seven hundred and eight square feet of a tract of land known as parcel 18/52, and three hundred and eighty square feet of a tract of land known as parcel 18/23, all for the widening of Reservoir Road, and to use for street purposes twenty-three thousand seven hundred and seventy-nine and sixty-three one-hundredths square feet of a tract of land known as parcel 28/12 for the widening of Reservoir Road and Forty-fourth Street; and to use for street purposes a strip of land sixty feet wide containing two hundred and fifty-eight thousand seven hundred and fifty square feet, more or less, lying immediately northeasterly of the southwesterly boundary of a tract of land known as parcel 173/23 for the widening of South Dakota Avenue; and to use for street purposes nine thousand square feet, more or less, of a tract of land known as parcel 243/15 for the extension of Trenton Street and for the widening of Fourth Street Southeast; and to use for street purposes one thousand five hundred and twenty-one and twenty-eight one-hundredths square feet of lot 802, square 1932, and three thousand six hundred and sixty-nine and eighty-eight one-hundredths square feet of lot 837, square 1300, for the widening of Wisconsin Avenue, all as shown on maps designated as Street Extension Maps 1150 and 1154, and Surveyor's Office Maps 1314 and 1373, on file in the office of the surveyor of the District of Columbia, all the above-described property herein authorized to be used for street purposes being owned by the United States of America. (Feb. 27, 1929, 45 Stat. 1341, ch. 353.)

§ 7–127 [12: 43]. Relocation of Michigan Avenue—Relocation authorized.

In order to relocate the line of Michigan Avenue from Franklin Street as laid down on the plan of the permanent system of highways for the District of Columbia to Lincoln Road, bordering the southeast corner of the grounds of the United States Soldiers' Home, and to straighten and shorten the route of said avenue, the Commissioners of the District of Columbia are authorized to close, vacate, and abandon the portion of Michigan Avenue known and designated as Parcel E on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429, containing fifty-four thousand three hundred and eighty square feet, said part so closed, vacated, and abandoned to be transferred by said Commissioners of the District of Columbia to the United States as part of the grounds of the United States Military Asylum, known as the United States Soldiers' Home. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 1.)

COMPILER'S NOTE

Act of April 22, 1932, 47 Stat. 135, ch. 133, §§ 1 to 5, providing for the extension and widening of Michigan Avenue, reads as follows:

"SECTION 1. In order to extend and widen Michigan Avenue between First Street and Park Place Northwest, and to improve traffic conditions, the Commissioners of the District of Columbia be, and they are hereby, authorized to use for street purposes all of the land lying within the McMillan Park and the United States Soldiers' Home grounds which is comprised within the parcels designated A and B as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1650, together with any and all additional land that may be necessary for slopes in the proper construction of roadway and sidewalks."

SEC. 2. "The Chief of Engineers, United States Army, is hereby authorized and directed to transfer to the Commissioners of the District of Columbia for street purposes all of the land comprised within the parcels designated A, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1650; and the Board of Commissioners of the United States Soldiers' Home is hereby authorized and directed to transfer to said Commissioners of the District of Columbia for street purposes all of the land comprised within the parcels designated B, as shown on said map filed in the office of the surveyor of the District of Columbia and numbered as map 1650."

SEC. 3. "That the Board of Commissioners of the United States Soldiers' Home shall transfer to the Chief of Engineers, United States Army, all of the land comprised within the parcels designated C, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1650, to be used as part of the McMillan Park; and the Chief of Engineers, United States Army, shall transfer to the Board of Commissioners of the United States Soldiers' Home all of the land comprised within the parcels designated D, as shown on said map filed in the office of surveyor of the District of Columbia and numbered as map 1650, to be used as part of the United States Soldiers' Home grounds."

SEC. 4. "That the surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing all parcels of land to be transferred in accordance with the provisions of this Act, with a certificate affixed thereon to be signed by the parties in interest making the necessary transfers; which plat and certificate, after being signed by the various interested officials and approved by the Commissioners of the District of Columbia, shall be recorded upon order of said Commissioners in the office of the surveyor of the District of Columbia; and said plat or plats, when duly recorded in said office of the surveyor of the District of Columbia, shall constitute a legal transfer for the purposes designated according to the provisions of this Act."

SEC. 5. "The District of Columbia shall perform the necessary work and shall pay any and all expenses for removing and replacing water mains, removing, reconstructing, and repainting the boundary fence of the United States Soldiers' Home and bringing the surface of the areas reconstructed to proper grade with loose earth suitable for growing vegetation and otherwise replacing the property of the United States Soldiers' home in the same condition as it was before construction was undertaken; any trees required to be cut along the proposed route and on the areas authorized to be transferred by the United States Soldiers' Home to remain the property of the United States Soldiers' Home and to be cut into such lengths as may be suitable for cord wood or lumber, and to be split and stacked by said District of Columbia as directed by the governor of said home."

§ 7–128 [12: 44]. Use of part of Soldiers' Home.

The Commissioners of the District of Columbia are authorized to use for street purposes all that part of

the United States Soldiers' Home grounds designated as Parcel A, containing fifty-seven thousand six hundred and thirteen square feet, and Parcel B containing eleven thousand eight hundred and seventy square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429; and the proper authorities having title, control, or jurisdiction are authorized to make the necessary transfer of said parcels of land to the District of Columbia for street purposes. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 2.)

CROSS REFERENCE

See notes to § 7–127.

§ 7–129 [12: 45]. Portion of Michigan Avenue abandoned.

The Commissioners of the District of Columbia are authorized to close, vacate, and abandon the portion of Michigan Avenue known and designated as Parcel D, containing sixty-nine thousand three hundred and thirty-six square feet, and Parcel H, containing seven thousand two hundred and seventy-nine square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429, title to said parcels so closed, vacated, and abandoned to revert in fee simple to the owner or owners of the parcel numbered on the assessment records of the District of Columbia as parcel 120/1, said closing of said street and the transfer of title thereto to be upon the condition and with the express stipulation that the owner or owners of said parcel 120/1 shall dedicate to the District of Columbia for street purposes all of the parcel known and designated as Parcel F, containing forty-three thousand one hundred and sixty-one square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429 and shall further, in consideration of the increase in area of the property of said owner or owners of said parcel 120/1 by reason of the transfers as provided herein, dedicate to the District of Columbia about thirty-six thousand square feet of land, the location of which shall be mutually agreed upon by the Commissioners of the District of Columbia and the owner or owners of parcel 120/1, and that said owner or owners of said parcel 120/1 shall transfer to the United States as part of the grounds of the United States Military Asylum, known as the United States Soldiers' Home, all of the parcel known and designated as Parcel G, containing one thousand five hundred and forty-three square feet, as shown on said map numbered 1429 in the office of the surveyor of the District of Columbia: *Provided, however,* That the Board of Commissioners of the United States Soldiers' Home, or the proper authorities having title, control, or jurisdiction, shall transfer to the owner or owners of the parcel designated on the assessment and taxation records of the District of Columbia as parcel 120/1 all the land comprised within the parcel known and designated as Parcel C containing four thousand five hundred and seventeen square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 3.)

CROSS REFERENCE

See notes to § 7–127.

§ 7–130 [12: 46]. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.

The surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing all parcels of land to be transferred in accordance with the provisions of sections 7–127 to 7–131, with a certificate affixed thereon to be signed by the parties in interest making the necessary transfers; which plat and certificate, after being signed by the various interested parties and approved by the Commissioners of the District of Columbia, shall be recorded upon order of said commissioners in the office of the surveyor of the District of Columbia; and said plat or plats, when duly recorded in said office of the surveyor of the District of Columbia, shall constitute a legal transfer of title of the various parcels to the parties in interest according to the provisions contained in sections 7–127 to 7–131. (Mar. 4, 1929, 45 Stat. 1544, ch. 682, § 4.)

CROSS REFERENCES

Duties of surveyor, § 1–616.
Recording maps and plats, § 1–606.
See note to § 7–127.

§ 7–131 [12: 47]. Right-of-way to Washington Railway and Electric Company.

The commissioners of the District of Columbia are hereby authorized, upon the straightening and shortening of Michigan Avenue as provided by sections 7–127 to 7–131, to do any and all acts which may be necessary to give the Washington Railway and Electric Company such easement or right of way over said Michigan Avenue as is necessary for the proper operation of the railway lines and cars of said company over said avenue as straightened and shortened by the provisions of said sections. (Mar. 4, 1929, 45 Stat. 1545, ch. 682, § 7.)

COMPILER'S NOTE

The Washington Railway and Electric Company and the Capital Traction Company have been consolidated under the name of Capital Transit Company. Act of Jan. 14, 1933, 47 Stat. 752, ch. 10, § 1.

Chapter 2.—LAND FOR STREETS

Sec.

7–201. Commissioners may open, extend, or widen streets, avenues, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.
7–202. Condemnation of land for streets.
7–203. Contents of condemnation petition.
7–204. Public notice—Service of process on owner and occupant—Appointment of guardian ad litem for person under disability.
7–205. Jury—Drawing—Oath.
7–206. Objection to jurors—Hearings—Verdict.
7–207. Condemnation of part of plot.
7–208. Assessment of benefits and damages—Excess damages and costs paid by District.
7–209. Objections—Exceptions—When filed—Court may vacate verdict and grant new trial—Vacated in part.

Sec.
7–210. Confirmation of verdict—Payment of award.
7–211. Assessments made liens—How paid—Set-off of damages and benefits.
7–212. Power to amend proceedings.
7–213. Compensation of jurors.
7–214. Right to appeal—Parties not appealing.
7–215. Deposit of award in registry—Transfer of title.
7–216. Condemnation for streets through unsubdivided part of plot.
7–217. Procedure—Appropriation to pay damages.
7–218. Cost of street extension assessed as benefits—Assessments for parkways.
7–219. If damages and costs exceed benefits, commissioners may dismiss cause.
7–220. Appropriation for costs and damages authorized—Benefits covered into treasury.
7–221. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

§ 7–201 [25: 51]. Commissioners may open, extend, or widen streets, avenues, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.

The Commissioners of the District of Columbia are hereby authorized to open, extend, or widen any street, avenue, road, or highway to conform with the plan of the permanent system of highways in that portion of the District of Columbia outside of the cities of Washington and Georgetown, adopted under sections 7–108 to 7–115, by condemnation under the provisions of sections 7–202 to 7–215: *Provided,* That the entire amount found to be due and awarded by the jury under such proceedings as damages for and in respect of the land condemned, plus the cost and expenses of said proceedings, shall be assessed by the jury as benefits: *And provided further,* That the costs and expenses of the condemnation proceedings taken under the provisions hereof, and the amounts awarded as damages for and in respect of the land condemned, shall be paid entirely from the revenues of the District of Columbia, and shall be repaid to said District of Columbia from the assessments for benefits and covered into the treasury of the United States to the credit of the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 950, ch. 150.)

CROSS REFERENCES

Application of this chapter to proceedings to close public highways under Street Readjustment Act, § 7–405.

Assessment of benefits against lands not condemned, § 7–221.

Benefits may exceed damages in certain cases; payment of excess; dismissal of proceedings, § 7–219.

Condemnation of materials for making or repairing public roads, § 7–332.

Condemnation proceedings in general, § 16–601 et seq. and notes.

Georgetown, as a separate and distinct city, abolished and made part of the city of Washington, § 1–107.

NOTES TO DECISIONS

EXTENSION OF STREET AT ANGLE

Widening of Street—Right to Object.—Commissioners were authorized to institute a proceeding for the extension of street at an angle. *Briggs* v. *Brownlow* (49 App. D. C. 345, 265 Fed. 985).

When widening of street benefits properties, the owners of same are not as matter of right entitled to challenge the regularity of the proceedings unless it clearly appears that such owners were in fact prejudiced or defrauded. *Nealy* v. *Hazen* (63 App. D. C. 239, 71 Fed. (2d) 692).

Question for consideration is whether or not, by the widening of the street, the properties of the respective appellants were benefited to the amount assessed against them; hence they are not in position to challenge the regularity or irregularity of the condemnation proceedings, unless it clearly appears that it operated to their prejudice, or fraud was practiced in making the awards. *Nealy* v. *Hazen* (63 App. D. C. 239, 71 Fed. (2d) 692).

§ 7–202 [25: 52]. Condemnation of land for streets.

Whenever land is needed for the opening, extension, widening, or straightening of any street, avenue, road, or highway in the District of Columbia, authorized by Congress, the Commissioners of the District of Columbia may institute, in the District Court of the United States for the District of Columbia, sitting as a District Court, by petition, a proceeding in rem for the condemnation of the land needed. (Apr. 30, 1906, 34 Stat. 151, ch. 2070, § 491a.)

NOTES TO DECISIONS

PROCEEDINGS FOR EXTENSION OR WIDENING

Proceedings for extension and widening of street held not to comply with statutory requirements. *Newman* v. *Lynchburg Inv. Corp.* (236 U. S. 692, 59 L. Ed. 792, 35 Sup. Ct. 477, aff'g 40 App. D. C. 129).

REASSESSMENT OF BENEFITS

Reassessment of benefits from extension of street affirmed. *Columbia Heights Realty Co.* v. *Rudolph* (217 U. S. 547, 54 L. Ed. 877, 30 Sup. Ct. 581, aff'g 31 App. D. C. 112).

REVIEW, LOCAL LAWS OF DISTRICT

Supreme Court denied writ of error in case arising under this section. Statute of District of Columbia is not a law of the United States within the meaning of § 250 of the Judicial Code. *American Security & Trust Co.* v. *Commissioners of District of Columbia* (224 U. S. 491, 56 L. Ed. 856, 32 Sup. Ct. 553, den'g writ of error, 38 App. D. C. 32).

§ 7–203 [25: 53]. Contents of condemnation petition.

Such petition shall contain a particular description of the land to be condemned and the names of the owners of the fee of said land and their residences, so far as the same may be ascertained, together with a plan of the land to be taken. (Apr. 30, 1906, 34 Stat. 151, ch. 2070, § 491b.)

CROSS REFERENCE

See notes to § 7–202.

§ 7–204 [25: 54]. Public notice—Service of process on owner and occupant—Appointment of guardian ad litem for person under disability.

The said court shall cause public notice of not less than twenty days to be given of the institution of such proceeding, by advertisement in three daily newspapers published in the District of Columbia, which notice shall warn and require all persons having any interest in the proceeding to appear in court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits by the jury herein provided for; and in addition to such public notice said court shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the land to be condemned as can be found by said marshal, or his deputies, within the District of Columbia and upon the tenants and occupants of

the same. The said court shall appoint a guardian ad litem for any person interested in the proceedings who may be under disability. (Apr. 30, 1906, 34 Stat. 151, ch. 2070, § 491c; Feb. 28, 1916, 39 Stat. 21, ch. 37.)

AMENDMENTS

The act of 1916 reenacted § 491c of the act of 1906.

CROSS REFERENCES

Assessment of benefit against lands not condemned, § 7–221.

See notes to § 7–202.

NOTES TO DECISIONS

IN GENERAL

"It is clear that the statute requires both general notice by publication and personal service of the notice by the marshal upon such owners of land to be condemned as can be found within the District of Columbia." *Edwards* v. *Brownlow* (50 App. D. C. 331, 271 Fed. 797), affd. (236 U. S. 692, 59 L. Ed. 792, 35 Sup. Ct. 477); *National Savings & Trust Co.* v. *Reichelderfer* (61 App. D. C. 38, 57 Fed. (2d) 404).

APPEARANCE BY COUNSEL

In condemnation proceedings, the provision of the statute as to notice by publication does not apply to one who has actual notice and appeared, represented by counsel. *Cafritz* v. *Hazen* (66 App. D. C. 94, 85 Fed. (2d) 260). See *Mitchell* v. *Reichelderfer* (61 App. D. C. 50, 57 Fed. (2d) 416).

COMPUTATION OF TIME

The statute means that notice shall be given not less than 20 days before the time set, and does not mean on 20 distinct days before that time. *Newman* v. *Lynchburg* (236 U. S. 692, 59 L. Ed. 792, 35 Sup. Ct. 477).

CONSTRUCTION

Statutes authorizing the taking of property for public use must be strictly construed. *Fay* v. *Macfarland* (32 App. D. C. 295); *Edwards* v. *Brownlow* (50 App. D. C. 331, 271 Fed. 797).

DUE PROCESS

It must be affirmatively shown that all provisions of the statutes that apply to the condemnation of lands have been substantially complied with, otherwise the whole proceeding would be void and without effect. *Brown* v. *Macfarland* (19 App. D. C. 525).

Every step to be taken by public officials in condemning private property must be literally followed. *Lynchburg Inv. Corp.* v. *Rudolph* (40 App. D. C. 129).

The failure to give appellant notice in fact amounts to a taking of property without due process of law. *Wilkinson* v. *Dougherty* (58 App. D. C. 81, 24 Fed. (2d) 1007).

NOTICE JURISDICTIONAL

Entry of the judgment as to appellant's property, being without notice of any kind or opportunity on his part to object, was a nullity, and the requirement of the statute as to notice being mandatory, a failure to comply is jurisdictional. *Smith* v. *Gotwals* (61 App. D. C. 304, 62 Fed. (2d) 466).

PARTICIPATION IN PROCEEDING

Where owners of land involved in condemnation proceeding received notice contemplated by law and had full opportunity to make such showing as was appropriate to their right, their contention that they had been denied a hearing, and opportunity to cross-examine witnesses and generally to participate in condemnation proceeding was not sustained. *Brown* v. *District of Columbia,* 1944 (143 F. 2d 374, 79 U. S. App. D. C. 148).

§ 7–205 [25: 55]. Jury—Drawing—Oath.

After the return of the marshal and the filing of proof of publication of the notice provided for in section 7–204 said court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall appoint a jury of five capable and disinterested persons, to which jury the court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned, and are not related to the parties interested therein, and that they will, without favor or partiality, and to the best of their judgment, ascertain the damages each owner of land to be taken may sustain by reason of the opening, extension, widening, or straightening of said street, avenue, road, or highway, and the condemnation of the land needed for the purpose thereof, and to assess the benefits resulting therefrom as hereinafter provided. (Apr. 30, 1906, 34 Stat. 152, ch. 2070, § 491d; Apr. 19, 1920, 41 Stat. 566, ch. 153.)

AMENDMENT

Act of April 19, 1920, cited to the text, inserted the word "next" before "preceding section which has been translated to read" "section 7–204." The provision as to the jury to be chosen originally read as follows: "Five experienced, judicious, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in the proceeding and not in the service or employment of the District of Columbia or of the United States, to be summoned by said marshal."

CROSS REFERENCES

Assessment of benefits against lands not condemned, § 7–221.

See notes to § 7–202.

§ 7–206 [25: 56]. Objection to jurors—Hearings—Verdict.

The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power and authority to pass upon any such objections, and to excuse any juror or cause any vacancy in the jury, when impaneled, to be filled; and after the jury shall have been organized and shall have viewed and examined the land and premises affected by the condemnation proceeding they shall proceed, in the presence of the court, to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their verdict, setting forth the amount found to be due and awarded to the owners of the land to be condemned as damages by reason of said opening, extension, widening, or straightening of said street, avenue, road, or highway, under the provisions hereof, and the lots, pieces, or parcels of land benefited by said opening, extension, widening, or straightening, and the amounts of the assessments for the benefits against the same. (Apr. 30, 1906, 34 Stat. 152, ch. 2070, § 491e.)

CROSS REFERENCES

Assessment of benefits against lands not condemned, § 7–221.

See notes to § 7–202.

NOTES TO DECISIONS

NUMBER OF VIEWS BY JURY

This section authorized the jury to view and examine the "land and premises affected by the condemnation proceedings." It was not error to permit jury to have second view after hearing the evidence. *Briggs* v. *Brownlow* (49 App. D. C. 345, 265 Fed. 985).

§ 7–207 [25: 57]. Condemnation of part of plot.

If a part only of any lot, piece, or parcel of ground is to be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from said opening, extension, widening, or straightening of said street, avenue, road, or highway, but such benefits shall be considered by the jury in determining what assessment shall be made or levied against such part of such lot, piece, or parcel of land as may not be taken as hereinbefore provided. (Apr. 30, 1906, 34 Stat. 152, ch. 2070, § 491f.)

CROSS REFERENCES

Assessment of benefits against lands not condemned, § 7–221.

See notes to § 7–202.

§ 7–208 [25: 58]. Assessment of benefits and damages—Excess damages and costs paid by District.

Of the amount found to be due and awarded as damages for and in respect of the land to be condemned for said opening, extension, widening, or straightening, plus the costs and expenses of the proceeding, such amount shall be assessed by the jury as benefits, and to the extent of such benefits against the lots, pieces, or parcels of land on each side of the street, avenue, road, or highway to be opened, extended, widened, or straightened, and against any and all other lots, pieces, or parcels of land which the jury may find will be benefited by the opening, extension, widening, or straightening, as the jury may find said lots, pieces, or parcels of land will be benefited; and in determining the amounts to be assessed against said lots, pieces, or parcels of land the jury shall take into consideration the respective situations and topographical conditions of said lots, pieces, or parcels of land and the benefits and advantages they may severally receive from the opening, extension, widening, or straightening of the street, avenue, road, or highway. If the total amount of the damages awarded by the jury and the costs and expenses of the proceeding be in excess of the total amount of the assessment of benefits, such excess shall be borne and paid by the District of Columbia. (Apr. 30, 1906, 34 Stat. 152, ch. 2070, § 491g; Feb. 25, 1907, 34 Stat. 930, ch. 1195; Apr. 11, 1935, 49 Stat. 153, ch. 57, § 6.)

AMENDMENTS

The act of 1907, cited to the text, added the following sentence which was repealed by the 1935 amendment: "And where part of any lot, piece, parcel, or tract of land has been dedicated for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the jury, in determining whether the remainder of said lot, piece, parcel or tract is to be assessed for benefits, and the amount of benefits, if any, to be assessed thereon, shall also take into consideration the fact of such dedication and the value of land so dedicated."

CROSS REFERENCES

Assessment of benefits against lands not condemned, § 7–221.

See notes to §§ 7–202, 7–204, 7–206.

NOTES TO DECISIONS

ISSUES FOR JURY

Where notice is given by publication, parties to be assessed for the betterment could not be mentioned by name in the notice since by statute the jury decides what land is benefited as well as the sum with which it shall be charged. *Newman* v. *Lynchburg* (236 U. S. 692, 59 L. Ed. 792, 35 Sup. Ct. 477).

PART OF LAND DEDICATED

The value of the land dedicated, as well as the value of the land condemned, should be considered as of the date of condemnation. *Briggs* v. *Brownlow* (49 App. D. C. 345, 265 Fed. 985).

Congress has delegated to the jury authority to determine not only whether and to what extent any particular piece of property is benefited, but the area within which benefits are to be assessed. *Wilkinson* v. *Dougherty* (58 App. D. C. 81, 24 Fed. (2d) 1007).

§ 7–209 [25: 59]. Objections—Exceptions—When filed—Court may vacate verdict and grant new trial—Vacated in part.

The said court shall hear and determine any objections or exceptions that may be filed to any verdict of the jury and shall have power to vacate and set any verdict aside, in whole or in part, when satisfied that it is unjust or unreasonable, in which event the court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed to ascertain the damages or assess the benefits, or both, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided,* That if vacated in part, the residue of the verdict as to the land condemned or assessed shall not be affected thereby: *And provided further,* That the objections or exceptions to the verdict shall be filed within twenty days after the return of the verdict to the court. (Apr. 30, 1906, 34 Stat. 153, ch. 2070, § 491h; Apr. 19, 1920, 41 Stat. 566, ch. 153.)

AMENDMENTS

Prior to amendment this section provided for the summoning of a "new jury of five experienced, judicious, disinterested men, who shall be freeholders in the District of Columbia, not related to any person interested in the proceeding and not in the service or employment of the District of Columbia or of the United States."

CROSS REFERENCE

Assessment of benefits against lands not condemned, § 7–221.

NOTES TO DECISIONS

ISSUES FOR COURT

There was no abuse of discretion by the lower court either in not granting the motion for a new trial, under the rules governing trials of civil cases in general, when the issue presented was an alleged error of fact, or in refusing to grant a new trial, under the additional powers given by the special provisions of the condemnation statute, since there was no "grave error of fact indicating plain partiality or corruption." *Willis* v. *United States* (69 App. D. C. 129, 99 Fed. (2d) 362).

In the absence of a showing that property owner was prejudiced or defrauded, the concern of the owner is whether he was benefited by the assessment. *Johnson & Wimsatt* v. *Hazen* (69 App. D. C. 151, 99 Fed. (2d) 384).

In proceeding by District of Columbia to condemn land for street purposes, trial court had no jurisdiction to determine what lands, if any, were exempt from assessment for benefits. *Brown* v. *District of Columbia,* 1944 (143 F. 2d 374, 79 U. S. App. D. C. 148).

Where landowners contended that while proceeding to condemn land for street purposes instituted by District of Columbia was pending, Federal Government filed declaration of taking against their property and took title thereto whereupon compensation was paid to them by the

Federal Government and that thereafter land was no longer subject to assessment for benefits by District of Columbia, issue thus tendered was not appropriate for decision in the condemnation proceeding. *Brown* v. *District of Columbia,* 1944 (143 F. 2d 374, 79 U. S. App. D. C. 148).

NATURE OF OBJECTIONS

"Had actual notice been given appellant after the return of the verdict, he could have protected his interests through the filing of objections or exceptions." *Wilkinson* v. *Dougherty* (58 App. D. C. 81, 24 Fed. (2d) 1007).

Objections and exceptions are in the nature of a motion for a new trial, and are not to be tried by the condemnation jury, but are to be heard by the court, and only in case they are sustained by the court shall another jury be impaneled to retry the issue. *Mitchell* v. *Reichelderfer* (61 App. D. C. 50, 57 Fed. (2d) 416).

Mere filing of objections and exceptions to the verdict of a condemnation jury does not entitle a property owner to reopen and retry the case to the same or another jury. *Mitchell* v. *Reichelderfer* (61 App. D. C. 50, 57 Fed. (2d) 416).

TIME FOR OBJECTION

Objections to verdict in condemnation proceedings must be filed within time limited. *Shannon & Luchs Constr. Co.* v. *Reichelderfer* (61 App. D. C. 36, 57 Fed. (2d) 402).

It was intended by Congress to require a party in a condemnation proceeding to bring his objections and exceptions to the attention of the court within 20 days, the time limit prescribed, or else be taken to have waived them. *Walker* v. *Hazen* (67 App. D. C. 188, 90 Fed. (2d) 502).

§ 7–210 [25: 60]. Confirmation of verdict—Payment of award.

When the court shall have finally ratified and confirmed the verdict of a jury condemning the land needed for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the amounts of money found to be due and awarded to the owners of the land condemned shall be paid to such owners by the disbursing officer of the District of Columbia from moneys advanced to him by the Secretary of the Treasury, upon requisitions of the commissioners of said District, as provided by law. (Apr. 30, 1906, 34 Stat. 153, ch. 2070, § 491i.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, § 7–221.

NOTES TO DECISIONS

TIME OF PAYMENT

In the exercise by the United States of the power of eminent domain, compensation need not be paid, or even finally determined, in advance of the taking, provided reasonable, certain, and adequate provision is made at the time of the taking to ascertain and secure the compensation to be made to the owner. *Miller* v. *United States* (61 App. D. C. 58, 57 Fed. (2d) 424).

§ 7–211 [25: 61]. Assessments made liens—How paid—Set-off of damages and benefits.

When finally ratified and confirmed by the court, the several assessments authorized to be made or levied by the jury shall severally be a lien upon the land assessed, and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in five equal annual installments, with interest at the rate of four per centum per annum from and after sixty days after the confirmation of the verdict of the jury. In all cases of payments the accounting officers shall take into account the assessments for benefits and the award of damages, and shall pay only such part of the award in respect of any lot, piece, or parcel of land condemned as may be in excess of the assessment for benefits against the part of such lot, piece, or parcel of land not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment. (Apr. 30, 1906, 34 Stat. 153, ch. 2070, § 491j.)

CROSS REFERENCES

Assessment of benefits against lands not condemned, § 7–221.

Assessment for benefits upon closing streets under Street Readjustment Act, § 7–406.

General provision concerning special assessments, § 47–1101.

See notes to §§ 7–202, 7–204, 7–206.

NOTES TO DECISIONS

ABANDONMENT OF PROJECT

Assessments paid for benefits to property from proposed street extension must be returned where the proposed extension is abandoned. *District of Columbia* v. *Thompson* (281 U. S. 25, 74 L. Ed. 677, 50 Sup. Ct. 172, aff'g 58 App. D. C. 313, 30 Fed. (2d) 476).

In landowner's action to recover benefit assessment payments made as result of a condemnation proceeding on ground of failure of consideration because project had been abandoned, where court found that improvements were promptly undertaken, that work on project continued after institution of action and that at time of trial all work had been completed, record justified denial of recovery on ground that there had been no "abandonment" or intention to abandon. *Boss* v. *District of Columbia,* 1943 (134 F. 2d 14, 77 U. S. App. D. C. 142, 145 A. L. R. 1126).

On abandonment of a street improvement project for which assessments had been levied and paid, there is a failure of "consideration" and the moneys received as assessments must be returned to those entitled thereto. *Boss* v. *District of Columbia,* 1943 (134 F. 2d 14, 77 U. S. App. D. C. 142, 145 A. L. R. 1126).

§ 7–212 [25: 62]. Power to amend proceedings.

Said court shall have full power and authority, at any time, to allow amendments in form or substance in any petition, process, verdict, record, or other proceeding, or in the description of property proposed to be condemned or of property assessed for benefits whenever such amendment will not interfere with the substantial rights of the parties interested. (Apr. 30, 1906, 34 Stat. 153, ch. 2070, § 491k.)

§ 7–213 [25: 63]. Compensation of jurors.

Each juror shall receive as compensation for his services the sum of five dollars per day for every day necessarily employed in the performance of the duties herein prescribed. (Apr. 30, 1906, 34 Stat. 153, ch. 2070, § 491*l*.)

§ 7–214 [25: 64]. Right to appeal—Parties not appealing.

Any party aggrieved by any final order of the court may appeal therefrom to the United States Court of Appeals for the District of Columbia; but no appeal from any order of the court confirming any award of damages or assessment for benefits, nor any other proceeding that may be taken by any person, at law or in equity, against the confirmation of any award of damages or any assessment for benefits shall delay or prevent the payment of the

damages awarded to other persons in respect of the property condemned, or delay or prevent the taking of the property sought to be condemned, or delay or prevent the opening, extension, widening, or straightening of the street, avenue, road, or highway. (Apr. 30, 1906, 34 Stat. 153, ch. 2070, § 491m.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, § 7–221.

NOTES TO DECISIONS

VESTED TITLE

Once title vests, it stays vested until it passes by grant, by descent, by adverse possession, or by some operation of law such as escheat or forfeiture; but title does not pass by inaction on the part of the owner. *Faulks* v. *Schrider* (69 App. D. C. 137, 99 Fed. (2d) 370).

§ 7–215 [25: 65]. Deposit of award in registry—Transfer of title.

In case any of the owners of land condemned are under disability or can not be found, or neglect or refuse to receive the money awarded to them; or in case the title to the property is in dispute or uncertain, the money due the owners of the property for damages for land taken may be deposited in the registry of the District Court of the United States for the District of Columbia, for the use of the rightful owners without cost or expense to said District; and thereupon the title to the land condemned shall become vested in the District of Columbia. (Apr. 30, 1906, 34 Stat. 154, ch. 2070, § 491n; Dec. 18, 1908, 35 Stat. 582, ch. 4.)

AMENDMENT

Section 491n of the act of 1906, read as follows: "In case any of the owners of the land condemned are under disability or can not be found or neglect to receive the money awarded to them, or in case the title to the property condemned is in controversy, the money awarded to any of such persons, or for any such property the title to which is in controversy, shall be deposited in the registry of the Supreme Court of the District of Columbia, without cost or expense to said District, to the credit of the person or persons who may be entitled thereto."

CROSS REFERENCE

This section applies to condemnation proceedings generally, § 16–608.

§ 7–216 [25: 66]. Condemnation for streets through unsubdivided part of plot.

Whenever in the subdivision of a tract of land in the District of Columbia the owner or owners of such tract shall reserve from subdivision any portion thereof, and shall fail to or refuse to dedicate the streets or highways within the reserved portion as shown on the plan of permanent system of highways, the commissioners of the District of Columbia are authorized, in their discretion, to institute condemnation proceedings to acquire for street purposes in accordance with the highway plans any or all land comprised in the said streets within the limits of any portion reserved from subdivision, which the said commissioners may deem desirable for the purpose of extending existing or proposed streets or of connecting streets already of record according to the said highway plan. (Mar. 30, 1910, 36 Stat. 268, ch. 136, § 1.)

CROSS REFERENCES

Acceptance of streets previously dedicated, conditions, width, § 7–117.

Dedication of streets, § 1–614.

Streets to conform to plan of city of Washington, § 7–125.

§ 7–217 [25: 67]. Procedure — Appropriation to pay damages.

That the said condemnation proceedings shall be instituted under and in accordance with the provisions of sections 7–202 to 7–215: *Provided,* That the entire amount found to be due and awarded by the jury in said proceedings as damages for and in respect of the land condemned for such streets or highways, plus the cost and expenses of said proceedings, shall be assessed by the jury as benefits, under the provisions of said sections. And there is hereby appropriated, out of the revenues of the District of Columbia, such amount or amounts as may be necessary to pay the cost and expenses of the condemnation proceeding taken pursuant hereto and for the payment of amounts awarded as damages, to be repaid to the District of Columbia from the assessments for benefits and covered into the treasury to the credit of the revenues of the District of Columbia. (Mar. 30, 1910, 36 Stat. 268, ch. 136, § 2.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, § 7–221.

§ 7–218 [25: 68]. Cost of street extension assessed as benefits—Assessments for parkways.

The United States shall not bear any part of the cost of the acquisition of land for street extensions, but when the condemnation of any land for such purposes is authorized by law the total cost of the land and the expenses of the condemnation proceedings shall be assessed as benefits; in any case where land is condemned for a parkway, including a street or streets, where such parkway is of considerable length with relation to its width, not less than one-half of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits; and in any case where land is condemned for a public park, not less than one-third of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits. (June 26, 1912, 37 Stat. 178, ch. 182.)

§ 7–219 [25: 69]. If damages and costs exceed benefits, Commissioners may dismiss cause.

In all condemnation proceedings instituted by the Commissioners of the District of Columbia in accordance with the provisions of sections 7–202 to 7–215, for the acquisition of land for the opening, extension, widening, or straightening of Piney Branch Road between Thirteenth and Butternut Streets; Thirteenth Street, extended, except through the Walter Reed Hospital Reservation; Concord Avenue; Nicholson Street, or any street, avenue, road, or highway, or a part of any street, avenue, road, or highway in accordance with the plan of the permanent system of highways for the District of Columbia, all or any part of the entire amount found to be due and awarded by the

jury in said proceedings as damages for, and in respect of, the land condemned for such streets, avenues, roads, or highways, or parts of streets, roads, avenues, or highways, plus all or any part of the costs and expenses of said proceedings, may be assessed by the jury as benefits: *Provided, however,* That if the total amount of damages awarded by the jury in any such proceedings, plus the costs and expenses of said proceeding, be in excess of the total amount of benefits, it shall be optional with the commissioners of the District of Columbia to abide by the verdict of the jury or, at any time before the final ratification and confirmation of the verdict, to enter a voluntary dismissal of the cause. (May 28, 1926, 44 Stat. 675, ch. 418, § 1.)

Cross Reference

Assessment of benefits against lands not condemned, § 7–221.

NOTES TO DECISIONS

Abandonment of Proceedings

Court cannot assume that Commissioners have abandoned condemnation proceedings but on the contrary must assume that they are acting for the best interest of the public. *Johnson & Wimsatt* v. *Reichelderfer* (62 App. D. C. 237, 66 Fed. (2d) 217).

§ 7–220 [25: 70]. Appropriation for costs and damages authorized—Benefits covered into treasury.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary from time to time to pay the costs and expenses of the condemnation proceedings instituted under the authority of this act and for the payment of the amounts awarded as damages, the amounts collected as benefits to be covered into the treasury of the United States to the credit of the revenues of the District of Columbia: *Provided, however,* That if the total amount of damages awarded by the jury in any such proceeding, plus the costs and expenses of said proceedings, be in excess of the total amount of assessments for benefits, such excess shall be paid out of the appropriation herein authorized. (May 28, 1926, 44 Stat. 676, ch. 418, § 2.)

§ 7–221 [25: 71]. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

Where in any condemnation proceedings instituted by the Commissioners of the District of Columbia in accordance with the provisions of sections 7–202 to 7–215 or in accordance with the provisions of sections 7–301 to 7–327, the jury of condemnation shall assess benefits against any land or parcel of land no part of which was taken by the condemnation proceedings, and the owner of the land or parcel of land so assessed for benefits was not served with notice of the condemnation proceedings, notice of such assessment for benefits shall be given by the Commissioners of the District of Columbia by registered letter, mailed to the last known address of the person listed on the records of the assessor of the District of Columbia as the owner of the land or parcel of land so assessed, and, in addition thereto, the court shall give public notice of the land or parcels of land assessed for benefits, no part of which was taken by the condemnation proceedings, by advertisement once in each of three daily newspapers published in the District of Columbia showing the amount assessed against each such piece or parcel of land and stating the time within which interested parties may file with the court any objections or exceptions they may have to the verdict. The mailing by registered letter and the notice by publication herein provided for shall be sufficient notice to the owner of any land or parcel of land assessed for benefits as aforesaid. Nothing herein contained shall be considered to abrogate or nullify the option conferred upon the commissioners of the District of Columbia by sections 7–219, 7–220. (May 29, 1928, 45 Stat. 953, ch. 863.)

NOTES TO DECISIONS

Injunction

Suit to enjoin collection of street improvement assessment brought within a year after receiving tax bill is not laches. *Smith* v. *Gotwals* (61 App. D. C. 304, 62 Fed. (2d) 466).

Issues for Jury

In condemnation proceeding, the amount of benefits to be assessed against land which was not taken, was for the jury, and there is nothing in the record to show that the jury acted unreasonably or unjustly. *Johnson & Wimsatt* v. *Hazen* (69 App. D. C. 151, 99 Fed. (2d) 384).

Notice

This provision of the statute for notice by publication and registered letter does not apply to appellant, although benefits were assessed against his property, no part of which was condemned, since he had actual notice of the proceedings and was represented by counsel who appeared therein. *Cafritz* v. *Hazen* (66 App. D. C. 94, 85 Fed. (2d) 260).

After the publication of the general notice of the condemnation proceedings, the assessments of benefits against lands not taken may be made by the condemnation jury. *Johnson & Wimsatt* v. *Hazen* (69 App. D. C. 151, 99 Fed. (2d) 384).

Notice by publication together with a registered letter containing such notice is sufficient under this statute. *Johnson & Wimsatt* v. *Hazen* (69 App. D. C. 151, 99 Fed. (2d) 384).

Time for Objections

In condemnation proceedings owners receiving notice must file objections within 20 days after verdict. *Shannon & Luchs Constr. Co.* v. *Reichelderfer* (61 App. D. C. 36, 57 Fed. (2d) 402).

It is the duty of the Commissioners to give notice to person listed on the assessors' books at his last-known address. *Smith* v. *Gotwals* (61 App. D. C. 304, 62 Fed. (2d) 466).

Without strict compliance with the statute in regard to giving notice by registered mail, an order of assessment is a mere nullity. *Smith* v. *Gotwals* (61 App. D. C. 304, 62 Fed. (2d) 466).

The requirement of the statute as to notice being mandatory, a failure to comply is jurisdictional. *Smith* v. *Gotwals* (61 App. D. C. 304, 62 Fed. (2d) 466).

Chapter 3.—ALLEYS AND MINOR STREETS

Sec.

7–301. Alleys and minor streets opened, extended, widened, or straightened by Commissioners—Conditions—Petition of landowners—Minor street defined.
7–302. Useless alleys—Sale of original alleys—Reversion of title to owner.
7–303. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.
7–304. Closing narrow alleys—Application of property owners—Disposal of land.

Sec.
7–305. Alleys closed for single improvement on two-thirds of square.
7–306. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.
7–307. Copy of order and plat recorded—Ownership of closed alley.
7–308. Obliterating subdivisions and alleys—Filing copy of order.
7–309. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owners right of access preserved.
7–310. Land owned by District may be set aside for alley purposes.
7–311. Public notice—Hearings.
7–312. Maps—Preparation—Recordation.
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7–324. Benefit assessments from condemnation for alleys or minor streets.
7–325. Proceeds of sale of lands paid into Treasury.
7–326. Plats to be made by surveyor—Costs.
7–327. Correcting defects in certain prior proceedings.
7–328. Certain alleys previously opened made valid.
7–329. Alleys closed by subdivision prior to March 3, 1901, unaffected.
7–330. Surplus from sale of land in which United States is interested to be paid into Treasury.
7–331. Costs paid from alley appropriations when proceedings fail.
7–332. Condemnation of materials for making or repairing public roads.
7–333. Commissioners to employ assistant corporation counsel for condemnation proceedings.

§ 7–301 [25: 72]. Alleys and minor streets opened, extended, widened, or straightened by Commissioners—Conditions—Petition of landowners—Minor street defined.

The Commissioners of the District of Columbia are authorized to open, extend, widen, or straighten alleys and minor streets in the District of Columbia under the following conditions, namely: First, upon the petition of the owners of more than one-half of the real estate in the square or blocks in which such alley or minor street is sought to be opened, extended, widened, or straightened, accompanied by a plat showing the opening, extension, widening, or straightening proposed; second, when the commissioners deem that the public interests require such opening, extension, widening, or straightening; third, when the health officer of said District certifies to the necessity for the same on the grounds of public health: *Provided,* That a minor street shall be of a width of not less than forty feet nor more than sixty feet and shall run through a square or block from one street to another. (Mar. 3, 1901, 31 Stat. 1429, ch. 854, § 1608; Feb. 23, 1905, 33 Stat. 733, ch. 734, § 1608.)

AMENDMENT

The first part of the act of 1901 was substantially same as the section set out herein. The following provisos were omitted in the 1905 amendment: "*Provided,* That in the opening, extension, widening, or straightening of an alley or minor street it shall be lawful to close any original alley, which may thereby become useless or unnecessary; and that it shall also, in like manner, be lawful to close any other alleys or parts of alleys, the title thereto to revert to the person or persons who dedicated the same for alley purposes, or to their assigns: *And provided further,* That the Commissioners of the District of Columbia are authorized, whenever in their judgment the same may be necessary or expedient, to close any alley or part of an alley the width of which is less than ten feet: *Provided,* That the assent thereto, in writing, is obtained from the owners of a majority of the real estate abutting thereon; that if the fee title to the land contained in the alley or part of an alley so to be closed is in the United States the said Commissioners are authorized to dispose of said land by sale to the owners of the lots or parts of lots contiguous thereto, at a price to be agreed upon between the said Commissioners and said owners, which price shall not be less than the current market price of the ground in the contiguous lots; that if the fee title to the land in the alley or part of alley so to be closed is not in the United States the title to said land shall revert to the person or persons who dedicated the same for alley purposes, or to his or their heirs or assigns."

CROSS REFERENCES

Appropriations made under this chapter may be used to establish building lines on streets, § 5–206.

Condemnation and payment of damages for land in excess of public needs, § 16–615.

Condemnation proceedings generally, § 16–601 and notes.

Jurisdiction and control of commissioners over streets and highways, § 7–102 and notes.

Obtaining land for streets and highways outside of the cities of Washington and Georgetown, §§ 7–201 to 7–221.

Opening, closing, extending, widening, or straightening alleys under §§ 5–103 et seq.

Permanent highway system for streets and highways, outside the cities of Washington and Georgetown, §§ 7–101 to 7–131.

NOTES TO DECISIONS

CONDITIONS, EXISTENCE OF

Under this section authorizing Commissioners of District of Columbia to open, widen, and straighten alley on petition of owners, when Commissioners deem that public interests require such opening, etc., or when public health officer of District certifies to necessity for same on grounds of public health, each of the three conditions specified need not exist to justify action of Commissioners. *Bailey* v. *Young* (App. D. C. 1945, 149 F. 2d 15, 80 U. S. App. D. C. 65).

EXTENSION FROM STREET TO STREET

Commissioners could not open street running through corners of two squares and across proposed street. *Rudolph* v. *Warwick* (56 App. D. C. 128, 10 Fed. (2d) 993).

NECESSITY OF PETITION

The commissioners have no authority, except on petition of all abutting property owners, to close an alley. *Compton* v. *Rudolph* (56 App. D. C. 211, 12 Fed. (2d) 152).

PUBLIC INTEREST

In action to condemn piece of land for purpose of widening alley and providing space for turning of vehicular traffic at corner of alley, evidence supported determination that public interests required widening, etc., of alley. *Bailey* v. *Young* (App. D. C. 1945, 149 F. 2d 15, 80 U. S. App. D. C. 65).

§ 7–302 [25: 73]. Useless alleys—Sale of original alleys—Reversion of title to owner.

If in the opening, extension, widening, or straightening of an alley or minor street, or in the extension or widening of public streets or highways, an alley or part of an alley may have been, or may hereafter be, in the judgment of the said commissioners rendered useless or unnecessary, said commissioners are authorized to close the same. If the alley to be closed is an original alley, they may sell the land contained therein for cash at a price not less than the assessed value of contiguous lots. If the alley is not an original alley, the title thereto shall revert to the owners of the land abutting thereon, but all such land shall be subject to the assessment for benefits hereinafter referred to. (Mar. 3, 1901, ch. 854, § 1608a, as added Feb. 23, 1905, 33 Stat. 733, ch. 734.)

CROSS REFERENCES

Abandonment of streets and alleys in adoption of highway plans, §§ 7–113 to 7–116, 7–118, 7–123, 7–124.

Closing alleys, streets, or highways under the Streets Readjustment Act, §§ 7–401 to 7–410.

Disposition of proceeds of sale of lands belonging to the United States, §§ 7–325, 7–330.

Ownership or reversion of lands on abandonment of public ways, §§ 7–118, 7–123, 7–303 to 7–309, 7–401.

Provisions of street readjustment for the closing of public highways did not repeal similar provisions of this chapter, § 7–409.

NOTES TO DECISIONS

PETITION, NECESSITY

Commissioners can not close alley not petitioned for. *Compton* v. *Rudolph* (56 App. D. C. 211, 12 Fed. (2d) 152.)

§ 7–303 [25: 74]. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.

The said commissioners are authorized to accept the dedication of an alley or alleys and in connection therewith to close any existing alley or alleys in the square or block in which such dedication is made upon the application of the owners of all the property abutting on such existing alley or alleys. If the alley proposed to be closed is an original alley, the party or parties making the dedication and the parties applying for the closing of the alley or alieys shall present with such application a mutual agreement in writing and under seal, in duplicate, as to the future ownership of the land contained in the alley or alleys to be closed, together with two plats showing the alley or alleys divided into parcels, with the name of the future owner marked on each parcel, in accordance with such agreement. Copies of the order of the commissioners accepting the dedication and closing the original or subdivisional alley, together with the said agreements and plats in the case of an original alley, shall be forwarded by said commissioners to the surveyor and recorder of deeds of the District of Columbia for record, and thereafter the title to the land in such subdivisional alley shall revert to the owners of the land abutting thereon, and the title to the land in the original alley shall vest in the parties whose names appear on said plat in accordance with said agreement. (Mar. 3, 1901, ch. 854, § 1608b, as added Feb. 23, 1905, 33 Stat. 733, ch. 734.)

CROSS REFERENCES

Opening, extending, widening, or straightening alleys under §§ 5–103 et seq.

Ownership or reversion of lands on abandonment of public way, §§ 7–118, 7–123, 7–302, 7–304 to 7–309, 7–401.

See notes to § 7–302.

NOTES TO DECISIONS

ALL OWNERS MUST JOIN

A condition precedent to the closing of an existing alley is that the application must be concurred in by all the owners of property abutting thereon. *Compton* v. *Rudolph* (56 App. D. C. 211, 12 Fed. (2d) 152).

POWERS OF COMMISSIONERS

The Commissioners are without discretion in the premises. *Compton* v. *Rudolph* (56 App. D. C. 211, 12 Fed. (2d) 152).

§ 7–304 [25: 75]. Closing narrow alleys—Application of property owners—Disposal of land.

The commissioners are authorized to close any alley or part of alley the width of which is less than ten feet upon the application in writing of the owners of all the abutting property. If the title to such closed alley is in the United States, the land shall be sold, as provided in section 7–302; and if the title is not in the United States, the land shall revert as provided in said section. (Mar. 3, 1901, ch. 854, § 1608c, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

CROSS REFERENCES

Ownership or reversion of lands on abandonment of public way, §§ 7–118, 7–123, 7–302, 7–303, 7–306 to 7–309, 7–401.

See notes to § 7–302.

§ 7–305 [25: 76]. Alleys closed for single improvement on two-thirds of square.

Whenever the title in fee simple to an entire square is vested in one person or tenants in common or partners, and such owner or owners desire to improve said square by the erection thereon of a building covering not less than two-thirds of the area thereof, or to use said square for the purpose of some business enterprise, the commissioners are authorized, in their discretion, to order any alley or alleys in such square to be closed, and a copy of said order shall be filed with the surveyor and recorder of deeds of said District for record. (Mar. 3, 1901, ch. 854, § 1608d, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

COMPILER'S NOTE

This section partially supersedes § 7–308.

CROSS REFERENCE

See notes to § 7–302.

§ 7–306 [25: 77]. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.

Whenever all the owners of an entire square, or all the owners of a part of a square bounded on all sides by public streets, in the District of Columbia, shall present to the commissioners of the District of Columbia a petition asking that any alley or alleys within said square or part of square may be closed wholly or partially, and shall in said petition offer to dedicate for public use, and shall so dedicate if in the opinion of the commissioners of said District such dedication is necessary, as alleyways ground

owned by the petitioners in amount equal at least in area to that of the alleyway sought to be closed, and shall also present to said commissioners with said petition a correct plat of said square or part of square signed by all of the owners thereof, upon which shall be accurately delineated the positions and dimensions of the existing alleyway or ways and a subdivision of the entire area of the alley or alleys sought to be closed into parcels, according to an agreement of all said owners for the future ownership of the same, the name of the agreed future owner of each parcel being marked thereon, and showing also the position and dimensions of the new alleyway or ways proposed to be substituted therefor, it shall be the duty of said commissioners, upon being satisfied of the truth of the facts stated in the petition as to ownership and of correctness of the plat, and also that the proposed change will not be detrimental to the public convenience, to make an order declaring the existing alleyway or ways closed, as prayed for, and opening the new alleyway or ways proposed to be substituted therefor. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1605.)

CROSS REFERENCES

Ownership or reversion of lands on abandonment of public way, §§ 7–118, 7–123, 7–302 to 7–304, 7–307, 7–309, 7–401.

See notes to § 7–302.

§ 7–307 [25: 78]. Copy of order and plat recorded—Ownership of closed alley.

The commissioners shall cause a certified copy of the order to be attached to the plat and filed for record with the recorder of deeds of the District and also in the office of the surveyor of the District, each of whom shall record the same, and thereafter the right of the public to use the alleyway or ways declared closed and the proprietary interest of the United States therein shall forever cease and determine, and the title to the same shall be vested according to the agreement of the owners as shown in the aforesaid plat, each person being thenceforward the owner in fee simple of the parcel or parcels upon which his name shall be marked as provided in section 7–306. The new alleyway or ways described in said order and delineated on said plat shall thereafter be and remain dedicated to public use as alleyways, and, like other alleys of said city, shall be under the care and control of the city authorities. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1606; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

Act of 1901 was amended by striking out in the first sentence the words "delivered to the petitioners, who shall file the same" and inserting in lieu thereof the word "filed."

CROSS REFERENCES

Other provisions concerning jurisdiction and control over public highways, § 7–102 and notes.

Ownership or reversion of lands on abandonment of public way, §§ 7–118, 7–123, 7–302 to 7–304, 7–306, 7–309, 7–401.

See note to § 7–302.

NOTES TO DECISIONS

REDEDICATION OF ALLEYS

"To make such a dedication requires not alone that the street or alley be given, but that it be accepted. The reason for this is self-evident. The acceptance of a public street or alley imposes burdens on the District. 'The law is well settled that, to constitute a public street or highway by dedication, there must not only be an absolute dedication—by a setting apart and a surrender to the public use of the land by the proprietors—but there must be an acceptance and a formal opening thereof by the proper authorities, or a user which is equivalent to such acceptance and opening.'" *Watson* v. *Carver* (27 App. D. C. 555).

"There was no valid statutory dedication, for an essential provision of the statute was not complied with, and without this there could be no valid statutory dedication." *Watson* v. *Carver* (27 App. D. C. 555).

§ 7–308 [25: 79]. Obliterating subdivisions and alleys—Filing copy of order.

Whenever the title in fee simple to an entire square is vested in one person or in tenants in common, or partners, and such owner or owners desire to improve said square by the erection of a building thereon, covering not less than two-thirds of the area thereof, or for the purpose of some business enterprise, the Commissioners of the District may, on the petition of such owner or owners, setting forth such ownership, the purpose for which it is desired to use such square, and the manner and the time in which it is proposed to improve the same, on being satisfied of the truth of the facts stated in the petition, and also that the proposed change and use will not be detrimental to the public interests, make an order canceling any previous subdivision of said square and obliterating all alleys therein. They shall cause a certified copy of such order to be filed for record with the recorder of deeds, and also the surveyor of the District, each of whom shall record the same. The expense of the recording provided for by this section and section 7–307 shall be advanced by the petitioner to the commissioners under such regulations as they may prescribe. (Mar. 3, 1901, 31 Stat. 1429, ch. 854, § 1607; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

The act of 1902 amended § 1607 of the act of 1901 by striking out in the last sentence the words "attached to a plat of said square and delivered to the petitioners, who shall file the same" and inserting in lieu thereof the word "filed"; also by adding at the end of said section the words "the expense of the recording provided for by this and the preceding section shall be advanced by the petitioner to the commissioners under such regulations as they may prescribe."

CROSS REFERENCE

See note to § 7–302.

NOTES TO DECISIONS

ASSESSMENTS

The front-foot rule can not be applied to the assessment of a lot for paving an alley, which had a boundary of 233.17 feet facing two alleys, which could not be used commercially, and when the lot is assessed 222 per cent. higher than average assessment of other lots bordering the alleys, the assessment must be revised. *Willner* v. *Hazen* (71 App. D. C. 373, 111 Fed. (2d) 511).

One seeking to cancel an alley paving assessment on a lot, facing two alleys, which, under zoning regulations was limited to one-family detached house, and which was assessed 222 per cent. higher than other lots, was entitled to trial on the merits, and dismissal of complaint was improperly granted. *Willner* v. *Hazen* (71 App. D. C. 373, 111 Fed. (2d) 511).

§ 7–309 [25: 79a]. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owner's right of access preserved.

The Commissioners of the District of Columbia are authorized to close any alleys or parts of alleys in the District of Columbia when, in their judgment, such alleys, or parts of alleys, are rendered useless and unnecessary by reason of the acquisition of abutting land for municipal purposes: *Provided,* That the District of Columbia, prior to the closing of any such alley or part of alley, has acquired title to all the land abutting on the alley or part of alley proposed to be closed: *Provided further,* That the title to the land comprised in the alleys or parts of alleys so closed shall revert to the District of Columbia: *And provided further,* That no property owner within the block where such alleys or parts of alleys are closed shall be deprived of the right of access to his property by alleys or parts of alleys, unless adequate access to such property be substituted therefor. (June 14, 1932, 47 Stat. 303, ch. 248, § 1.)

CROSS REFERENCES

Closing alleys or streets in municipal center, § 9–201.
Ownership or reversion of lands on abandonment of public way, §§ 7–118, 7–123, 7–302 to 7–307, 7–401.
See notes to § 7–302.

§ 7–310 [25: 79b]. Land owned by District may be set aside for alley purposes.

The Commissioners of the District of Columbia are authorized to set aside for alley purposes any land owned by the District of Columbia whenever it becomes necessary to provide additional area for alleys by reason of the closing of any alley or part of any alley: *Provided,* That in each case the area set aside for alley purposes shall not exceed the area of the alley or part of alley closed. (June 14, 1932, 47 Stat. 303, ch. 248, § 2.)

CROSS REFERENCE

See notes to § 7–302.

§ 7–311 [25: 79c]. Public notice—Hearings.

The Commissioners of the District of Columbia shall cause public notice to be given, by advertisement in a newspaper of general circulation in the District of Columbia, of any order to be made by the said commissioners under the authority granted them by the provisions of sections 7–309 to 7–312: *Provided,* That such public notice shall be given not less than thirty days prior to the effective date of such order: *And provided further,* That if any interested property owner affected adversely by such order shall request a public hearing by the said commissioners, within thirty days prior to the effective date of the order, the said commissioners shall grant such hearing. (June 14, 1932, 47 Stat. 303, ch. 248, § 3.)

CROSS REFERENCE

See notes to § 7–302.

§ 7–312 [25: 79d]. Maps—Preparation—Recordation.

Any and all necessary maps showing the action taken by the commissioners of the District of Columbia under the provisions of sections 7–309 to 7–312 shall be prepared by the surveyor of the District of Columbia, approved by the commissioners of the District of Columbia, and ordered by said commissioners to be recorded in the office of the surveyor of the District of Columbia. (June 14, 1932, 47 Stat. 304, ch. 248, § 4.)

CROSS REFERENCE

See notes to § 7–302.

§ 7–313 [25: 80]. Condemnation to open, widen, or straighten alleys or minor streets—Plats.

Whenever it becomes necessary to open, widen, extend, or straighten alleys or minor streets by condemnation the said commissioners shall institute condemnation proceedings in the District Court of the United States for the District of Columbia, sitting as a District Court, by a petition in rem particularly describing the land to be taken, which petition shall be accompanied by duplicate plats to be prepared by the surveyor of said District, showing the courses and boundaries of the alley or minor street proposed to be opened, widened, extended, or straightened, the number of square feet to be taken from each lot or part of lot in the square or block, showing the existing alleys or minor street in said square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office. (Mar. 3, 1901, ch. 854, § 1608e, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

CROSS REFERENCES

Application of this chapter to condemnation proceedings to establish building lines on streets, § 5–203.
Application of this chapter to condemnation proceedings under the District of Columbia Alley Dwelling Act, § 5–104.
Condemnation of material for making or repairing public roads, § 7–332.
Condemnation proceedings for streets, alleys, or highways outside Washington and Georgetown, § 7–201 et seq.
Condemnation proceedings generally, § 16–601 et seq.

§ 7–314 [25: 81]. Public notice of condemnation—Personal service on owner.

The said court shall cause public notice of not less than ten days to be given of the filing of said proceedings, by advertisement in such manner as the court shall prescribe, which notice shall warn all persons having any interest in the proceedings to attend court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and assessment of benefits of the jury; and, in addition to such public notice, said court, whenever in its judgment it is practicable to do so, shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal or his deputies within the District of Columbia. (Mar. 3, 1901, ch. 854, § 1608f, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

CROSS REFERENCES

Notice of assessments against land no part of which was condemned, § 7–221.
See notes to § 7–313.

NOTES TO DECISIONS

POWERS OF COURT

It will be observed that this statute does not require personal service. This is a matter left to the discretion of the court. *National Sav. & T. Co.* v. *Reichelderfer* (61 App. D. C. 38, 57 Fed. (2d) 404).

Where court directed newspaper publication, and personal service on owners found in the District, failure to obtain personal service does not require quashing verdict for damages. *National Sav. & T. Co.* v. *Reichelderfer* (61 App. D. C. 38, 57 Fed. (2d) 404).

§ 7–315 [25: 82]. Procedure — Jury — Qualifications — Oath—Objections—Hearing—Verdict—Damages—Benefits.

After the return of the marshal and the filing of proof of publication of the notice provided for in section 7–314, said court shall cause a jury of five judicious, disinterested persons, not related to any person interested in the proceedings and not in the service or employment of the District of Columbia or of the United States, to be summoned by the said marshal, to which jurors said court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned nor in any way related to the parties interested therein, and that they will, without favor or partiality, to the best of their judgment, assess the damages each owner of land taken may sustain by reason of the opening, extension, widening, or straightening of said alley or minor street and the condemnation of lands for the purposes thereof, and assess the benefits resulting therefrom as hereinafter provided. The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power to decide upon all such objections, and to excuse any juror or cause any vacancy in the jury, when impaneled, to be filled; and after said jury shall have been organized and shall have viewed the premises, said jury shall proceed to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceedings for the opening; extension, widening, or straightening of said alley or minor street; but all such hearings shall be in the presence of the court and under its supervision and direction. When the hearing is concluded the jury, or a majority of them, shall return to said court, in writing, its verdict of the amount found to be due and payable as damages sustained by reason of the said opening, extension, widening, or straightening under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330, and of the pieces or parcels of land benefited by such opening, extension, widening, or straightening, and the amount of the assessment for such benefits against the same. (Mar. 3, 1901, ch. 854, § 1608g, as added Feb. 23, 1905, 33 Stat. 735, ch. 734.)

CROSS REFERENCE

Assessment of benefits against land no part of which was condemned, § 7–221.

NOTE TO DECISIONS

ANSWER TO CONDEMNATION PROCEEDINGS

An answer is not necessary in condemnation proceedings to protect property-owner's interests, having right to appear, produce witnesses and examine witnesses. *Concord Imp. Co.* v. *Reichelderfer* (62 App. D. C. 101, 65 Fed. (2d) 189).

§ 7–316 [25: 83]. Manner of assessing benefits where part only of parcel condemned.

If a part only of any piece or parcel of ground shall be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from such opening, extension, widening, or straightening, but such benefits shall be considered in determining what assessment shall be made on or against such part of such piece or parcel of land as may not be taken as herein provided. (Mar. 3, 1901, ch. 854, § 1608h, as added Feb. 23, 1905, 33 Stat. 735, ch. 734.)

CROSS REFERENCE

Assessment of benefits against lands, no part of which was condemned, §§ 7–221, 7–319.

§ 7–317 [25: 84]. Objections to verdict—When filed—Vacation or modification by court—New jury—Costs.

The court shall have power to hear and determine any objections which may be filed to said verdict or award, and to set aside and vacate the same, in whole or in part, when satisfied that it is unjust or unreasonable, and in such event a new jury in the case, having the qualifications hereinbefore mentioned, shall be summoned, who shall proceed to assess the damages or benefits, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided,* That the exceptions or objections to the verdict and award shall be filed within thirty days after the return of such verdict and award: *And provided further,* That if the court is satisfied that part of the verdict or award should be set aside or vacated, then and in that event, at the election of the said commissioners, the court shall set aside and vacate the entire verdict or award and a new jury shall be summoned in the case as aforesaid. The verdict of a new jury summoned in accordance with the provisions of this section shall be final, and if the amount of damages assessed by any new jury summoned as aforesaid shall not be greater, or if the assessment of benefits shall not be less, than the amount assessed by the jury first summoned, according as the objection to the verdict may have been to the assessment of damages or benefits, the costs of the new jury shall be assessed against the property of the party or parties objecting, but if the party or parties should prevail by the verdict of the new jury, either in increasing his or their damages, or in diminishing the assessment for benefits, then, and in that event, the costs of the new jury shall be paid by the District of Columbia, and if the Commissioners of the District of Columbia do not elect that the entire verdict shall be set aside, and the same be set aside or vacated in part, the residue of the verdict and award shall not be affected thereby. (Mar. 3, 1901, ch. 854, § 1608i, as added Feb. 23, 1905, 33 Stat. 735, ch. 734.)

CROSS REFERENCE

Procedure where benefits were assessed against lands, no part of which were condemned, § 7–221.

NOTE TO DECISIONS

ASSESSMENT EXCEEDING BENEFITS

Assessment for widening alley quashed where it greatly exceeded benefit to lots. *Brandenberg* v. *District of Columbia* (205 U. S. 135, 51 L. Ed. 743, 27 Sup. Ct. 440, revg. 26 App. D. C. 140).

§ 7–318 [25: 85]. Benefits assessed must equal damages and costs.

Said jury shall assess as benefits accruing by reason of said opening, extension, widening, or straightening an amount equal to the amount of damages as ascertained by them as hereinbefore provided, including five dollars per day for the marshal and five dollars per day for each juror for the services of each when actually employed, and all other expenses of such proceedings. (Mar. 3, 1901, ch. 854, § 1608j, as added Feb. 23, 1905, 33 Stat. 736, ch. 734.)

COMPILER'S NOTE

In view of the provisions of the act of March 3, 1917, 39 Stat. 1017, ch. 160, set out as § 7–319, the last part of this section, which formerly read as follows, has been omitted: "upon each lot or part of lot or parcel of land in the square or block in which such alley or minor street is to be opened, extended, widened, or straightened, and upon each lot, part of lot, or parcel of ground in the squares or blocks confronting the square in which such alley or minor street is to be opened, extended, widened, or straightened, which will be benefited by such opening, extension, widening, or straightening, in the proportion that said jury may find said lots, parts of lots, or parcels of land will be benefited."

§ 7–319 [25: 86]. Jury not restricted as to assessment area—Building lines and alleys—Benefits must equal damages and costs.

In all proceedings for the opening, extension, widening, or straightening of alleys and minor streets and for the establishment of building lines in the District of Columbia the jury of condemnation shall not be restricted as to the assessment area, but shall assess the entire amount awarded as damages plus the costs and expenses of the proceedings as benefits upon any and all lots, parts of lots, pieces or parcels of land which they may find will be benefited by the opening, extension, widening, or straightening of the alley or minor street, or by the establishment of the building line as they may find said lots, parts of lots, pieces or parcels of land will be benefited. (Mar. 3, 1917, 39 Stat. 1017, ch. 160.)

CROSS REFERENCE

Assessment of benefits against lands, no part of which were condemned, § 7–221.

§ 7–320 [25: 87]. Awards paid by Treasurer of United States—Benefits deducted from damages.

When the verdict of said jury shall have been finally ratified and confirmed by the court, as herein provided, the amounts of money awarded and adjudged to be payable for lands taken under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330 shall be paid to the owners of said land by the treasurer of the United States, ex officio commissioner of the sinking fund of the District of Columbia, upon the warrants of the commissioners of said District, out of any funds available therefor: *Provided,* That in all cases of payments the accounting officers shall take into account the assessment for benefits and the award for damages, and shall pay only such part of said award in respect of any lot as may be in excess of the assessment for benefits against the part of such lot not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment. (Mar. 3, 1901, ch. 854, § 1608k, as added Feb. 23, 1905. 33 Stat. 736, ch. 734.)

§ 7–321 [25: 88]. Assessments to be liens—Payable in four annual installments—Amendments allowed.

When confirmed by the court the several assessments herein provided to be made shall severally be a lien upon the land assessed and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in four equal annual instalments, with interest at the rate of four per centum per annum from and after sixty days after the date of confirmation until paid. That said court may allow amendments in form or substance in any description of property proposed to be taken, or of property assessed for benefits, whenever such amendments will not interfere with the substantial rights of the parties interested, and any such amendment may be made after as well as before the order or judgment confirming the verdict or award aforesaid. (Mar. 3, 1901, ch. 854, § 1608*l*, as added Feb. 23, 1905, 33 Stat. 736, ch. 734.)

CROSS REFERENCE

General provisions concerning special assessments, § 47–1101.

§ 7–322 [25: 89]. Compensation of jurors.

Each juror shall receive as compensation the sum of five dollars per day for his services during the time he shall be actually engaged in such services under the provisions hereof. (Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1609; June 30, 1902, 32 Stat. 545, ch. 1329; Feb. 23, 1905, 33 Stat. 736, ch. 734.)

AMENDMENTS

Act of 1902 struck out the word "kept" and inserted in lieu thereof the word "recorded."

The act of 1905, ch. 734, amended the act of Mar. 3, 1901, ch. 854, § 1609, as amended by the 1902 act, by striking out § 1609 and inserting in lieu thereof the section as set out above.

§ 7–323 [25: 90]. Appeal from assessment of benefits or damages not to stay proceedings—Determination on appeal controls.

No appeal by any interested party from the decision of the District Court of the United States for the District of Columbia confirming the assessment or assessments of benefits or damages herein provided for, nor any other proceeding at law or in equity by such party against the confirmation of such assessment or assessments, shall delay or prevent the payment of award to others in respect to the property condemned, nor delay or prevent the taking of any of said property sought to be condemned, nor the opening, extension, widening, or straightening of such alley or minor street: *Provided, however,* That upon the final determination of said appeal or other proceeding at law or in equity, the amount found to be due and payable as damages sustained by reason of the opening, extension, widening, or straightening of said alley or minor street under the provisions hereof shall be paid as hereinbefore pro-

vided. (Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1610; Feb. 23, 1905, 33 Stat. 736, ch. 734.)

AMENDMENT

The act of 1905 struck out the original § 1610 of the act of March 3, 1901, and substituted therefor the section as set out herein.

CROSS REFERENCE

Assessment of benefits against lands, no part of which was condemned, § 7–221.

§ 7–324 [25: 90a]. Benefit assessments from condemnation for alleys or minor streets.

In all condemnation proceedings instituted by the Commissioners of the District of Columbia in accordance with the provisions of sections 7–301 to 7–305, 7–313 to 7–318, 7–320 to 7–323 for the acquisition of land for the opening, extension, widening, or straightening of alleys or minor streets, all, or any part of the entire amount found to be due and awarded by the jury in said proceedings as damages for, and in respect of, the land condemned, plus all or any part of the costs and expenses of said proceedings, may be assessed by the jury as benefits: *Provided, however,* That if the total amount of damages awarded by the jury in any such proceedings, plus the costs and expenses of said proceedings, be in excess of the total amount of benefits, it shall be optional with the commissioners of the District of Columbia to abide by the verdict of the jury, or, at any time before the final ratification and confirmation of the verdict, to enter a voluntary dismissal of the cause: *Provided further,* That if the total amount of damages awarded by the jury in any such proceedings, plus the costs and expenses of said proceedings, be in excess of the total amount of the assessment for benefits, any such excess in any verdict for the acquisition of land for minor streets or alleys, shall be paid out of the appropriation available for the payment of damages awarded and costs incurred under said verdict. (June 20, 1939, 53 Stat. 844, ch. 225.)

§ 7–325 [25: 91]. Proceeds of sale of lands paid into Treasury.

All money derived from the sale of land in which the United States is interested, under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330 shall be paid into the treasury of the United States by the commissioners of the District of Columbia to the credit of the United States. (Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1611; Feb. 23, 1905, 33 Stat. 737, ch. 734.)

COMPILER'S NOTE

This section probably supersedes § 7–330.

AMENDMENT

The act of 1905 struck out the original § 1611 of the act of March 3, 1901, and substituted therefor the section as set out herein.

§ 7–326 [25: 92]. Plats to be made by surveyor—Costs.

In all cases where plats are required to be made under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330, or where the said commissioners shall deem it necessary that they shall be made in order to more effectually carry out any provision hereof, such plats shall be made by the surveyor of the District of Columbia, who shall require the person or persons desiring the same to deposit in advance a sum to defray the cost of preparing the same; any amount of such deposit remaining after the cost of such plats has been paid shall be refunded to the party so depositing: *Provided,* That plats ordered by the said commissioners shall be prepared by said surveyor free of cost. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1612; Feb. 23, 1905, 33 Stat. 737, ch. 734.)

AMENDMENT

The act of 1905 struck out the original § 1612 of the act of March 3, 1901, and substituted therefor the section as set out herein.

CROSS REFERENCE

Duties of surveyor, fees, § 1–616.

§ 7–327 [25: 93]. Correcting defects in certain prior proceedings.

The validity of any condemnation proceeding under the Act of Congress entitled "An Act to provide for the opening of alleys in the District of Columbia," approved July 22, 1892, or under the Act of Congress entitled "An Act to open, widen, and extend alleys in the District of Columbia," approved August 24, 1894, or under sections 1608 to 1613, inclusive, of the Act of Congress approved March 3, 1901 (31 Stat. 1189, ch. 854), shall not be affected by the want of proper notice to any proprietor of land in the square, except as to such proprietor; and if it shall appear to the satisfaction of the commissioners of the District of Columbia that any such proprietor was not notified as required by said acts the said commissioners may proceed under sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330 to condemn the land affected by the want of such notice. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1613; Feb. 23, 1905, 33 Stat. 737, ch. 734.)

COMPILER'S NOTE

This section is temporary and probably superfluous.

§ 7–328 [25: 94]. Certain alleys previously opened made valid.

All alleys opened or extended in the city of Washington since June 30, 1871, under an ordinance of the late corporation of Washington approved November 4, 1842, are hereby made valid. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1614.)

§ 7–329 [25: 95]. Alleys closed by subdivision prior to March 3, 1901, unaffected.

All alleys or parts of alleys prior to March 3, 1901, closed by subdivision, with the approval of the commissioners, shall remain unaffected by sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1615.)

§ 7–330 [25: 96]. Surplus from sale of land in which United States is interested to be paid into Treasury.

If any money from the sale of land in which the United States is interested shall remain after carrying out the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320 to 7–323, 7–325 to 7–330, such moneys shall be paid into the treasury of the United

States by the commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1616.)

COMPILER'S NOTE

This section is probably superseded by § 7–325.

§ 7–331 [25: 97]. Costs paid from alley appropriations when proceedings fail.

In cases of condemnation proceedings for opening, widening, and extending alleys and minor streets in the District of Columbia, taken pursuant to law, which fail of confirmation and ratification by the court, the Commissioners of the District of Columbia are authorized to pay all costs and expenses that may be incurred in connection with such proceedings from the appropriation for "Alleys, District of Columbia." (May 30, 1908, 35 Stat. 494, ch. 227.)

CROSS REFERENCE

Appropriations made under this chapter may be used to establish building lines on streets, § 5–206.

§ 7–332 [25: 98]. Condemnation of materials for making or repairing public roads.

In any case where materials of any kind shall be deemed necessary for making or repairing a public road, if the proper authorities can not agree with the owner as to their purchase, such materials may be condemned in the same manner as provided for in this chapter in cases of condemnation of land for the purposes of a public road. (R. S., D. C., § 267.)

§ 7–333 [25: 99]. Commissioners to employ assistant corporation counsel for condemnation proceedings.

The commissioners of said District are hereby authorized to employ, for such time as may be necessary, an assistant to the corporation counsel, whose duty it shall be to institute proceedings for the condemnations necessary to be taken in opening, widening, extending, and straightening alleys and minor streets. (June 27, 1906, 34 Stat. 491, ch. 3553; Mar. 2, 1907, 34 Stat. 1128, ch. 2510.)

AMENDMENT

The act of 1906, ch. 3553, is substantially the same as the act of 1907, ch. 2510. These sections originally provided that the compensation of the assistant corporation counsel should be $150 per month. The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

Chapter 4.—CLOSING STREETS, ALLEYS, OR HIGHWAYS

Sec.

7–401. Street Readjustment Act—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.
7–402. Notice of intention to close public way—Hearing.
7–403. Plats to be prepared showing public way intended to be closed—Approval conditional upon dedication of other property.
7–404. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.
7–405. Objections to closing public ways—Proceedings.
7–406. Payment of damages—Collection of benefit assessments.
7–407. Abandonment of proceedings.
7–408. Petition by property owners for closing.
7–409. Prior laws to remain in force.
7–410. Short title.

§ 7–401 [25: 99a]. Street Readjustment Act—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.

The Commissioners of the District of Columbia are authorized to close any street, road, highway, or alley, or any part of any street, road, highway, or alley, in the District of Columbia when, in the judgment of said commissioners, such street, road, highway, or alley, or such part of a street, road, highway, or alley, has been rendered useless or unnecessary, the title to the land embraced within the public space so closed to revert to the owners of the abutting property subject to such compensation therefor in money, land, or structures as the commissioners of the District of Columbia, in their judgment, may find just and equitable, in view of all the circumstances of the case affecting near-by property of abutters and/or nonabutters: *Provided,* That if the title to such land be in the United States the property shall not revert to the owners of the abutting property but may be disposed of by the said commissioners to the best advantage of the locality and the properties therein and thereby affected, which properties thenceforth shall become assessable on the books of the tax assessor of the District of Columbia in all respects as other private property in the District; or also said property be sold as provided in section 7–302 this title, unless the use of such land is requested by some other department, bureau, or commission of the government of the United States for purposes not otherwise inconsistent with the proper development of the District of Columbia: *Provided further,* That the said closing by said commissioners is made expedient or advisable by reason of change in the highway plan or by reason of provision for access or better access to the abutting or nearby property and the convenience of the public by other street, road, highway, or alley facilities, or by reason of the acquisition by the District of Columbia or by the United States of America for school, park, playground, or other public purposes, of all the property abutting on the street, road, highway, or alley, or part of a street, road, highway, or alley, proposed to be closed or for other public reasons: *And provided further,* That the proposed closing of any street, road, highway, or alley, or any parts thereof, as provided for in this chapter shall be referred to the National Capital Park and Planning Commission for its recommendation. (Dec. 15, 1932, 47 Stat. 747, ch. 4, § 1.)

CROSS REFERENCES

Closing minor streets or alleys, §§ 7–302 to 7–312.

Closing public highways outside Washington and Georgetown, §§ 7–113 to 7–116, 7–118, 7–123, 7–124.

Jurisdiction and control of commissioners over highways, § 7–102 and notes.

Ownership or reversion of lands on abandonment of public ways, §§ 7–118, 7–123, 7–302 to 7–309.

NOTES TO DECISIONS

IN GENERAL

Street Readjustment Act is a condemnation act in reverse, designed, as is the condemnation act, to dispose of all claims in a single suit. *Woodbury* v. *District of Columbia* (67 App. D. C. 278, 92 Fed. (2d) 202).

§ 7–402 [25: 99b]. Notice of intention to close public way—Hearing.

Whenever a street, road, highway, or alley, or a part of a street, road, highway, or alley, is proposed to be closed under the provisions of this chapter the commissioners of the District of Columbia shall cause public notice of intention to be given by advertisement for not less than fourteen consecutive days, exclusive of Sundays and holidays, in a daily newspaper of general circulation printed and published in the District of Columbia, to the effect that a public hearing will be held at a time and place stated in the notice for the hearing of objections, if any, to such closing. The said commissioners shall, not later than fourteen days in advance of such hearing, serve notice of such hearing, in writing, by registered mail, on each owner of property abutting the street, road, highway, or alley, or part thereof, proposed to be closed, or if the owner can not be located the advertisement provided for above shall be deemed sufficient legal notice. At such hearing a map showing the proposed closing shall be exhibited, and the property owners or their representatives, and any other persons interested, shall be given an opportunity to be heard. (Dec. 15, 1932, 47 Stat. 748, ch. 4, § 2.)

§ 7–403 [25: 99c]. Plats to be prepared showing public way intended to be closed—Approval conditional upon dedication of other property.

After such public hearing the said commissioners, if they are satisfied that the proposed closing will be in the public interest, and that such closing will not be detrimental to the rights of the owners of the property abutting on the street, road, highway, or alley, or part of a street, road, highway, or alley, proposed to be closed, nor cause unreasonable inconvenience to or adverse effect upon the owner or owners of any property abutting on streets connected therewith, nor unreasonably infringe the rights of the public to use such street, road, highway, or alley, shall cause to be prepared a plat or plats showing the street, road, highway, or alley, or part thereof, proposed to be closed and the area to be apportioned to each owner of property abutting thereon: *Provided,* That if the approval of the proposed closing by the said commissioners shall be conditioned upon the dedication of any other areas for street, highway, or alley purposes, and/or the retention by the District of Columbia of specified rights of way for any public purpose, and/or any other reservations deemed expedient or advisable by said commissioners, such plat or plats shall also show the parcels of land so dedicated, and/or the reserved rights of way, and/or such additional area affected by said closing, with alternative openings occasioned thereby, and/or by certificate thereon any such reservations deemed expedient or advisable by the said commissioners of the District of Columbia. (Dec. 15, 1932, 47 Stat. 748, ch. 4, § 3.)

§ 7–404 [25: 99d]. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.

If, after such hearing, the commissioners are of the opinion that any street, road, highway, or alley, or part thereof, should be closed, they shall prepare an order closing the same and shall cause public notice of such order to be given by advertisement for fourteen consecutive days, exclusive of Sundays and legal holidays, in at least two daily newspapers of general circulation printed and published in the District of Columbia, and shall serve a copy of such order on each property-owner abutting the street, road, highway, or alley, or part thereof, proposed to be closed by such order, and copy of such order shall be served on the owners in person or by registered mail delivered at the last known residence of such owners, or if the owner can not be located the advertisement provided for above shall be deemed sufficient legal notice; or if he be a nonresident of the District of Columbia, by sending a copy thereof by registered mail to his last known place of address: *Provided,* That if no objection in writing be made to the commissioners by any party interested within thirty days after the service of such order, then the said order shall immediately become effective; and the said order and plat or plats as provided for herein shall be ordered by the commissioners of the District of Columbia recorded in the office of the surveyor of the District of Columbia. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 4.)

§ 7–405 [25: 99e]. Objections to closing public ways—Proceedings.

When any such objection shall be filed with the commissioners as provided in section 7–404, then the commissioners of the District of Columbia shall institute a proceeding in rem in the District Court of the United States for the District of Columbia for the closing of such street, road, highway, or alley, or part thereof, and its abandonment for street, highway, or alley purposes, and for the ascertainment of damages and the assessment of benefits resulting from such closing and abandonment. Such proceeding shall be conducted in like manner as proceedings for the condemnation of land for streets, under the provisions of sections 7–202 to 7–215, and such closing and abandonment shall be effective when the damages and benefits shall have been so ascertained and the verdict confirmed. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 5; June 25, 1936, 49 Stat. 1921, ch. 804.)

CROSS REFERENCE

Condemnation generally, § 16–601 et seq.

§ 7–406 [25: 99f]. Payment of damages—Collection of benefit assessments.

Any damages awarded in any proceedings under section 7–405, together with the costs of the proceedings, shall be payable from the indefinite annual appropriation for opening, extending, straightening, or widening of any street, avenue, road, or highway, in accordance with the plan of the permanent system of highways of the District of Columbia. Any benefits assessed against private property in any such proceedings shall be a lien upon such property and shall be collected in like manner as provided in section 7–211. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 6.)

CROSS REFERENCES

Permanent system of highways, §§ 7–108 to 7–131.
Special assessments in general, § 47–1101 et seq.

NOTES TO DECISIONS

In General

Action in personam to recover assessment from an extension of streets alleging partial failure of consideration for closing one of streets was not barred on grounds, that jury awarded him no damages upon such proceedings, when there was no evidence that the matter was actually litigated and determined. *Woodbury* v. *District of Columbia* (67 App. D. C. 278, 92 Fed. (2d) 202).

§ 7–407 [25: 99g]. Abandonment of proceedings.

In any proceedings under section 7–405 or section 7–406 it shall be optional with the commissioners either to abide by the verdict and proceed with the proposed closing, or within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proposed closing without being liable for damages therefor. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 7.)

§ 7–408 [25: 99h]. Petition by property owners for closing.

Nothing in this chapter contained shall be construed to prevent the filing of petitions by abutting property-owners, or other persons or groups of persons affected by said closing, praying the closing or discontinuance in the public interest of any street, road, highway, or alley, or parts or portions thereof within the District of Columbia; and all such petitions shall be definitely considered by the commissioners of the District of Columbia, and all action taken by the said commissioners thereon shall be in conformity and compliance with the provisions of this chapter. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 8.)

§ 7–409 [25: 99i]. Prior laws to remain in force.

Nothing in this chapter shall be construed to repeal the provisions of any existing law authorizing the commissioners of the District of Columbia to close streets, roads, highways, or alleys, not inconsistent with the provisions of this chapter, but all such laws shall remain in full force and effect; and in any case to which more than one of these laws is applicable, the commissioners of the District of Columbia may elect the one under which they will proceed. (Dec. 15, 1932, 47 Stat. 750, ch. 4, § 9.)

Cross References

Closing minor streets or alleys, §§ 7–302 to 7–312.

Closing public highways outside Washington and Georgetown, §§ 7–113 to 7–116, 7–118, 7–123, 7–124.

§ 7–410 [25: 99j]. Short title.

In all cases where necessary to refer to this chapter, the same may be cited as "The Street Readjustment Act of the District of Columbia." (Dec. 15, 1932, 47 Stat. 750, ch. 4, § 10.)

Chapter 5.—BRIDGES, VIADUCTS, AND SUBWAYS

Sec.
7–501. Control of bridges vested in Commissioners of the District of Columbia—Except Aqueduct Bridge.
7–502. Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.
7–503. Cost of maintenance and repairs to Rock Creek bridges—Collection.
7–504. Pennsylvania Avenue Bridge.
7–505. Anacostia Bridge—Cost of paving—Repairs.
7–506. John Philip Sousa Bridge over Anacostia River.
7–507. Highway Bridge—Maintenance cost—Street railways.
7–508. Long Bridge—Maintenance cost—Railroads.
7–509. Tugboat construction—Approval by Secretary of War—Passage under bridges without using draw.
7–510. Monroe Street Bridge—Cost—Street railways.
7–511. Key Bridge—Railways—Approval by Secretary of War.
7–512. South Dakota Avenue Bridge—Payment of proportion of cost—Street railways.
7–513. Connecticut Avenue Bridge over Klingle Valley—Street railways.
7–514. Benning Bridge—Cost—Railways.
7–515. Fern and Varnum Streets and Eastern Avenue Viaducts—Cost—Railways.
7–516. Certain grade crossings to be closed after completion of Fern Street Viaduct.
7–517. Van Buren Street Subway—Cost—Railways.
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7–519. Cedar Street Subway—Use by street railway company—Payment of share of cost.
7–520. Michigan Avenue Viaduct—Construction authorized—Cost.
7–521. Use of viaduct by street railway companies.
7–522. Grade crossing to be closed
7–523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.
7–524. Calvert Street Bridge—Street railways.

§ 7–501 [12: 51]. Control of bridges vested in Commissioners of the District of Columbia—Except Aqueduct Bridge.

The control of bridges, except the Aqueduct Bridge across Rock Creek, in the District of Columbia, is hereby conferred on the commissioners of the District of Columbia, and they are hereby required to make such proper regulations as they may deem necessary for the safety of the public using said bridges, and for the lighting and the police control of the same. (Mar. 3, 1893, 27 Stat. 544, ch. 199.)

Cross References

General provisions for contracts for construction or repair, § 1–801 et seq.

Powers and duties of Commissioners, § 7–102 and notes.

Provisions for lighting public places, §§ 7–701 to 7–710.

Railroads other than street railways to pay cost of lighting bridges and subways, § 7–709.

Rules and regulations in general, § 1–226.

§ 7–502 [12: 52]. Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.

Appropriations made after June 7, 1924, for the construction and repair of bridges shall be available for repairing, when necessary, any bridge carrying a public street over the right of way or property of any railway company, or for constructing, reconstructing, or repairing in such manner as shall in the judgment of the commissioners be necessary reasonably to accommodate public traffic, any bridge required to carry or carrying such traffic in a public street over the right of way or property of any canal company operating as such in the District of Columbia, on the neglect or refusal of such railway or canal company to do such work when notified and required by the commissioners, and the amounts thus expended shall be a valid and subsisting lien against the property of such railway company or of such canal company, and shall be collected from such railway company or from such canal company in the manner provided in section 7–604, and shall be deposited in the Treasury to the credit of

the United States and the District of Columbia in the manner provided by law. (June 7, 1924, 43 Stat. 550, ch. 302.)

COMPILER'S NOTES

This section provides for deposit in the Treasury in the manner provided by law. The act of February 22, 1921, 41 Stat. 1144, ch. 70, § 7, provided: "That on and after July 1, 1921, all fees, fines, and other miscellaneous items of revenue theretofore required by law to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia; and all collections on account of special assessments for public improvements for which assessments are levied according to the law shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as the appropriations used in paying for such assessment work are charged, respectively, against the revenues of the District of Columbia and the Treasury of the United States."

As to the proportions in which revenue is credited to the United States and the District of Columbia, see also the acts of June 7, 1924, 43 Stat. 539, 550, ch. 302; Mar. 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 3, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 659.

The act of August 9, 1935, 49 Stat. 568, ch. 502, provided as follows with respect to the opening of streets within the area designated and the construction of viaduct bridges:

SECTION 1. "No streets or avenues shall be opened across the railroads constructed under the authority of this Act between Florida Avenue and an extension of the west line of Twenty-second Street Northeast from Bryant Street to New York Avenue, except New York Avenue and except as hereinafter provided; the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall construct, within two years after being directed so to do by the Commissioners of the District of Columbia, a suitable viaduct bridge above the said railroads connecting Brentwood Road and T Street Northeast, with New York Avenue at such point as may be determined by the said Commissioners between Fourth Street Northeast and the extension of Mount Olivet Road Northeast, as the same may be shown on the plan of the permanent system of highways at the time the said Commissioners direct the construction of said viaduct bridge, said viaduct bridge either to connect directly with New York Avenue at grade or to pass over said avenue with connections thereto as the said Commissioners may direct; the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall pay in equal shares the entire cost and expense of the bridge structure, including the necessary retaining walls and approaches in connection therewith, between the southerly line of New York Avenue as now publicly owned, and the southerly line of Brentwood Road as now publicly owned; the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall dedicate or cause to be dedicated to the District of Columbia such land lying between the southerly line of Brentwood Road and the northerly line of New York Avenue Northeast, as now publicly owned, as may be necessary for the location of such bridge structure and the approaches thereto in accordance with the plan of the permanent system of highways as said plan may be established at the time the Commissioners direct the construction of said viaduct bridge; the cost of maintenance of said viaduct bridge, retaining walls, and approaches is to be borne entirely by the District of Columbia; and said viaduct bridge, retaining walls, and approaches shall be constructed in accordance with plans and specifications and at a location approved by the Commissioners of said District; and the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall construct, within two years after being directed so to do by the Commissioners of the District of Columbia, a suitable subway or underpass beneath the tracks of said companies within the lines of the street connecting the intersection of New York Avenue and West Virginia Avenue Northeast, as the same may be shown on said plan of the permanent system of highways at the time said Commissioners direct the construction of said subway or underpass; the said railroad companies shall pay in equal shares the entire cost and expense of the subway or underpass structure, including the necessary retaining walls in connection therewith, and in addition thereto, so much of the approaches to said subway or underpass as lie within the limits of the said railroad companies' properties; each of said railroad companies shall dedicate or cause to be dedicated to the District of Columbia such land lying within the limits of said railroad companies' properties as may be necessary for said street in accordance with the plan of the permanent system of highways as said plan may be established at the time the Commissioners direct the construction of said subway or underpass; the cost of maintenance of said approaches is to be borne entirely by the District of Columbia; the cost of maintenance of said subway or underpass structure and the retaining walls is to be borne entirely by said railroad companies; and the said subway or underpass and the retaining walls and approaches shall be constructed in accordance with the plans and specifications and at a location approved by the Commissioners of said District." (Time extended for commencing construction until October 20, 1940, the same to be completed within eighteen months thereafter. June 11, 1938, 52 Stat. 641, ch. 338.)

SEC. 2. "Congress reserves the right to alter, amend, or repeal this Act."

SEC. 3. "If this amendatory Act or any part thereof shall be declared invalid, so much of this Act as forbids the opening of Ninth, Twelfth, and Fifteenth Streets shall be void, and the duty of the terminal company referred to in said Act of Congress approved February 28, 1903, to construct suitable viaduct bridges and the approaches thereto to carry said streets over the railroads as required by said section 5 of said Act of February 28, 1903, as originally enacted, shall remain in full force and effect and unimpaired by this amendatory Act."

CROSS REFERENCES

Other provisions concerning construction, cost, and repair of viaducts and subways, §§ 7–1210 to 7–1212, 7–1214, 7–1215, 7–1220 to 7–1227, 7–1228.

§ 7–503 [12: 53]. Cost of maintenance and repairs to Rock Creek bridges—Collection.

The entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and the excess cost of construction and maintenance of any bridge across Rock Creek due to the existence or installation by a street railway or railways of its or their tracks on such bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 7–604. The amounts thus collected shall be deposited to the credit of the appropriation for the fiscal year in which they are collected. (Aug. 7, 1894, 28 Stat. 252, ch. 232; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

AMENDMENT

As originally enacted the section commenced as follows: "One-half the cost of maintenance and repair of any bridge across Rock Creek occupied by the tracks of a street railway or railways shall bear * * *."

The language inserted in lieu thereof was taken from the act of Jan. 14, 1933, 47 Stat. 759, which was not directly amendatory of the act of Aug. 7, 1894, but applied generally to all bridges.

CROSS REFERENCE

As to disposition of collections, see Compiler's Note under § 7–502.

§ 7–504 [12: 54]. Pennsylvania Avenue Bridge.

The East Washington Heights Traction Railroad Company shall bear the cost of maintenance, construction, and repair of the Pennsylvania Avenue Bridge over the Anacostia River in like manner and under the same conditions as are provided by section 7–503. (July 1, 1902, 32 Stat. 636, ch. 1360; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

AMENDMENT

The act of Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3, was not directly amendatory of the act of July 1, 1902, 32 Stat. 636, but contained language which affected the last-mentioned act, therefore its wording has been changed to conform to the meaning of the act of Jan. 14, 1933.

§ 7–505 [12: 55]. Anacostia Bridge—Cost of paving—Repairs.

The Anacostia and Potomac River Railroad Company shall pay the entire cost of the pavement between the exterior rails of its tracks on said bridge (the Anacostia Bridge) and for a distance of two feet from the said exterior rails of said tracks on each side thereof and the cost of the entire floor system supporting said pavement, to be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 7–604 and paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia: *Provided further,* That any other railroad company on or after April 27, 1904, authorized by Congress to use said bridge shall have the right to use the tracks of the Anacostia and Potomac River Railroad Company thereon upon such reciprocal trackage and such compensation as may be mutually agreed upon, and in case of failure to reach such an agreement that the District Court of the United States for the District of Columbia shall, upon petition filed by either party, fix and determine the same. And after April 27, 1904, one-half of the cost of the maintenance and repairs of this bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways, and paid into the treasury, as provided for above. The entire cost of maintenance of such underfloor construction as may be necessary in order that the cars of said company may be propelled over said bridge by underfloor electrical conductors or cables shall, after March 3, 1905, be borne by said railroad company, and no cars shall be propelled across said bridge unless all electrical conductors or cables furnishing power for the propulsion of the same shall be placed under floor of said bridge. (Apr. 27, 1904, 33 Stat. 372, ch. 1628; Mar. 3, 1905, 33 Stat. 893, ch. 1406; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

COMPILER'S NOTE

While the law has been changed as to what must be done by street railways and as to what they must pay toward the cost, maintenance, and paving of bridges, the change seems limited to street railways (see § 7–604) and therefore inapplicable to steam roads and that their liability would remain as here set out.

AMENDMENTS

This section is a composite of the credits cited in the history line. The 1904 act originally provided that the cost when collected should be paid into the Treasury one-half to the credit of the United States and one-half to the credit of the District of Columbia.

For the change made by the act of 1921, and proportions in which revenue has been credited between the United States and the District of Columbia, see Compiler's Note to § 7–502.

CROSS REFERENCES

Joint use of facilities, § 43–302.

The Federal Government now makes a lump sum appropriation for the District, § 47–134.

NOTE TO DECISIONS

APPORTIONMENT OF MAINTENANCE COST

Street railway required to pay one-half cost of maintenance and repairs under the act of 1904 and said act was not repealed by the act of 1905. *Hazen* v. *Washington R. & E. Co.* (64 App. D. C. 57, 74 Fed. (2d) 461, cert. den. 294 U. S. 714, 79 L. Ed. 1247, 55 Sup. Ct. 512).

§ 7–506 [12: 55a]. John Philip Sousa Bridge over Anacostia River.

The bridge authorized to be erected over the Anacostia River, in the District of Columbia, in the line of Pennsylvania Avenue shall be hereafter known as the John Philip Sousa Bridge. (Mar. 7, 1939, 53 Stat. 512, ch. 8.)

§ 7–507 [12: 56]. Highway Bridge—Maintenance cost—Street railways.

The jurisdiction and control of the Highway Bridge across the Potomac River, including appropriations and employees, shall be under the commissioners of the District of Columbia. The Highway Bridge shall be for highway traffic. The entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and the excess cost of construction and maintenance of the bridge due to the existence or installation of its tracks thereon shall be paid by the street railway company or companies using the same under such regulations as the commissioners of the District of Columbia shall prescribe: *Provided,* That all street railroads chartered or that may hereafter be chartered by Congress shall have the right to cross said bridge upon terms mutually agreed upon with the Washington, Alexandria, and Mount Vernon Railway Company or in case of disagreement, upon terms determined by the District Court of the United States for the District of Columbia which is authorized and directed to give hearing to the interested parties and to fix the terms

of joint trackage. (Feb. 12, 1901, 31 Stat. 773, ch. 353, § 12; July 1, 1902, 32 Stat. 598, ch. 1352; Feb. 22, 1921, 41 Stat. 1117, ch. 70, § 1; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

COMPILER'S NOTE

This section may be partially superseded, see note to § 7–604.

AMENDMENT

This section is a composite of the credits cited in the history line.

CROSS REFERENCES

Joint use of facilities, § 43–302.

Other provisions concerning jurisdiction and control of Highway Bridge, § 7–103.

STATUTORY REFERENCE

The first sentence of this section is in U. S. C., title 40. § 61.

§ 7–508 [12: 57]. Long Bridge — Maintenance cost — Railroads.

The bridge built in lieu of the Long Bridge shall be for railroad purposes only and for two or more railway tracks. The Baltimore and Potomac Railroad Company shall maintain, and keep in repair said bridge at its own cost and expense, and shall maintain an efficient draw in said bridge, operating the same so as not to unnecessarily impede the free navigation of the Potomac River at any hour of the day or night, and shall give other railroad companies the right to pass over said bridge upon such reasonable terms as may be agreed upon between the companies or prescribed by Congress. (Feb. 12, 1901, 31 Stat. 772, ch. 353, § 11.)

COMPILER'S NOTE

This section may be partially superseded, see note to § 7–604.

CROSS REFERENCE

Joint use of facilities, § 43–302.

§ 7–509 [12: 58]. Tugboat construction—Approval by Secretary of War—Passage under bridges without using draw.

All tugboats using the Potomac River at the place or places where the same is spanned by the two certain bridges in said act provided for, namely the railway bridge and the highway bridge are required to equip and fit, not later than July 1, 1909, all smokestacks thereof or other vertical projections with hinges or other mechanical device so as to permit the same to be lowered to the level of the top of the pilot house of such boats: *Provided,* That all such tugboats the pilot house of which will not pass under such bridges may be exempted from the operations of the provisions hereof, upon application made to the Secretary of War and his approval thereof: *Provided further,* That all tugboats after March 4, 1909, built or purchased, or not on said date actually engaged in business on the Potomac River at the places aforesaid, must have their dimensions approved by the Secretary of War before being permitted to use and operate the same on the Potomac River at the places above mentioned: *And provided further,* That the provisions hereof shall not apply to such tugboats as may, by reason of their structure, be able to pass under said two bridges, respectively, without the necessity of operating the draws thereof.

The provisions of this section are applicable to "power boats," meaning any boat, vessel, or craft propelled by machinery, whether the machinery be only principal or auxiliary power of propulsion. (Mar. 4, 1909, 35 Stat. 1066, ch. 315; Mar. 4, 1915, 38 Stat. 1053, ch. 142, § 6.)

COMPILER'S NOTE

The first part is probably temporary.

AMENDMENT

The wording of the second paragraph of this section is that of the compilers of the 1929 Code, the 1915 amendment having merely provided that the act should be amended to include such boats.

§ 7–510 [12: 59]. Monroe Street Bridge—Cost—Street railways.

No street railway company shall use the viaduct or bridge or any approaches thereto authorized by the Act of July 3, 1930, to carry Monroe Street Northeast over the tracks of the Baltimore and Ohio Railroad Company, for its tracks until such company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fourth of the cost of such viaduct or bridge and approaches, which sum shall be paid to the collector of taxes for the District of Columbia for deposit to the credit of the District of Columbia. (Mar. 2, 1907, 34 Stat. 1130, ch. 2510; July 3, 1930, 46 Stat. 963, ch. 848.)

AMENDMENT

The amendment required the payment of one-fourth the cost of the bridge and approaches instead of one-sixth, to be paid to the collector of taxes for the District, instead of the Treasurer of the United States for the use of the District without apportionment to the United States.

CROSS REFERENCE

See note to § 7–502.

§ 7–511 [12: 60]. Key Bridge—Railways—Approval by Secretary of War.

The jurisdiction or control of the Georgetown bridge, to be known as the Francis Scott Key bridge, across the Potomac River and approaches shall be under the commissioners of the District of Columbia. The said bridge shall be used as a highway for traffic, and for gas and water-mains, power, telegraph and telephone wires or cables, and interurban railroads upon such conditions and for such compensation as may from time to time be prescribed by the Secretary of War: *Provided,* That the Washington and Old Dominion Railway, using the Aqueduct Bridge on May 18, 1916, shall be permitted, with the approval of the Secretary of War, to change its location so as to cross with a double track the new bridge and approaches herein provided for, and to connect its railway, located in Alexandria County, Virginia, and in the District of Columbia, with the tracks of said new bridge; and that all plans for such change are to be approved by the Secretary of War: *And provided further,* That a standard system of electric propulsion shall be installed by said railway on said new bridge, and no dynamo furnishing power to this portion of the road of said railway shall be in any manner connected with the ground, and that the cost of paving and maintaining in good condition between the tracks and two feet outside thereof shall be paid by said railway: *And provided further,*

That any electric railway shall have the right to use said new bridge and the double track above described upon terms determined by the Secretary of War, who is hereby authorized and directed to hear the interested parties and to fix the terms of joint trackage. (May 18, 1916, 39 Stat. 163, ch. 127, § 5; Feb. 28, 1923, 42 Stat. 1338, ch. 148, § 1; June 7, 1926, 44 Stat. 697, ch. 480, § 2.)

COMPILER'S NOTES

This section may be partially superseded, see note to § 7–604.

The words "the Georgetown bridge, to be known as" are superfluous.

AMENDMENTS

The first sentence was added by act of 1923.

The act of June 7, 1926, repealed the last sentence of § 5 of the act of February 28, 1923, which formerly read as follows: "And all electric railways, including the Washington and Old Dominion Railway, using said new bridge shall, in addition to taxes and other charges, pay monthly into the Treasury of the United States the sum of one-half of 1 cent for each passenger transported each way over said new bridge, and just and reasonable rates or charges on all freight transported thereon, and of these sums, when paid into the Treasury, one-half shall be credited to the District of Columbia."

CROSS REFERENCE

Joint use of facilities by utility companies, § 43–302.

STATUTORY REFERENCE

The first sentence of this section is in U. S. C., title 40, § 62.

§ 7–512 [12: 61]. South Dakota Avenue Bridge—Payment of proportion of cost—Street railways.

No street railway company shall use the bridge authorized by the Act of March 3, 1917 (39 Stat. 1018, for its tracks until such company shall have paid to the treasurer of the United States a sum equal to one-sixth of the total cost of said bridge, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Mar. 3, 1917, 39 Stat. 1018, ch. 160; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

COMPILER'S NOTE

For proportions credited to the United States and the District of Columbia, see acts of June 7, 1924, 43 Stat. 539, ch. 302; March 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; March 3, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 659.

AMENDMENT

The act of 1917 originally provided, with respect to the payment to the Treasurer of the United States of one-sixth of the cost, that one-half thereof should be credited to the United States and the other half to the credit of the District of Columbia.

CROSS REFERENCE

The Federal Government now makes a lump-sum appropriation for the District, §§ 7–604, 47–134.

§ 7–513 [12: 61a]. Connecticut Avenue Bridge over Klingle Valley—Street railways.

Any street railway company using the new Connecticut Avenue Bridge over Klingle Valley shall install thereon at its own expense an approved standard underground system and an overhead trolley system of street car propulsion, including trolley poles of approved design, and at its own expense shall thereafter maintain such underground and overhead construction and bear the cost of surfacing, resurfacing, and maintaining in good condition the space between the railway tracks and two feet exterior thereto, and shall defray the cost of excess construction occasioned by such use. (July 3, 1930, 46 Stat. 962, ch. 848.)

COMPILER'S NOTE

This section may be partially superseded, see note to § 7–604.

§ 7–514 [12: 61b]. Benning Bridge—Cost—Railways.

One-fifth of the cost of constructing the said bridge (in line of Benning Road over the Anacostia River) and approaches shall be borne and paid by the Washington Railway and Electric Company, its successors and assigns, to the collector of taxes of the District of Columbia, to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railway company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the District Court of the United States for the District of Columbia, or by any other lawful proceeding against the said railway company: *Provided further,* That after the completion of said bridge and approaches authorized by the Act of June 29, 1932 (47 Stat. 355) no street railway company shall use said bridge or approaches until the said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fifth of the cost of said bridge and approaches, which sum shall be paid to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia. (June 29, 1932, 47 Stat. 355, ch. 308.)

COMPILER'S NOTE

The first part is probably temporary.

CROSS REFERENCE

Joint use of facilities by utility companies, § 43–302.

§ 7–515 [12: 62]. Fern and Varnum Streets and Eastern Avenue Viaducts—Cost—Railways.

The viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right of way of the Baltimore and Ohio Railroad Company or the viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company shall not be used by any street railroad company until said companies shall have paid to the collector of taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section. (Mar. 3, 1927, 44 Stat. 1352, ch. 306, § 1.)

CROSS REFERENCE

Cost of repairs and maintenance, § 7–502.

§ 7–516 [12: 63]. Certain grade crossings to be closed after completion of Fern Street Viaduct.

From and after the completion of the viaduct and approaches to carry Fern Street over the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and right of way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind; and from and after the completion of the viaduct and approaches to carry Varnum Street over the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and right of way of the said railroad company at Bates Road shall be forever closed against further traffic of any kind, and from and after the completion of the viaduct and approaches to carry Eastern Avenue over the tracks and right of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and rights of way of the said railroad companies at Quarles Street, shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1354, ch. 306, § 4.)

COMPILER'S NOTE

Section 3 of the act cited to the text appears herein as § 7–1215.

§ 7–517 [12: 64]. Van Buren Street Subway—Cost—Railways.

No street railway company shall use the subway and approaches to carry Van Buren Street under the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company for its tracks until said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fourth of the total cost of said subway and approaches, to be applied to the credit of the District of Columbia. (Mar. 2, 1925, 43 Stat. 1096, ch. 395, § 1.)

CROSS REFERENCE

See note to § 7–502.

§ 7–518 [12: 65]. Grade crossing closed.

The highway grade crossing formerly over the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company at Lamond shall be forever closed against further traffic of any kind. (Mar. 2, 1925, 43 Stat. 1097, ch. 395, § 3.)

§ 7–519 [12: 66]. Cedar Street Subway—Use by street railway company—Payment of share of cost.

No street railway company shall use the subway herein authorized (to carry Cedar Street under the tracks of the Baltimore and Ohio Railroad Company) for its tracks until such company shall have paid to the treasurer of the United States a sum equal to one-fourth of the total cost of said subway and bridge, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (May 18, 1910, 36 Stat. 388, ch. 248; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

Prior to act of 1921, this section provided that payment to the Treasurer of the United States of one-fourth of the cost should be credited one-half to the United States, and the other half to the District of Columbia.

CROSS REFERENCES

The Federal Government now makes a lump sum appropriation for the District, §§ 7–604, 47–134.

See note to § 7–502 and Compiler's Note under § 7–511.

§ 7–520 [12: 67]. Michigan Avenue Viaduct—Construction authorized—Cost.

The Commissioners of the District of Columbia are authorized and directed to construct a viaduct and approaches to eliminate the crossing at grade of Michigan Avenue and the tracks and right of way of the Baltimore and Ohio Railroad Company, said viaduct to be constructed north of the present line of Michigan Avenue as may be determined by the commissioners of the District of Columbia in accordance with plans and profiles of said works to be approved by the said commissioners: *Provided,* That one-half of the total cost of constructing the said viaduct and approaches shall be borne and paid by the said railroad company, its successors and assigns, to the collector of taxes of the District of Columbia to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the District Court of the United States for the District of Columbia, or by any other lawful proceeding against the said railroad company: *Provided further,* That from and after the completion of the said viaduct and approaches the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company in line of present Michigan Avenue shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1351, ch. 305, § 1; Feb. 12, 1931, 46 Stat. 1087, ch. 119; June 14, 1935, 49 Stat. 349, ch. 241, § 1.)

AMENDMENTS

Prior to the 1931 amendment, the viaduct provided for herein was described as "a viaduct to carry Michigan Avenue over the tracks and right-of-way of the Baltimore and Ohio Railroad Company in accordance with plans and profiles of said works."

The last proviso was added by act of 1935.

CROSS REFERENCES

Cost of repairs and maintenance, § 7–502.

See note to § 7–502.

NOTES TO DECISIONS

COMMISSIONER'S DISCRETION IN DETERMINING LOCATION

Project for erection of a viaduct was not unauthorized by law, because its location was not exactly as specified in the statute authorizing it where it was substantially so, and the statute left to the commissioners some discretion in placing the exact location. *Ralph* v. *Hazen* (68 App. D. C. 55, 93 Fed. (2d) 68).

§ 7–521 [12: 68]. Use of viaduct by street railway companies.

No street railway company shall use the viaduct or any approaches thereto authorized by section 7–520 for its tracks until the said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fourth of the cost of said viaduct and approaches, which sum shall be deposited to the credit of the District of Columbia. (Mar. 3, 1927, 44 Stat. 1352, ch. 305, § 2.)

CROSS REFERENCE

See note to § 7–502.

STATUTORY REFERENCE

This section is repeated in the act of Feb. 12, 1931, 46 Stat. 1088, ch. 119, § 2.

§ 7–522 [12: 70]. Grade crossing to be closed.

From and after the completion of the said viaduct and approaches, the highway grade crossing over the tracks and the right of way of the said Baltimore and Ohio Railroad Company at Michigan Avenue in the District of Columbia shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1352, ch. 305, § 4.)

STATUTORY REFERENCE

This section is repeated in the act of Feb. 12, 1931, 46 Stat. 1088, ch. 119, § 4.

§ 7–523 [12: 70a]. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.

One-half of the total cost of constructing a subway under the tracks and right of way of the Baltimore and Ohio Railroad Company in the vicinity of Chestnut Street or of the intersection of Fern Place and Piney Branch Road, extended, and thereafter the cost of maintaining the structure within the limits of its right of way shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company, and shall constitute a legal indebtedness against the said railroad company in favor of the District of Columbia, and said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the commissioners in the District Court of the United States for the District of Columbia, or by any other legal proceeding against the said railroad company: *Provided further,* That from and after the completion of the said subway and approaches, the highway grade crossing over the tracks and right of way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind. (July 3, 1930, 46 Stat. 963, ch. 848.)

CROSS REFERENCE

See note to § 7–502.

§ 7–524 [12: 70b]. Calvert Street Bridge—Street railways.

Any street railway company using the bridge constructed to replace the Calvert Street Bridge over Rock Creek, as authorized by the act of June 16, 1933 (48 Stat. 229, ch. 93) shall install thereon, at its own expense, an approved underground system of streetcar propulsion and, at its own expense, shall thereafter maintain such underground construction, and bear the cost of surfacing and resurfacing and maintaining in good condition the space between the railway tracks and two feet exterior thereto as provided by law, and shall defray the cost of excess construction occasioned by such use including the relocation and construction of closed plow pits at the west approach to the bridge in accordance with plans to be approved by the commissioners of the District of Columbia. (June 16, 1933, 48 Stat. 229, ch. 93.)

COMPILER'S NOTE

The above provision taken from the act of June 16, 1933, 48 Stat. 229, ch. 93, was preceded by an appropriation of $575,000 for the construction of a bridge to replace the Calvert Street Bridge.

Chapter 6.—REPAIR AND CONSTRUCTION

Sec.

7–601. Repairs to streets, avenues, alleys or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.
7–602. Contracts—Unanimous consent of Commissioners required—Contracts to be copied into book.
7–603. Pavement to be of best known materials—Bond of contractors—Liability for repairs.
7–604. Payments—Railway companies to pay portion of cost—Penalty for refusal.
7–605. Water and gas mains, service pipes, and sewer connections, to be laid before permanent improvements are made.
7–606. Assessment of cost of sidewalks and curbing against abutting property.
7–607. Commissioners to submit schedules of streets to be improved in order of importance.
7–608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.
7–609. Permit system—Repayments.
7–610. Service connections for water and sewer when street is about to be paved—Cost—Assessment.
7–611. Paving or repairing roadway of streets, avenues, and roads—Maintenance and improvements—Cost—Assessment.
7–612. Assessments for costs of paving streets.
7–612a. Special assessments for curbs and gutters—Definition of gutter.
7–612b. Same—Computation of assessment.
7–612c. Same—Property abutting two or more streets, avenues, or roads.
7–612d. Same—Roadway improvements and curbs and gutters completed after May 25, 1943.
7–613. Width of pavement of streets.
7–614. Street railway companies to keep tracks free of snow and ice.
7–615. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.
7–616. Penalty—Prosecution.
7–617. Use of bituminous macadam authorized.
7–618. Use of portable asphalt plant.
7–619. Unexpended allotments for street paving made available for succeeding year.
7–620. Limitation on contracts of District Commissioners.
7–621. Contracts for repairs may be made for not more than 5 years.
7–622. Assessment when roadway of street, avenue, or road is paved—One-half of cost assessed—Improvement of one-half only of roadway.
7–623. "Roadway" to include gutters and curbs—Assessment for curbs and gutters.

Sec.
7–624. Cost of certain roadway improvements not to be assessed.
7–625. Maximum front foot assessment—Total assessment limited—Computation against unsubdivided property.
7–626. Property exempt from replacement costs.
7–627. Assessments when prior roadway improvements were made at owner's cost.
7–628. No assessment for cost of resurfacing by heater method—Assessment of replacement cost.
7–629. Assessment against property abutting two or more streets.
7–630. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.
7–631. Protest of aggrieved property owner—Adjustment of assessment by Commissioners.
7–632. Cancelation of prior assessments directed—Reassessment—Refund.
7–633. Effect of unconstitutionality of part of law.
7–634. Not applicable to assessments levied prior to 1885.

§ 7–601 [12: 71]. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.

When any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of $1,000, notice shall be given in one newspaper in Washington, and if the total cost shall exceed $5,000, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week, for proposals, with full specifications as to material for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the commissioners shall determine upon shall in all cases be accepted: *Provided, however,* That the commissioners shall have the right, in their discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. (June 11, 1878, 20 Stat. 105, ch. 180, § 5.)

Cross References

Annual estimate of salaries and expenses to operate and maintain bridges, § 47–207.

Annual estimate of salaries, cost of repairs and maintenance of sewers, § 47–206.

Condemnation of material for making or repairing public roads, § 7–332.

Construction, type of rails, and removal of street railway tracks, §§ 44–206, 44–209, and 44–211.

Contracting power of Commissioners in general, §§ 1–801 to 1–819.

General powers and duties of Commissioners regarding streets and sewers, § 7–102 and notes.

General provisions for laying water-mains and sewers, assessments, § 43–1501 et seq.

Inspector of asphalt and cement, § 1–307.

Philadelphia, Baltimore, and Washington Railroad Company required to construct and maintain certain walkways, § 44–106.

Repair of permanent highways abandoned or not approved by commissioners forbidden, § 7–109.

Repair of sewers declared to be a municipal object, § 1–235.

Testing building materials, §§ 1–813, 1–814.

Organic Act of 1878

Section 5 of the act of June 11, 1878, ch. 180, as amended, in its entirety reads as follows:

"Hereafter when any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of one thousand dollars, notice shall be given in one newspaper in Washington and if the total cost shall exceed five thousand dollars, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week, for proposals, with full specifications as to materials for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the Commissioners shall determine upon shall in all cases be accepted: *Provided, however,* That the Commissioners shall have the right, in their discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. All contracts for the construction, improvement, alteration, or repairs of the streets, avenues, highways, alleys, gutters, sewers, and all work of like nature shall be made and entered into only by and with the official unanimous consent of the Commissioners of the District, and all contracts shall be copied in a book kept for that purpose and be signed by the said Commissioners, and no contract involving an expenditure of more than one hundred dollars shall be valid until recorded and signed as aforesaid. No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the United States, in a penal sum not less than the amount of the contract, with sureties to be approved by the Commissioners of the District of Columbia, shall be required from all contractors, guaranteeing that the terms of their contracts shall be strictly and faithfully performed to the satisfaction of and acceptance by said Commissioners; and that the contractors shall keep new pavements or other new works in repair for a term of five years from the date of the completion of their contracts; and ten per centum of the cost of all new works shall be retained as an additional security and a guarantee fund to keep the same in repair for said term, which said per centum shall be invested in registered bonds of the United States or of the District of Columbia and the interest thereon paid to said contractors. The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: When any street or avenue through which a street-railway runs shall be paved, such railway company shall bear all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads, and for a distance of two feet from and exterior to such track or tracks on each side thereof, and of keeping the same in repair; but the said railway companies, having conformed to the grades established by the Commissioners, may use such cobblestone or Belgian blocks for paving their tracks, or the space between their tracks, as the Commissioners may direct; the United States shall pay one half of the cost of all work done under the provisions of this section, except that done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times as they may deem safe and proper in view of the progress of the work: That if any street railway company shall neglect or refuse to perform the work required by this act, said pavement shall be laid between the tracks and exterior thereto of such railway by the District of Columbia; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of

said District in such case of the neglect or refusal of such railway company to perform the work required as aforesaid, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. It shall be the duty of the Commissioners of the District of Columbia to see that all water and gas mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down; and the Washington Gas Light Company, under the direction of said Commissioners, shall at its own expense take up, lay, and replace all gas mains on any street or avenue to be paved, at such time and place as said Commissioners shall direct. The President of the United States may detail from the Engineer Corps of the Army not more than three officers, junior to the engineer officer belonging to the Board of Commissioners of said District, to act as assistants to said Engineer Commissioner in the discharge of the special duties imposed upon him by the provisions of this act."

AMENDMENT

This section of the 1878 act was amended by the act of Aug. 7, 1894, 28 Stat. 246, ch. 232, by changing words therein reading "two officers of rank subordinate to that of the engineer" to "three officers junior to the engineer"; by adding a comma after the word "District"; and by taking out a comma after the words "Engineer Commissioner."

CROSS REFERENCE

This section was contained in D. C. Code, 1929 ed., as §§ 71–75 of Title 12 and § 24 of Title 20, and is contained herein as §§ 7–601—7–605 and 1–212.

NOTE TO DECISIONS

BREACH OF CONTRACT

The District is liable for breach of a contract entered into for the doing of certain work on its streets, including repair work, when the contract was entered into under authority of an act of Congress, even though the work may have been dependent on annual appropriations, especially where the appropriation was ample to cover the work. *District of Columbia* v. *Cranford Paving Co.* (50 App. D. C. 300, 271 Fed. 374).

§ 7–602 [12: 72]. Contracts—Unanimous consent of Commissioners required—Contracts to be copied into book.

All contracts for the construction, improvement, alteration, or repairs of the streets, avenues, highways, alleys, gutters, sewers, and all work of like nature shall be made and entered into only by and with the official unanimous consent of the commissioners of the District, and all contracts shall be copied into a book kept for that purpose and be signed by the said commissioners, and no contract involving an expenditure of more than one hundred dollars shall be valid until recorded and signed as aforesaid. (June 11, 1878, 20 Stat. 106, ch. 180, § 5.)

COMPILER'S NOTE

The provision in regard to contracts involving less than $100 has apparently been superseded and the limit raised to $1,000, §§ 1–805, 7–603.

CROSS REFERENCE

General limitation on powers of Commissioners, § 1–801.

NOTE TO DECISIONS

AUTHORITY OF COMMISSIONERS

When the Board of Commissioners was constituted by statute to carry the powers of the municipal corporation called the District of Columbia into effect, the Commissioners could adopt for the corporation any seal they chose, whether intended to be permanently used or adopted for the time being. When, acting officially, as in this instance, they signed and sealed the instrument as for the corporation, their signatures and seals bound the corporation as by a specialty. *District of Columbia* v. *Camden Iron Works* (181 U. S. 453, 45 L. Ed. 948, 21 Sup. Ct. 680).

§ 7–603 [12: 73]. Pavement to be of best known materials—Bond of contractors—Liability for repairs.

No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the District of Columbia shall be required (except when otherwise provided by section 1–805) from the contractors in a penal sum of not less than twenty-five per centum of the amount of the contract with sureties or a surety company to be approved by the Commissioners of the District of Columbia guaranteeing that the terms of the contract shall be strictly and faithfully performed to the satisfaction of said commissioners; that the contractors shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contracts; and that such work shall be kept in repair for a period of one year from the date of completion of said work; and where repairs are necessary during the four years following the said one year period due to inferior work or defective materials, such repairs shall be made at the expense of the contractor, and the bond furnished by the contractor shall be liable for such expense; but no cash retent to guarantee such repair shall be held or required on such contracts. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Sept. 1, 1916, 39 Stat. 688, ch. 433; May 10, 1926, 44 Stat. 427, ch. 276; Mar. 2, 1927, 44 Stat. 1308, ch. 271; May 21, 1928, 45 Stat. 657, ch. 659.)

COMPILER'S NOTE

This section apparently partially supersedes § 7–602 and exempts contracts for less than $1,000 from the provisions of this section, § 1–805.

AMENDMENTS

This section is a composite of the credits cited in the history line. The parenthetical exception was inserted by the compilers in view of the provisions of § 1–805. The act of 1878 originally required contractors to keep new pavements or other new works in repair for 5 years, 10 per centum of the cost to be retained as additional security, such sum to be invested in United States or District of Columbia bonds, and the interest paid to the contractors.

The act of 1916 changed these requirements to read as above, except for the provision as to repairs necessary because of inferior work or defective materials which was added by the act of May 10, 1926, 44 Stat. 427, ch. 276, and repeated in acts of March 2, 1927, 44 Stat. 1308;

May 21, 1928, 45 Stat. 657, ch. 659; June 16, 1933, 48 Stat. 230, ch. 93; July 15, 1939, 53 Stat. 1037, ch. 281; June 12, 1940, 54 Stat. 307, ch. 333.

SIMILAR PROVISIONS

The provision respecting repairs necessary over a five-year period due to inferior work and defective materials was repeated in substance in the following Appropriation Acts:

1951—July 18, 1950, ch. 467, § 1, 64 Stat. 347.
1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 442.
1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
1944—July 1, 1943, ch. 184, § 1, 57 Stat. 341.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 455.
1942—July 1, 1941, ch. 271, § 1, 55 Stat. 534.

CROSS REFERENCES

General limitation on power of Commissioners, § 1–801.
Retention of percentage of cost to guarantee faithful performance, § 1–807.

§ 7–604 [12: 74]. Payments—Railway companies to pay portion of cost—Penalty for refusal.

The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: When any street or avenue through which a street railway runs shall be paved, such railway company shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges due to the existence or installation of its tracks on such bridges: *Provided further,* That nothing herein contained shall relieve such railway company from liability for street paving as owner of real estate apart from right of way occupied by its tracks as provided by section 6–712, but the said railway companies, having conformed to the grades established by the commissioners, may use such cobblestone or Belgian blocks for paving their tracks, or the space between their tracks, as the commissioners may direct; the cost of the work done by the railway companies shall be credited as part of any per centum which the United States may contribute toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the commissioners of the District of Columbia or a majority thereof, in such amounts and at such times as they may deem safe and proper in view of the progress of the work: If any street railway company shall neglect or refuse to perform the work required by this act, said pavement shall be laid between the tracks and exterior thereto of such railway by the District of Columbia; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District in such case of the neglect or refusal of such railway company to perform the work required as aforesaid. the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

AMENDMENTS

As originally enacted between the word "bear" in the sixth line, and the line reading "but the said railroad companies, having conformed" appeared the following, "all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads, and for a distance of two feet from and exterior to such track or tracks on each side thereof, and of keeping the same in repair."

The matter inserted in lieu of this language is from the act of Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3, which provided that, "All provisions of law making it incumbent upon any street railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the street car lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative."

This was followed by the language that has been inserted in lieu of the words first above quoted. The act of Jan. 14, 1933, 47 Stat. 752, ch. 10, § 3, did, however, read "the Capital Transit Company herein provided for shall bear" instead of "such railway company shall bear." This for the reason that the then existing street railway companies were being consolidated under the name of the Capital Transit Company, but it was thought that the true intention of Congress would be expressed if the section was given a general wording.

As originally enacted, this section also provided, "the United States shall pay one-half of the cost of all work done under the provisions of this section, except the work done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes."

This 50–50 ratio was changed to 60 for the District and 40 for the United States, by a general provision found in the appropriation act of June 29, 1922, 42 Stat. 668, ch. 249, § 1, which also repealed all prior inconsistent acts. This provision was in turn repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding Title X to the act of Aug. 17, 1937. This last-mentioned repealing act provided no substitute for the 60–40 ratio but apparently left it for each appropriation act to fix its own ratio and if none were fixed it would seem that the District would be required to pay whatever sums were needed over and above the lump sum appropriation, if any.

CROSS REFERENCES

Assessment of cost of paving streets against abutting property, §§ 7–622 to 7–634.

Cost of repair and maintenance of bridges, §§ 7–502 to 7–508.

General limitations on power of Commissioners, § 1–801.

Section 7–625, limits assessments to $3.50 the linear foot.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 7–605 [12: 75]. Water and gas mains, service pipes, and sewer connections to be laid before permanent improvements are made.

It shall be the duty of the commissioners of the District of Columbia to see that all water and gas-mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down; and the Washington Gas Light Company, under the direction of said commissioners, shall at its own expense take up, lay, and replace all gas-mains on any street or avenue to be paved, at such time and place as said commissioners shall direct. (June 11, 1878, 20 Stat. 107, ch. 180, § 5.)

CROSS REFERENCES

General limitation on power of Commissioners, § 1–801.

General provisions for laying water mains and sewers, § 43–1501 et seq.

Permit to excavate public streets or alleys to make water, gas, or sewer connections, fees, § 1–726.

§ 7–606 [12: 76]. Assessment of cost of sidewalks and curbing against abutting property.

When new sidewalks or curbing are required to be laid on streets being improved, one-half the total cost shall be assessed against abutting property, in like manner and under the law governing in the case of assessment and permit work: *Provided,* That abutting property shall not be liable to such assessment when sidewalk and curbing have been laid by the District authorities in front of the same under the assessment and permit system within two years prior to such assessment. (Aug. 7, 1894, 28 Stat. 250, ch. 232.)

COMPILER'S NOTE

This section is partially superseded as to curbing by § 7–623.

CROSS REFERENCE

General provisions concerning special assessments, §§ 47–1101 et seq.

§ 7–607 [12: 77]. Commissioners to submit schedules of streets to be improved in order of importance.

The commissioners, in submitting the schedules of streets and avenues to be improved, shall each year arrange said streets and avenues in the order of their importance, as determined by them after personal examination of said streets and avenues. (Mar. 3, 1903, 32 Stat. 962, ch. 992.)

§ 7–608 [12: 78]. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

The Commissioners of the District of Columbia are authorized and empowered, whenever in their judgment the public health, safety, or comfort require it, or whenever application shall be made therefor, accompanied by a deposit equal to one-half the estimated cost of the work, to improve and repair alleys and sidewalks, and to construct sewers and sidewalks in the District of Columbia of such form and materials as they may determine, and to pay the total cost of such work from appropriations for assessment and permit work.

Said commissioners shall give notice by advertisement, twice a week for two weeks in some newspaper published in the city of Washington, of any assessment work proposed to be done by them under this section, designating the location and the kind of work to be done, specifying the kind of materials to be used, the estimated cost of the improvement, and fixing a time and place when and where property-owners to be assessed can appear and present objections thereto, and for hearing thereof. One-half of the total cost of the assessment work herein provided for, including the expenses of the assessment, shall be charged against and become a lien upon abutting property, and an assessment therefor shall be levied pro rata according to the linear frontage of said property. One-half of the cost of the assessment work done under the provisions of this section shall be paid to the Collector of Taxes of the District of Columbia, as follows: One-third of the amount within sixty days after service of notice of such assessment, without interest; one-third within one year, and the remainder within two years from the date of such service of notice, and interest shall be charged at the rate of six per centum per annum from the date of service of such notice on all amounts which shall remain unpaid at the expiration of sixty days after service of notice of such assessment, which in all cases shall be served upon each lot owner, if he or she be a resident of the District, and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the commissioners, then they shall give notice of such assessment by advertisement twice a week for two weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District of Columbia, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said commissioners: *Provided,* That the cost of publication of the notice herein provided for, and the service of such notices shall be paid out of the appropriations for assessment and permit work. Any property upon which such assessment and accrued interest thereon, or any part thereof, shall remain unpaid at the expiration of two years from the date of service of notice of such assessment shall be subject to sale therefor under the same conditions and penalties which are imposed by existing laws for the nonpayment of general taxes; and if any property assessed as herein provided for shall become liable to sale for any other assessment

or tax whatever, then the assessments levied under this section shall become immediately due and payable, and the property against which they are levied may be sold therefor, together with the accrued interest thereon, and the cost of advertising, to the date of such sale. Property-owners who request improvements under the permit system shall deposit in advance with the Collector of Taxes of the District of Columbia an amount equal to one-half the estimated cost of such improvements, and in such cases it shall not be necessary to give the notice hereinbefore provided for. All moneys received by the Collector of Taxes of the District of Columbia for work done upon the request of property-owners, as herein provided for, shall be deposited by him in the United States Treasury to the credit of the permit fund. Upon the completion of work done as aforesaid at the request of property-owners, the commissioners shall repay to the then current appropriation for assessment and permit work, out of the permit fund, a sum equivalent to one-half of the cost of the work, and shall return to the depositors, from the same fund, as application may be made therefor, any surplus that may remain over and above one-half of the cost of the work. All sums received by the collector under the provisions of this section on account of assessment work, and in payment of assessments heretofore made prior to August 7, 1894, for compulsory permit work, shall be credited to the appropriation for assessment and permit work for the fiscal years in which they are collected: *Provided further,* That the costs of service connections with water-mains and sewers shall be assessed against the lots for which said connections are made, and shall be collected in the same manner and upon the same conditions as to notice as herein provided for assessment work. (Aug. 7, 1894, 28 Stat. 247, ch. 232; Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 9.)

AMENDMENT

The act of Feb. 20, 1931, 46 Stat. 1198, ch. 246, reduced the rate of interest from 8 percent. per annum to 6 percent.

This same act also provided for interest at the rate of 12 percent. on all instalments not paid within the time provided in this section, see § 7–630.

CROSS REFERENCES

Apportionment and deposit of permit funds, § 47–129.

Assessments against abutting property, §§ 7–622 to 7–634.

Exemption from assessment for repairs where original construction was done under permit system, § 7–627.

General provision concerning special assessments, §§ 47–1101 et seq.

General provisions for laying water mains and sewers, assessments, § 43–1501 et seq.

§ 7–609 [12: 78a]. Permit system—Repayments.

Repayments from the permit fund to the appropriation for assessment and permit work shall be credited to the appropriation for the fiscal year in which the repayment is made. (Mar. 2, 1907, 34 Stat. 1127, ch. 2510.)

§ 7–610 [12: 79]. Service connections for water and sewer when street is about to be paved—Cost—Assessment.

The Commissioners of the District of Columbia are hereby authorized whenever the roadway of a street is about to be paved or macadamized to make service connections in such street for all abutting lots and premises with the water mains and sewer provided for the service of said lots and premises. The entire cost of the said connections shall be paid from the current appropriations respectively for the extension of the sewer and water-supply systems and shall be assessed against the abutting property and collected in like manner as assessments which are levied under the compulsory permit system; the sums so collected shall be credited to the respective appropriations for the extension of the sewer and water-supply systems for the fiscal year during which said collections are made. (Mar. 14, 1894, 28 Stat. 44, ch. 40.)

CROSS REFERENCES

General provisions concerning special assessments, §§ 47–1101 et seq.

General provisions for laying water mains and sewer, assessments, § 43–1501 et seq.

§ 7–611 [12: 80]. Paving or repairing roadway of streets, avenues, and roads—Maintenance and improvements—Cost—Assessment.

Whenever under appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is improved by laying a new pavement thereon or completely resurfacing the same not less than one square in extent, from curb to curb, or from gutter to gutter where no curb exists, where the material used is sheet asphalt, asphalt block, asphaltic or bituminous macadam, concrete, or other fixed roadway pavement, such proportion of the total cost of the work, including all expenses of the assessment, to be made as prescribed by section 7–612, shall be charged against and become a lien upon the abutting property, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road, or portion thereof upon the roadway of which said new pavement or resurfacing is laid: *Provided,* That there shall be excepted from such assessment the cost of paving the roadway space included within the intersection of streets, avenues, and roads, as said intersections are included within the building lines projected, and also the cost of paving the space within such roadways for which street railway companies are responsible under their charters or under law on streets, avenues, or roads where such railways have been or shall be constructed.

All of the expenses of maintenance and repairs shall be paid from the revenues of the District of Columbia and in addition, such sums as may be appropriated out of any money in the Treasury of the United States not otherwise appropriated. Nothing contained in this section shall be construed as relieving street-railway companies from bearing one-half the expense of paving streets or avenues between the exterior rails of the tracks of their roads in the District of Columbia and for a distance of two feet from and exterior to such tracks on each side thereof and of keeping the same in repair, as required by section 7–604. (July 21, 1914, 38 Stat. 524, ch. 191; July 29, 1914, 38 Stat. 565, ch. 215; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

AMENDMENTS

The first paragraph of this section and the first sentence of the second paragraph are from act of July 21, 1914, cited to the text, and the last sentence is from act of July 29, 1914, also cited in the history line.

This section formerly contained the 60–40 provision for the division of the expense of maintenance and repair of streets found in the act of June 29, 1922, 42 Stat. 668, ch. 249, § 1, but this provision was repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8.

It also provided that street railway companies should bear all the expense of paving between tracks and two feet beyond each rail, but the act of Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3, provided that street railway companies should bear only half of this expense.

Lump-sum appropriations are now made for the District and specific sums assigned to the various agencies and projects. See appropriation acts of April 4, 1938, 52 Stat. 156, ch. 62; July 15, 1939, 53 Stat. 1004, ch. 281; June 12, 1940, 54 Stat. 307, ch. 333.

CROSS REFERENCE

Assessment of cost of paving against abutting property, §§ 7–622 to 7–634.

General provisions concerning special assessments, §§ 47–1101 et seq.

NOTES TO DECISIONS

APPLICATION TO CITY STREET

This act applies to a city or village street, not to a country road, for it is unusual to speak of squares or curbs when referring to a road of that character. *Rudolph* v. *Knox* (52 App. D. C. 33, 280 Fed. 1007).

If the paving of an avenue be treated as an original improvement, converting a highway into a paved city street, its constitutional infirmities are emphasized by reason of the existence of physical conditions forbidding any equal, fair, or equitable application of the frontage rule of taxing benefits. If considered as a repair of the avenue, in the form of repaving, its validity must be condemned as a general city improvement. *Johnson* v. *Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

FRONT-FOOT RULE

Size, shape, improvements, or favorable location of the instant property is not the test to be applied in determining the validity of an assessment under the front-foot rule. The test is the relation of the property to other properties facing on the avenue, and in the immediate vicinity. *Taliaferro* v. *Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

Paving assessment on triangular shaped lot on frontage basis is invalid under the Borland Amendment. *Dougherty* v. *American Security & Trust Co.* (59 App. D. C. 301, 40 Fed. (2d) 813); *Crosby* v. *Dodge* (60 App. D. C. 36, 46 Fed. (2d) 727); *Crosby* v. *Moebs* (61 App. D. C. 42, 57 Fed. (2d) 408); *Reichelderfer* v. *Hechinger* (61 App. D. C. 104, 57 Fed. (2d) 943); *Gotwals* v. *Miller* (61 App. D. C. 402, 59 Fed. (2d) 1051).

§ 7–612 [12: 81]. Assessments for costs of paving streets.

The half cost of the paving or repaving of a roadway between the side thereof and the center thereof with sheet asphalt, asphalt block, granite block, vitrified block, cement concrete, bituminous concrete, macadam, or other form of pavement shall be assessed against the property abutting the side of the street so improved, such assessments to be levied and collected as provided on September 1, 1916, as to alleys and sidewalks: *Provided,* That the advertisement by publication of the commissioners' intention to do such work and the formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway improvements.

There shall be included in the area the cost of which is assessable hereunder only the roadway area abutting the property between lines normally projected from the building line of the street being improved at the points of intersection with the building lines of intersecting streets.

There shall be excluded from the cost of the roadway work to be assessed hereunder:

First. The cost of all such work beyond a line twenty feet from the side thereof.

Second. The cost of all such work within the space within which street railway companies are required to pave by law, and nothing herein contained shall be construed as relieving street-railway companies from bearing one-half the cost of paving and repairing streets and avenues between lines two feet exterior to the outer rails of their tracks, as required by section 7–604.

Third. That no frontage of abutting property, on which a legal assessment for paving or repaving has been levied and paid hereunder, shall be liable to any further assessment hereunder on account of the replacement of such pavement. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 8; Feb. 9, 1927, 44 Stat. 1064, ch. 87; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

COMPILER'S NOTE

This section is probably superseded in part by §§ 7–622 to 7–634, and note to § 7–604.

AMENDMENTS

The last paragraph of this section was added by act of 1927.

Subdivision "second" originally provided that street railway companies should bear all the expense of paving between tracks and two feet beyond each exterior rail, but the act of Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3, provides that street railway companies shall bear only half of this expense.

CROSS REFERENCE

Special assessments generally, §§ 47–1101 et seq.

NOTES TO DECISIONS

FRONT-FOOT RULE

Special repaving assessment on basis of frontage, under this act, invalid. *Reichelderfer* v. *Hechinger* (61 App. D. C. 104, 57 Fed. (2d) 943).

§ 7–612a. Special assessments for curbs and gutters—Definition of gutter.

When any curb or gutter is laid, or any curb and gutter are laid, on any street, avenue, or road in the District of Columbia which said curb shall be constructed of concrete, stone, or other permanent type of construction, or which said gutter shall be constructed of concrete, brick, granite block, asphalt on a concrete base, or other permanent type of construction, one-half of the total cost thereof shall be charged against and become a lien upon the property abutting the side of the street, avenue, or road, or portion thereof, so improved, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the side of the street, avenue, or road, or portion thereof, so improved: *Provided, however,* That no assessments shall be levied hereunder on account of the replacement of any curb or gutter or curb and gutter of a permanent type of construction. When any gutter shall be constructed, in whole or in part, as an integral

portion of a permanent type of roadway of any street, avenue, or road, so much of said roadway as lies within two feet of the curb line shall be considered as a gutter for the purposes of sections 7–612a to 7–612d. (May 25, 1943, 57 Stat. 83, ch. 98, § 1.)

§ 7–612b. Same—Computation of assessment.

The total assessment levied hereunder against any abutting property shall not exceed the number of square feet of area of said property multiplied by 1 per centum of the linear front-foot assessment and shall not exceed 10 per centum of the value of the said abutting property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the laying of the curb or gutter or curb and gutter for which said assessment is levied. In computing assessments hereunder against unsubdivided land according to the assessed valuation, there shall be excluded from the computation land lying back more than one hundred feet from the street, avenue, or road being improved where the depth is even, and where the depth is uneven the average depth shall be taken in computation but not to exceed more than one hundred feet. (May 25, 1943, 57 Stat. 83, ch. 98, § 2.)

§ 7–612c. Same—Property abutting two or more streets, avenues, or roads.

When any property abuts two or more streets, avenues, or roads, the assessments against said property levied hereunder shall not exceed in the aggregate, together with any legal assessments heretofore levied and paid for paving, curbing, and guttering of or on said streets, avenues, or roads, under the authority of sections 7–611, 7–612, relating to assessments for the paving of streets, avenues, and roads, or under section 7–606, relating to assessments for laying curbs, or under sections 7–622 to 7–625, 3½ cents per square foot of area of said property, or 20 per centum of the value of said property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the laying of the curb or gutter or curb and gutter for which said assessment is levied. (May 25, 1943, 57 Stat. 83, ch. 98, § 3.)

§ 7–612d. Same—Roadway improvements and curbs and gutters completed after May 25, 1943.

No assessments shall be levied under sections 7–622 to 7–625, for any roadway improvement completed subsequent to May 25, 1943, but for curbs or gutters, or curbs and gutters, completed subsequent to May 25, 1943, assessments shall be levied against the abutting property in accordance with the provisions of sections 7–612a to 7–612d. (May 25, 1943, 57 Stat. 83, ch. 98, § 4.)

§ 7–613 [12: 82]. Width of pavement of streets.

No street or avenue in the District of Columbia shall be paved less in width than the width provided by law except by express authority of Congress upon estimates to be submitted to Congress by the commissioners of the District of Columbia. (Mar. 2, 1907, 34 Stat. 1127, ch. 2510.)

§ 7–614 [12: 83]. Street railway companies to keep tracks free of snow and ice.

Every street railway company in the District of Columbia shall keep its tracks and the spaces between and for a distance of two feet outside thereof at the crossings of the several streets which intersect their railroads, at all times free from snow and ice, and shall not spoil or deposit the same in such location and quantity as to impede or hinder traffic. And in the event of any street railway company failing and refusing to comply with this section, the necessary work may be done by the commissioners of the District of Columbia, in their discretion, after notice to said company, the cost to be paid from the appropriation available for cleaning snow and ice from streets, sidewalks, crosswalks, and gutters and collected from such street railway company in the manner provided for in section 7–604, and shall be deposited to the credit of the appropriation for the fiscal year in which it is collected. (June 26, 1912, 37 Stat. 152, ch. 182.)

§ 7–615 [12: 84]. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.

It shall be unlawful for any person to make any cut or trench in any highway, reservation, or public space in the District of Columbia, or to disturb or remove any public work or material therein, without a permit so to do from the commissioners of the District of Columbia: *Provided,* That nothing in this section shall be construed to apply to public buildings of the United States, or to diminish the authority of the officer in charge of public buildings and grounds, or the Architect of the Capitol. (June 18, 1898, 30 Stat. 477, ch. 467, § 7.)

§ 7–616 [12: 85]. Penalty—Prosecution.

Any person violating any of the provisions of sections 7–615 and 7–616 shall, on conviction thereof in the police court, be punished by a fine of not less than five dollars nor more than one hundred dollars; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions shall be in the police court of said District, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8.)

§ 7–617 [12: 86]. Use of bituminous macadam authorized.

The use of bituminous macadam is authorized on streets, avenues, and roads to be improved or paved. (June 26, 1912, 37 Stat. 150, ch. 182.)

§ 7–618 [12: 87]. Use of portable asphalt plant.

The portable asphalt plant purchased under the appropriation for repairs of streets, avenues, and alleys for the fiscal year one thousand nine hundred and thirteen, may be operated under the immediate direction of the Commissioners of the District of Columbia in doing such work of resurfacing and repairs to asphalt pavements, in the repair of macadam streets by constructing on such macadam streets and asphalt macadam wearing surface

and in the construction of asphaltic macadam surfaces on concrete base, as in their judgment may be economically performed by the use of said plant: *Provided,* That at no time shall more work of resurfacing and repairs be done with the portable asphalt plant than can be accomplished with the single portable plant owned on March 4, 1913, by the District of Columbia. (Mar. 4, 1913, 37 Stat. 948, ch. 150.)

COMPILER'S NOTE

The District of Columbia Appropriation Act for 1933 (June 29, 1932, 47 Stat. 354, ch. 308) contained the following provision: "The Commissioners of the District of Columbia, should they deem such action to be to the advantage of the District of Columbia, are hereby authorized to purchase a municipal asphalt plant at a cost not to exceed $30,000."

The same authorization was continued in the District of Columbia Appropriation Act for 1934 (48 Stat. 229, ch. 93) and is found in the Appropriation Act of June 12, 1940 (54 Stat. 307, ch. 333, § 1).

§ 7–619 [12: 88]. Unexpended allotments for street paving made available for succeeding year.

When as many streets and entire blocks of streets in any section have been paved as the amount allotted to that section will permit, and there still remains a balance insufficient to pave an entire block of the street provided for pavement upon the schedule, such balance shall remain available and be added to the allotment for that section for the next succeeding year. (June 6, 1900, 31 Stat. 559, ch. 789.)

§ 7–620 [12: 89]. Limitation on contracts of District Commissioners.

The Commissioners of the District of Columbia are prohibited from incurring or contracting liabilities on behalf of the United States in the improvement of streets, avenues, and reservations beyond the amount of appropriations previously made by Congress, and from entering into any contract touching such improvements on behalf of the United States, except in pursuance of appropriations made by Congress. (R. S. § 1813; June 20, 1874, 18 Stat. 116, ch. 337.)

§ 7–621 [12: 90]. Contracts for repairs may be made for not more than 5 years.

Contracts for repairs to pavements may be made for periods not exceeding five years, and subject to annual appropriation therefor by Congress. (July 18, 1888, 25 Stat. 319, ch. 676.)

§ 7–622 [12: 90a]. Assessment when roadway of street, avenue, or road is paved—One-half of cost assessed—Improvement of one-half only of roadway.

Whenever under the appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is paved or repaved with sheet asphalt, asphalt block, asphaltic or bituminous concrete (except penetration macadam), cement concrete, granite block, vitrified brick, or other form of permanent pavement, one-half of the total cost thereof shall be charged against and become a lien upon the abutting property, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road, or portion thereof, upon the roadway of which said new pavement or repaving is laid: *Provided, however,* That when such new pavement or repaving is laid solely on one side of the center line of such roadway, the one-half cost thereof shall be assessed, as herein provided, against the property abutting the side of the street, avenue, or road, or portion thereof, so improved. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 1.)

COMPILER'S NOTE

The provisions of §§ 7–622 to 7–634, apparently supersede, in whole or in part, §§ 7–604, 7–606, 7–611, 7–612.

CROSS REFERENCES

Cost of pavement or repair of streets used by railroad, § 7–1222.

Improvements completed after May 25, 1943, see § 7–612d.

Special assessments generally, § 47–1101 et seq.

§ 7–623 [12: 90b]. "Roadway" to include gutters and curbs—Assessment for curbs and gutters.

For the purposes of computing the assessments under sections 7–622 to 7–633, the term "roadway" shall be construed to include the gutters and curbings: *Provided, however,* That where any permanent and new construction of curb, or curb and gutter, is laid, and the roadway of the street is not paved or repaved, or is not paved or repaved with a pavement of the character specified in section 7–622, the half cost of such curb, or curb and gutter, shall be assessed against the abutting property in the manner provided in sections 7–622 to 7–633. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 2.)

COMPILER'S NOTE

This section partially supersedes § 7–606.

CROSS REFERENCES

Improvements completed after May 25, 1943, see § 7–612d.

See notes to § 7–622.

§ 7–624 [12: 90c]. Cost of certain roadway improvements not to be assessed.

There shall be excepted from such assessments the cost of paving the roadway in excess of forty feet in width where the new pavement or repaving is laid on both sides of the center line of such roadway; the cost of paving the roadway in excess of twenty feet in width where the new pavement or repaving is laid solely on one side of the center line of such roadway; the cost of paving the roadway space included within the intersection of streets, avenues, and roads, as said intersections are limited by lines normally projected from the building lines of the street, avenue, or road being improved at its point of intersection with the building lines of the intersecting streets, avenues, or roads and also the cost of paving or repaving the space within such roadways for which street-railway companies are responsible under their charters or under law, on streets, avenues, or roads where such railways have been or shall be constructed. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 3.)

CROSS REFERENCES

Improvements completed after May 25, 1943, see § 7–612d.

Repeal of provisions relative to paving by street railways, see note to § 7–604

See notes to § 7–622.

§ 7–625 [12: 90d]. Maximum front foot assessment—Total assessment limited—Computation against unsubdivided property.

The maximum linear front foot assessment levied hereunder shall not exceed $3.50 per linear front foot. The total assessment levied hereunder against any abutting property shall not exceed the number of square feet of area of said property multiplied by 1 per centum of the linear front foot assessment, and shall not exceed 20 per centum of the value of the said abutting property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the paving or repairing of the street, avenue, or road for which said assessment is levied. In computing assessments hereunder against unsubdivided land by the square foot or according to the assessed valuation, there shall be excluded from the computation land lying back more than one hundred feet from the street, avenue, or road being improved where the depth is even; where the depth is uneven, the average depth shall be taken in computation, but not to exceed one hundred feet. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 4.)

CROSS REFERENCE

Improvements completed after May 25, 1943, see § 7–612d.

§ 7–626 [12: 90e]. Property exempt from replacement costs.

No property on which a legal assessment has been levied and paid for paving or repaving, curbing or curbing and guttering, on the roadway of any street, avenue, or road, shall be liable for any further assessment under sections 7–622 to 7–633 on account of the replacement of such pavement, curbing, or curbing and guttering. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 5.)

CROSS REFERENCE

See notes to § 7–622.

§ 7–627 [12: 90f]. Assessments when prior roadway improvements were made at owner's cost.

No assessments shall be levied for repaving where the original pavement was laid at the whole cost of the owner or owners of the abutting property if the said original pavement was constructed under a permit issued by the District of Columbia and under the supervision and direction of an authorized engineer and inspector of the Highway Department of said District, in strict accordance with the then current specifications and design for pavements of the type for which permit was issued: *Provided,* That where curb, or curb and gutter, or a part of the roadway has or have been paved under proper permit, subject to engineering and inspection as above stated, the assessment for paving other parts of the roadway, placing curb, or curb and gutter, when the same is done at public expense, shall be made against property abutting on the highway as provided in sections 7–622 to 7–633, credit being given in such assessment for the half cost of the pavement laid by the owner under permit as above, estimated on the basis of the contract rates for such work at the date of the performance of the assessable work, so that the total cost to the owner for such improvements shall not exceed the amount of assessments which would have been made under sections 7–622 to 7–633, had the improvements been all made at public expense. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 6.)

CROSS REFERENCE

See notes to § 7–622.

§ 7–628 [12: 90g]. No assessment for cost of resurfacing by heater method—Assessment of replacement cost.

No assessment shall be levied for the cost of resurfacing asphalt pavements by the heater method—stripping the surface from a rigid type base, and replacing surface thereon—or covering an existing hard surface or macadam pavement or base with bituminous material: *Provided,* That where an entire pavement is removed and replaced with a pavement of the character specified in section 7–622, the cost of the latter pavement shall be assessed as provided in sections 7–622 to 7–633, if no previous legal assessment has been levied and paid therefor. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 7.)

CROSS REFERENCE

See notes to § 7–622.

§ 7–629 [12: 90h]. Assessment against property abutting two or more streets.

When any property abuts two or more streets, avenues, or roads, the assessments against said property levied under sections 7–622 to 7–633 shall not exceed in the aggregate, together with any legal assessments levied and paid prior to February 20, 1931, for the paving, curbing, or curbing and guttering of or on said streets, avenues, or roads 3½ cents per square foot of area of said property, or 20 per centum of the value of said property, exclusive of improvements thereon, as assessed for purposes of taxation at the time of the paving or repaving, curbing, or curbing and guttering for which the assessment is levied. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 8.)

CROSS REFERENCE

See notes to § 7–622.

§ 7–630 [12: 90i]. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.

The assessments provided for in sections 7–622 to 7–633 shall be made and collected as provided in section 7–608, relating to alleys and sidewalks. The rate of interest to be charged upon any assessment, levied under section 7–608 relating to alleys and sidewalks, or any instalment thereof, is reduced hereby from eight per centum per annum to six per centum per annum: *Provided, however,* That any instalment of any such assessment not paid within the time provided in section 7–608 shall thereafter bear interest at the rate of twelve per centum per annum: *And provided further,* That the advertisement by publication of the intention of the Commissioners of the District of Columbia to perform the work and the formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway, curbing, and gutter improvements. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 9.)

CROSS REFERENCE

See notes to § 7–622.

§ 7–631 [12: 90j]. Protest of aggrieved property owner—Adjustment of assessment by Commissioners.

Any property-owner, aggrieved by any assessment levied under sections 7–622 to 7–633, may, within sixty days after service of notice of such assessment, file with the Commissioners of the District of Columbia a protest in writing against such assessment, accompanied by affidavits if he so desires, and if said commissioners find that the property of such owner so protesting is not benefited by the improvement for which said assessment is levied, or is benefited less than the amount of such assessment, or is unequally or inequitably assessed with relation to other property abutting such improvement, said commissioners shall abate, reduce, or adjust such assessment in accordance with such finding. In computing the sixty days provided in section 7–608, within which such assessment may be paid without interest, there shall be excluded therefrom the time between the date of the filing of any such protest and the date of action thereon by the commissioners. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 10.)

CROSS REFERENCE

See notes to § 7–622.

§ 7–632 [12: 90k]. Cancelation of prior assessments directed—Reassessment—Refund.

The Commissioners of the District of Columbia are directed to cancel all assessments for improvements completed within three years prior to February 20, 1931, levied under the authority of sections 7–611, 7–612, relating to assessments for the paving of streets, avenues, and roads, or under section 7–606, relating to assessments for laying curbs; and the commissioners are further directed to reassess the cost of such improvements against the abutting property in accordance with the provisions of sections 7–622 to 7–633, which assessments shall become a lien upon the abutting property and be collected in the manner provided under sections 7–622 to 7–633. Where assessments for such improvements have been paid in whole or in part the commissioners shall refund, within the limits of appropriations by Congress therefor, to the persons paying the same, the excess, if any, of such payments over the amounts of the reassessments levied under sections 7–622 to 7–633. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 11.)

CROSS REFERENCES

For other provisions concerning refund of taxes and assessments, § 47–1017.

See notes to § 7–622.

NOTES TO DECISIONS

PRIOR ASSESSMENTS, VALIDITY

Where Congress, in authorizing improvement of a particular street made finding of benefit to abutting property, the conclusiveness of the finding that benefits would be conferred on abutting landowners was not affected by fact that "existing law" in 1929 regarding assessments was replaced by this section. *Philadelphia, B. & W. R. R.* v. *Hazen,* 1940 (116 F. 2d 543, 73 App. D. C. 37).

PRIOR LAW

Act of Feb. 25, 1929, 45 Stat. 1272, authorizing improvement of a particular street in District of Columbia and providing for assessments against abutting property owners in accordance with the existing law, for protest to Commissioners of District by abutting property owners, does not negative finding that the act fixed with particularity location of the improvement, and of property to be benefited, and set up a method of assessment which required only mathematical computation for its application, but rather the provision was merely a recognition that in unusual situations application of general method of assessment may be inequitable. *Philadelphia, B. & W. R. R.* v. *Hazen,* 1940 (116 F. 2d 543, 73 App. D. C. 37).

§ 7–633 [12: 90*l*]. Effect of unconstitutionality of part of law.

Should any provision of sections 7–622 to 7–633 be decided by the courts to be unconstitutional or invalid, the validity of sections 7–622 to 7–633 as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 12.)

REPEAL

Section 13 of act of February 20, 1931, 46 Stat. 1199, ch. 246, read as follows: "All laws and parts of laws inconsistent with the provisions of this act (§§ 7–622 to 7–633) enacted prior to Feb. 20, 1931, are hereby repealed."

CROSS REFERENCE

See notes to § 7–622.

§ 7–634 [12: 90n]. Not applicable to assessments levied prior to 1885.

(a) The provisions of sections 7–626, 7–627, and 7–628 shall not preclude the levying of assessments hereunder if the improvement for which such prior assessment was levied, or, if the original paving, curbing, or curbing and guttering, laid at the whole cost of the owner, were completed prior to January 1, 1885.

(b) The provision of section 7–629, relating to legal assessments heretofore levied, shall not be applicable where said prior assessments were levied for any improvement completed prior to January 1, 1885.

(c) The provisions contained in this section shall not apply to assessments levied prior to June 28, 1935. (Feb. 20, 1931, ch. 246, § 14 (a), (b), as added June 28, 1935, 49 Stat. 430, ch. 331, §§ 1, 2.)

CROSS REFERENCE

See notes to § 7–622.

Chapter 7.—STREET LIGHTING

Sec.
7–701. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioners.
7–702. Overhead wires prohibited.
7–703. Deductions for failure to provide required illumination—Testing facilities.
7–704. Contracts for gas and electric lighting not required.
7–705. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.
7–706. Extension of gas-mains for maintenance of street lamps—Cost.
7–707. Regulating hours of lighting of street lamps.
7–708. Washington Terminal Company to pay for certain street lighting.
7–709. Railroads to pay for certain street lighting.
7–710. Increase in number of street lamps authorized.

§ 7–701 [12: 91]. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioners.

No more than the following rates shall be paid for lighting avenues, streets, roads, alleys, and public spaces.

For mantle gas lamps of sixty candlepower, eighteen dollars and forty cents per lamp per annum.

For mantle gas lamps of not less than one hundred and twenty candlepower, twenty-seven dollars per lamp per annum.

For street designation lamps, using flat-flame burners, consuming not more than two and one-half cubic feet of gas per hour, or eight candlepower incandescent electric lamps, with posts and lanterns furnished by the District of Columbia, ten dollars per lamp per annum.

For forty candlepower, fifty watt, incandescent electric lamps on overhead wires, fifteen dollars per lamp per annum.

For forty candlepower, fifty watt, incandescent electric lamps on underground wires, nineteen dollars and fifty cents per lamp per annum.

For sixty candlepower, seventy-five watt, incandescent electric lamps on overhead wires, seventeen dollars and fifty cents per lamp per annum.

For sixty candlepower, seventy-five watt, incandescent electric lamps on underground wires, twenty-three dollars per lamp per annum.

For eighty candlepower, one hundred watt, incandescent electric lamps on underground wires, twenty-six dollars per lamp per annum.

For one hundred candlepower, one hundred and twenty-five watt, incandescent electric lamps on underground wires, twenty-seven dollars and fifty cents per lamp per annum.

For one hundred and fifty candlepower, one hundred and eighty-seven watt, incandescent electric lamps on underground wires, thirty-six dollars and fifty cents per lamp per annum.

For two hundred candlepower, two hundred and fifty watt, incandescent electric lamps on underground wires, forty-six dollars and fifty cents per lamp per annum.

For four glower Nernst lamps on underground wires, fifty-two dollars and fifty cents per lamp per annum.

For six and six-tenths ampere, five hundred and twenty-eight watt, direct-current, series-inclosed arc lamps, eighty dollars per lamp per annum.

For five amperes, five hundred and fifty watt, direct-current, multiple-inclosed arc lamps, eighty dollars per lamp per annum.

For four ampere, three hundred and twenty watt, magnetite, or other arc lamps of equal illuminating value acceptable to the commissioners of the District of Columbia, on overhead wires, fifty-nine dollars per lamp per annum.

For four ampere, three hundred and twenty watt magnetite, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, on underground wires, seventy-two dollars and fifty cents per lamp per annum.

For six and six-tenths ampere, five hundred watt magnetite, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, on overhead wires, eighty-four dollars per lamp per annum.

For six and six-tenths ampere, five hundred watt magnetite, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, on underground wires, ninety-seven dollars and fifty cents per lamp per annum.

For flame arc lamps, five hundred watt, General Electric type, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, one hundred and fifty dollars per lamp per annum.

For the rates named above it shall be the duty of each gaslight company and each electric-light company doing business in the District of Columbia to erect and maintain such street lamps as the Commissioners of said District may direct; and each such company shall furnish, install, and maintain all posts, lamps, lanterns, burners, wires, cable, conduits, gas pipes, street designations, and fixtures necessary for the respective lamps maintained by each of them, including lighting and extinguishing lamps, and repairing, painting, and cleaning.

The cost of each lamp-post for incandescent electric lighting furnished by any lighting company under the above rates shall not exceed fifteen dollars, except as hereinafter provided, which cost shall include only the lamp-post, the globe, the ornamental top, and the street-designation frame and signs. All other fixtures, parts, fittings, lamps, sockets, wires, cables, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

The cost of each lamp-post for gaslighting furnished by any lighting company under the above rates shall not exceed fifteen dollars, except as hereinafter provided, which cost shall include only the lamp-post and the street-designation frame and signs. All other fixtures, parts, fittings, burners, lamps, pipes, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

The cost of each lamp-post for arc lighting furnished by any lighting company under the above rates shall not exceed fifty dollars, except as hereinafter provided, which cost shall include only the lamp-post, the street-designation frame and signs, and the arm or top from which the lamp is hung. All other fixtures, parts, fittings, lamps, cables, wires, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

Each lamp-post and its equipment shall be of a design and quality acceptable to the Commissioners of the District of Columbia.

For each such lamp-post furnished by a lighting company by direction of the District Commissioners which shall cost in excess of fifteen dollars for gas

or electric incandescent lamps, or which shall cost in excess of fifty dollars for electric arc lamps, the company furnishing the same shall receive, in addition to the above rates, eleven per centum per annum on such additional or excess cost.

The Commissioners of the District of Columbia are authorized, in their discretion, to purchase or construct from street-lighting appropriations made in the Act of June 26, 1912 (37 Stat. 181), posts, lanterns, street designations, and all necessary fixtures or appurtenances for any of the systems of lighting above named: *Provided,* That whenever the said commissioners shall furnish a lamp-post including only the globe, the ornamental top, and the street-designation frame and signs for the electric incandescent lamps, or including only the street-designation frame and signs for gas lamps, or including only the street-designation frame and signs and the arm or top for arc lamps, one dollar and sixty-five cents per lamp per annum for gas or electric incandescent lamps and four dollars and forty cents per lamp per annum for electric arc lamps shall be deducted from the rates above fixed.

The Commissioners of the District of Columbia are further authorized, in their discretion, to adopt other forms of electric street lighting than those named, in which event payments under appropriations made in the Act of June 26, 1912 (37 Stat. 181), shall be made for the lighting service rendered at not to exceed three cents per kilowatt-hour for current consumed, and, in addition thereto, eleven per centum per annum of the cost to the lighting company of furnishing and installing lamps, posts, street designations, fixtures, and the cable from lamps to the nearest point of current supply, and a fair sum for the cost of maintenance.

When ordered to do so by the said commissioners, lighting companies shall move and readjust any lamps maintained by them at the following rates:

For each electric arc lamp, ten dollars.

For each electric incandescent lamp, five dollars.

For each gas lamp moved not more than six feet, two dollars and fifty cents.

For each gas lamp moved more than six feet, four dollars.

For each gas lamp raised or lowered to new grade, one dollar and fifty cents.

When ordered by the commissioners to do so, lighting companies in the District of Columbia shall discontinue any public lamps maintained by them without further payment therefor, and shall remove from the streets, at their own expense, all posts, lanterns, and fixtures connected therewith. (Mar. 2, 1911, 36 Stat. 1008, ch. 192, § 7; June 26, 1912, 37 Stat. 181, ch. 182, § 7.)

COMPILER'S NOTES

The first part of the 27th and the last part of the 28th paragraphs of this section are probably temporary and obsolete.

The foregoing section fixes the rate therein specified for the fiscal year 1913 only. Successive appropriation acts have specified that the appropriations should be expended in accordance with the provisions of this section and of § 7 of the act of March 2, 1911 (36 Stat. 1008). The rates in both acts are identical. The act of May 10, 1926 (44 Stat. 430), provided that for the fiscal year 1927 "this appropriation shall not be available for the payment of rates for electric street lighting in excess of 87½ per centum of rates heretofore established by law, and rates established by the commissioners in accordance with law, and payment for electric current for new forms of street lighting shall not exceed 2 cents per kilowatt-hour for current consumed." The reduced rates were promulgated by the Public Utilities Commission effective July 1, 1926. (Orders Nos. 633 and 634 of June 30 and July 1, 1926.) Public Utilities Order No. 656 of December 21, 1926, established new rates for electric service, including street lighting, effective January 1, 1927, but the basic rates remain as above set out.

The act of June 12, 1940, 54 Stat. 307, ch. 333, provided that the sum appropriated therein for street lighting should be expended in accordance with the provisions of the appropriation acts for the fiscal years 1912 and 1913 (36 Stat. 1008–1011, §§ 7, 8, and 37 Stat. 181–184, § 7) and other laws applicable thereto.

CROSS REFERENCES

Duty to maintain lights on bridges, § 7–501.

Erection of lights, etc., beyond city limits, § 1–234.

General powers and duties as to streets, § 7–102 and notes.

§ 7–702 [12: 92]. Overhead wires prohibited.

No public electric lamp shall be maintained by means of overhead wires within either the city limits of Washington or the existing fire limits of the District of Columbia as existing March 2, 1911. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

§ 7–703 [12: 93]. Deductions for failure to provide required illumination—Testing facilities.

Proportionate deductions shall be made from the amounts due lighting companies for failure to furnish the illumination required by law for public lighting in the District of Columbia, and each company shall furnish, at its own expense, when and as required by the Commissioners of the District of Columbia, all proper and necessary facilities, testing places, and apparatus at its plant, and such help at points on its mains or circuits as to enable the said commissioners to determine whether the required illumination is being furnished. For each and every lamp which shall be extinguished or not lighted during any portion of the schedule time of lighting, a pro rata deduction, based upon the period of non-illumination and the price per lamp, shall be made from said amounts. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

§ 7–704 [12: 94]. Contracts for gas and electric lighting not required.

The Commissioners of the District of Columbia shall not be required to execute contracts for gas and electric lighting. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

§ 7–705 [12: 95]. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.

Any gaslight company or any electric-light company doing business in the District of Columbia, which shall fail or refuse to furnish, erect, maintain, move, or discontinue any street lamp in compliance with the foregoing provisions as the commissioners of the District of Columbia may direct, shall be subject to a penalty of twenty-five dollars for each and every day's failure or refusal so to do, to be

recovered at law in the name of the District of Columbia in any court of competent jurisdiction. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

COMPILER'S NOTE

The words "foregoing provisions" would seem to refer to § 7–701.

§ 7–706 [12: 96]. Extension of gas mains for maintenance of street lamps—Cost.

Each gas company in the District of Columbia shall, at its sole and entire expense, make reasonable extensions of its gas-mains whenever the said extensions shall be necessary for maintaining street lamps for the public safety and comfort, and the said commissioners shall regulate the location and depth of the said gas-mains in the streets, avenues, roads, alleys, and spaces of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199; May 29, 1928, 45 Stat. 996, ch. 901, § 1.)

AMENDMENT

The act of 1928 repealed the requirement that "any failure to comply with this provision shall be reported to Congress by the Commissioners."

§ 7–707 [12: 98a]. Regulating hours of lighting of street lamps.

The Commissioners of the District of Columbia, subject to appropriations therefor, are hereby authorized and empowered to require that all public and other lamps under their control be lighted during such hours as in their judgment will most effectively promote the safety and convenience of the public. (Mar. 6, 1939, 53 Stat. 511, ch. 7.)

§ 7–708 [12: 99]. Washington Terminal Company to pay for certain street lighting.

The Washington Terminal Company, its successors, or transferees shall pay to the District for the lighting of the streets, avenues, alleys, and grounds over and under which its right of way may cross, as well as for the lighting of those streets, avenues, alleys, and grounds bordering on its right of way, under the direction and control of the commissioners; and in case of default of payment of such bills, actions at law may be maintained by the District of Columbia against said terminal company or its successors, or transferees therefor: *Provided,* That not more than eighty-five dollars per annum shall be paid for any electric arc light burning from fifteen minutes after sunset to forty-five minutes before sunrise, and operated wholly by means of underground wire; and each arc light shall be of not less than one thousand actual candlepower: *Provided further,* That no more than eighteen dollars per annum shall be paid for each gas-lamp equipped with a self-regulating flat-flame burner so adjusted as to secure under all ordinary variations of pressure and density a consumption of five cubic feet of gas per hour, nor more than twenty dollars and eighty-five cents per annum for each gas and twenty-two dollars and eighty cents per annum for each oil lamp equipped with an incandescent mantle burner of not less than sixty candlepower. (May 26, 1908, 35 Stat. 288 and 287, ch. 198.)

§ 7–709 [12: 100]. Railroads to pay for certain street lighting.

All railroads other than street railroads shall pay to the District of Columbia for the lighting, under the direction and control of the commissioners of the District of Columbia, of the public roads, streets, avenues, and alleys, for their full width, through which their tracks may be laid, for the length of the street occupied by the said tracks, whether the said tracks be laid above, below, or at grade; as well as for the lighting of the subways and bridges over or under which the tracks of said railroads pass; and in default of payment of such bills, actions at law may be maintained by the District of Columbia against said railroads or their successors, transferees, or lessees therefor: *Provided,* That nothing herein shall be held to repeal section 7–708. (Mar. 4, 1913, 37 Stat. 953, ch. 150.)

CROSS REFERENCE

Duty to maintain lights on bridges, § 7–501.

§ 7–710 [12: 101]. Increase in number of street lamps authorized.

The proper authorities are directed to increase from time to time, as the public good may require, the number of street-lamps on any of the streets, lanes, alleys, public ways, and grounds, in the city of Washington, and to do any and all things pertaining to the well lighting of the city. (R. S., D. C., § 233.)

Chapter 8.—REMOVAL OF SNOW AND ICE

Sec.

7–801. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.
7–802. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand or ashes.
7–803. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.
7–804. Temporary use of sand and ashes.
7–805. Removal by Commissioners upon default by owner or occupant—Expense.
7–806. Suit for recovery of cost.

§ 7–801 [19: 71]. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.

It shall be the duty of every person, partnership, corporation, joint-stock company, or syndicate in charge or control of any building or lot of land within the fire limits of the District of Columbia, fronting or abutting on a paved sidewalk, whether as owner, tenant, occupant, lessee, or otherwise, within the first eight hours of daylight after the ceasing to fall of any snow or sleet, to remove and clear away, or cause to be removed and cleared away, such snow or sleet from so much of said sidewalk as is in front of or abuts on said building or lot of land. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 1.)

COMPILER'S NOTE

For prior laws on removal of snow and ice from sidewalks, see Mar. 2, 1895, 28 Stat. 809, ch. 178; Mar. 2, 1897, 29 Stat. 608, ch. 361; Feb. 10, 1904, 33 Stat. 12, ch. 156.

CROSS REFERENCE

Removal of ice and snow from street-car tracks, § 7–614.

NOTES TO DECISIONS

DUTY TO PEDESTRIANS

This section and section 805 of this title do not purport affirmatively to make property owner liable to respond in damages to a pedestrian who is injured by falling on snow or ice which owner has not removed from abutting sidewalk. *Radinsky* v. *Ellis* (App. D. C. 1948, 167 F. 2d 745).

§ 7–802 [19: 72]. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand or ashes.

It shall be the duty of the Commissioners of the District of Columbia within the first eight hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice on the paved sidewalks within the fire limits of the District of Columbia, in front of or adjacent to all public buildings, public squares, reservations, and open spaces in the said District owned or held by lease by said District, to cause such snow, sleet, and ice to be removed; and also to cause the same to be removed from all crosswalks of improved streets and places of intersection of alleys with paved sidewalks, and also from all paved sidewalks or crosswalks used as public thoroughfares through all public squares, reservations, or open spaces within the fire limits of said District owned or held by lease by the District of Columbia; but in the event of inability to remove such accumulation of snow, sleet, and ice without injury to the sidewalk, by reason of the hardening thereof, it shall be their duty, within the first eight hours of daylight after the hardening thereof, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean, or cause to be thoroughly cleaned, said sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 2.)

§ 7–803 [19: 73]. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.

It shall be the duty of the Director of National Park Service within the first eight hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice upon the paved sidewalks within the fire limits of the District of Columbia, to remove or cause to be removed from such sidewalks as are in front of or adjacent to all buildings owned or leased by the United States, except the Capitol buildings and grounds and the Congressional Library building, and from all paved sidewalks or crosswalks used as public thoroughfares in front of, around, or through all public squares, reservations, or open spaces within the fire limits of the District of Columbia, owned or leased by the United States, such snow, sleet, and ice; but in the event of inability to remove such accumulation of snow, sleet, and ice, by reason of the hardening thereof, without injury to the sidewalk, it shall be his duty, within the first eight hours of daylight after the hardening of such snow, sleet, and ice, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks and crosswalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks and crosswalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 3.)

COMPILER'S NOTE

This section originally placed the duty of removing ice and snow from sidewalks of public buildings on the Chief Engineer of the United States Army. Act of February 26, 1925, 43 Stat. 983, ch. 339, § 3, transferred the duties imposed upon the Chief of Engineers to the Director of Public Buildings and Public Parks of the National Capital. Ex. Or. No. 6166, June 10, 1933, transferred the functions of the Public Buildings and Public Parks of the National Capital to the Office of National Parks, Buildings, and Reservations. Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, changed the name of the Office of National Parks, Buildings, and Reservations to the National Park Service.

§ 7–804 [19: 74]. Temporary use of sand and ashes.

In case the snow, sleet, and ice can not be removed from so much of the paved sidewalks within the fire limits of the District of Columbia as front upon or abut such buildings or lots of land as are not owned or held by lease by the District of Columbia or the United States without injury to said sidewalks, because of the hardening thereof, the person, partnership, corporation, joint-stock company, or syndicate in charge or control of such buildings or lots of land, whether as owner, tenant, occupant, lessee, or otherwise, shall, within the first eight hours of daylight after the same has formed, make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, said sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 4.)

§ 7–805 [19: 75]. Removal by Commissioners upon default by owner or occupant—Expense.

In the event of the failure of any person, partnership, corporation, joint-stock company, or syndicate to remove or cause to be removed such snow or ice from the said sidewalks, or to make the same reasonably safe for travel, or cause the same to be made reasonably safe for travel, as hereinbefore provided, it shall be the duty of the Commissioners of the District of Columbia, as soon as practicable after the expiration of the time herein provided for the removal thereof, or for the making of the said sidewalks reasonably safe for travel, to cause the snow and ice in front of such building or lot of land to be removed or to cause the same to be made reasonably safe, as hereinbefore directed to be done by such person, partnership, corporation, joint-stock company, or syndicate in charge or control of such building or lot of land, and the amount of the expense of such removal or such work of making the said sidewalks reasonably safe for travel, shall in each instance be ascertained and certified by the said commissioners to the corporation counsel of the District of Columbia. (Sept. 16, 1922, 42 Stat. 846, ch. 318, § 5.)

§ 7–806 [19: 76]. Suit for recovery of cost.

The corporation counsel is hereby directed and authorized to sue for and recover from such person,

partnership, corporation, joint-stock company, or syndicate, the amount of such expense in the name of the District of Columbia, together with a penalty not exceeding $25 for each offense, with costs, and when so recovered the amount shall be deposited to the credit of the District of Columbia. (Sept. 16, 1922, 42 Stat. 846, ch. 318, § 6.)

Chapter 9.—RENTAL OF VAULTS UNDER SIDEWALKS

Sec.
7–901. Authority conferred on Commissioners.

§ 7–901 [25: 411]. Authority conferred on Commissioners.

The commissioners of the District of Columbia are authorized and directed to assess and collect rent from all users of space occupied under the sidewalks and streets in the District of Columbia, which said space is occupied or used in connection with the business of said users. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 7.)

CROSS REFERENCE

General powers and duties concerning streets and sidewalks, § 7–102 and notes.

NOTES TO DECISIONS

CONSTRUCTIONS PERMITTED BEFORE ACT

This section authorizing assessment and collection of rent from users of space under sidewalks and streets in the District comprehended constructions permitted before as well as after this act was passed. *District of Columbia* v. *R. P. Andrews Paper Co.* (256 U. S. 582, 65 L. Ed. 1103, 41 Sup. Ct. 545, revg. 49 App. D. C. 273, 263 Fed. 1017).

A permit to an abutting owner to erect a building with adjacent vaults under the sidewalk although used continuously does not grant a permanent right. *District of Columbia* v. *R. P. Andrews Paper Co.* (256 U. S. 582, 65 L. Ed. 1103, 41 Sup. Ct. 545, revg. 49 App. D. C. 273, 263 Fed. 1017).

Chapter 10.—REAL ESTATE SALE OR RENT SIGNS

Sec.
7–1001. Signs on sidewalk or parking prohibited—Number of signs—Removal—Penalties.

§ 7–1001 [19: 91]. Signs on sidewalk or parking prohibited—Number of signs—Removal—Penalties.

No sign or advertisement relating to the sale, rent, or lease of land or premises shall be located on the sidewalk or parking of any street, avenue, or road in the District of Columbia. One painted or printed sign or advertisement for the sale, rent, or lease of land or premises may, with the written consent of the owner or legal representative of the owner, be placed, by any one of not exceeding three real estate agents, on any lot, piece, or parcel of land abutting on a street, avenue, or road in said District, or attached to the exterior of any building fronting thereon. The commissioners of the District of Columbia are authorized to use the police authority vested in them, to require the removal of any sign or advertisement in violation of this provision, and to institute prosecutions, in the police court of the District of Columbia, against persons violating the provisions hereof, and every such person, upon conviction of such violation, shall be fined in the sum of not less than $5 nor more than $25. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 7.)

CROSS REFERENCE

Power of Commissioners to regulate and license out-of-door advertising signs, §§ 1–231 to 1–233.

Chapter 11.—BARBED-WIRE FENCES

Sec.
7–1101. Construction or maintenance within fire limits.
7–1102. Construction or maintenance outside fire limits.
7–1103. Notice to remove—Service.
7–1104. Penalties.
7–1105. Notice by publication—Removal by inspector of buildings—Cost, assessment.

§ 7–1101 [19: 131]. Construction or maintenance within fire limits.

No fence, barrier, or obstruction consisting or made, in whole or in part, of what is commonly called barbed wire shall be erected, constructed, or maintained along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking within the fire limits of the District of Columbia. (July 8, 1898, 30 Stat. 724, ch. 640, § 1.)

§ 7–1102 [19: 132]. Construction or maintenance outside fire limits.

No fence, barrier, or obstruction made, in whole or in part of what is commonly called barbed wire shall be erected, constructed, or maintained within the said District of Columbia, outside of the fire limits, along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking without a permit therefor from the commissioners of said District. (July 8, 1898, 30 Stat. 724, ch. 640, § 2.)

CROSS REFERENCE

Powers and duties of Commissioners concerning public highways, § 7–102 and notes.

§ 7–1103 [19: 133]. Notice to remove—Service.

Whenever, under the provisions of sections 7–1101 and 7–1102, any barbed wire in use in whole or in part on July 8, 1898, for a fence, barrier, or obstruction, along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking within the District of Columbia is required to be removed, said wire shall be removed by the owner of the building or other property upon which such fence, barrier, or obstruction exists, or his or her agent, within thirty days from the service by the inspector of buildings of said District of a notice, served in like manner as notices in regard to assessment and permit work are required by law to be served, directing the owner, agent, or other person or persons owning or controlling the land, structure, or other property upon which such fence or barrier exists to remove the same. (July 8, 1898, 30 Stat. 724, ch. 640, § 3.)

§ 7–1104 [19: 134]. Penalties.

Any person violating any of the provisions of this chapter shall, upon conviction thereof in the police court of said District, be fined not more than ten dollars for each day such violation shall continue. (July 8, 1898, 30 Stat. 725, ch. 640, § 4.)

§ 7–1105 [19: 135]. Notice by publication—Removal by inspector of buildings—Cost, assessment.

In case the owner, agent, or other person or persons in control of the property along which such fence, barrier, or obstruction unlawfully exists can not be found within five days after the issue of such notice, the commissioners shall publish such notice twice a week for two successive weeks in one daily newspaper of general circulation published in the District of Columbia. If within five days after the last publication of said notice the fence, barrier, or obstruction therein described be not removed, the inspector of buildings of said District shall immediately cause such fence, barrier, or obstruction to be removed, and the expense of such removal shall be paid out of the assessment and permit fund; and the cost of such removal, together with the cost of said advertising, shall be assessed against said property and collected as general taxes in said District are assessed and collected; and the funds from which said payments are made shall be reimbursed from such collections. (July 8, 1898, 30 Stat. 725, ch. 640, § 5.)

Chapter 12.—MISCELLANEOUS

Sec.
7–1201. Jurisdiction over Conduit Road transferred to Commissioners—Abutting property owners—Assessment—Application of municipal laws.
7–1202. Railroads prohibited on certain streets.
7–1203. Further laying of street railroads prohibited.
7–1204. Removal of paving stones—Permit from Director of National Park Service—Obstruction on streets.
7–1205. Denomination of streets as "business streets."
7–1206. Portion of streets may be set aside as parks.
7–1207. Removal of obstructions from streets—Duty of Director of National Park Service.
7–1208. Penalty for failure to replace paving stones.
7–1209. Improper appropriation or occupation of streets.
7–1210. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Commissioners.
7–1211. Certain railroad sidings authorized.
7–1212. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.
7–1213. Railroads may use Union Station and terminals—District Court of the United States for the District of Columbia authorized to fix rates.
7–1214. Streets to be under or over steam-railroad tracks—Cost of opening streets—Maintenance.
7–1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioners—Cost.
7–1216. Philadelphia, Baltimore and Washington Railroad Company—Extensions for development of Buzzards Point authorized.
7–1217. Connections with navy-yard tracks.
7–1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.
7–1219. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.
7–1220. Authority of Commissioners under section 7–1215 not affected.
7–1221. Condemnation proceedings by railroad company.
7–1222. Company to pay portion of cost of paving or repairing streets.
7–1223. Extensions—Use by other carriers.
7-1224. Right of repeal reserved.
7–1225. Pennsylvania Railroad Company—Construction of switch connections authorized.
7–1226. Plans to be approved by Commissioners.
7–1227. Grade crossings subject to approval of Commissioners—Overhead bridge.
7–1228. Authority of Commissioners not abridged.
7–1229. Right of repeal reserved.
7–1230. Electrification of existing steam-railroad lines—Structures, equipment.
7–1231. Submarine cables at drawbridge openings.
7–1232. Construction of conduit systems—Government use of three ducts.
7–1233. Jurisdiction not abridged.
7–1234. Liability for injuries.
7–1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.
7–1236. Employment of temporary laborers and mechanics—Per diem rate of pay.
7–1237. Employment of horses, horse drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.
7–1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.

§ 7–1201 [12: 111]. Jurisdiction over Conduit Road transferred to Commissioners—Abutting property owners—Assessment—Application of municipal laws.

Jurisdiction and control over the Conduit Road for its full width in the District of Columbia between Foxhall Road and the District line, excepting a strip nineteen feet wide within the lines of said road. the center of which is coincident with the center of the water-supply conduit, is hereby transferred from the Secretary of War to the commissioners of the District of Columbia, and property abutting thereon shall be subject to any and all lawful assessments which may be levied by the said commissioners for public improvements, the same as other private property in the District of Columbia: *Provided,* That all municipal laws and regulations shall apply to the entire width of the said road in the District of Columbia in the same degree that they apply to other streets and highways in the said District. (May 22, 1926, 44 Stat. 627, ch. 372.)

CROSS REFERENCE

Jurisdiction and control of Commissioners over public roadways, § 7–102 and notes.

MONTROSE PARK—TRANSFER OF PART FOR HIGHWAY PURPOSES

The Chief of Engineers, United States Army, is hereby directed to transfer to the jurisdiction of the Commissioners of the District of Columbia for highway purposes so much of Montrose Park as they may deem necessary for the connecting highway herein authorized. (Act of June 26, 1912, 37 Stat. 139, ch. 182.)

§ 7–1202 [12: 112]. Railroads prohibited on certain streets.

All railroads are prohibited on the I-Street and K-Street fronts of Farragut, Scott, and Franklin Squares. (R. S., D. C., § 223.)

§ 7–1203 [12: 113]. Further laying of street railroads prohibited.

No further street railroads shall be laid down in the city of Washington without the consent of Congress. (R. S., D. C., § 224.)

§ 7–1204 [12: 114]. Removal of paving stones—Permit from Director of the National Park Service—Obstruction on streets.

Whenever any person desires to remove the paving-stones, or to displace any other work done by the authority of the United States, for the purpose of laying gas-pipes, or for any other purpose, it shall be the duty of such person to obtain a written permit from the Director of the National Park Service, and such person shall oblige themselves to replace the said work to the satisfaction of said officer, and within such time as he may prescribe. If any person shall place any obstruction on the streets, avenues, or sidewalks, so improved by the United States, such person shall pay the costs of removing the same, and shall be subject to a penalty of ten dollars, to be recovered as other debts are recovered in said District, for each and every day the obstruction may remain after the Director of the National Park Service shall have given notice for its removal. (R. S., D. C., §§ 228 and 229; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

CROSS REFERENCES

For transfer of functions from the Office of Public Buildings and Grounds to the Office of Public Buildings and Public Parks of the National Capital, then to the Office of National Parks, Buildings, and Reservations, and finally to the National Park Service, see Compiler's Note under § 7–803.

General provisions for laying water mains and sewers, § 43–1501 et seq.

Other provisions concerning powers of Federal Government over public highways, §§ 7–1207 to 7–1210, 7–1217 to 7–1220.

Use of streets and sidewalks in Capitol grounds, §§ 9–106 to 9–111, 9–115 to 9–117.

§ 7–1205 [12: 115]. Denomination of streets as "business streets."

The Commissioners of the District of Columbia are authorized and directed to denominate portions of streets in the District of Columbia as business streets and to authorize the use, on such portions of streets, for business purposes by abutting property-owners, under such general regulations as said commissioners may prescribe, of so much of the sidewalk and parking as may not be needed, in the judgment of said commissioners, by the general public, under the following conditions, namely: First, where in a portion of a street not already denominated a business street a majority of a frontage not less than three blocks in length is occupied and used for business purposes; and, second, where a portion of a street has already been denominated a business street and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (Feb. 2, 1904, 33 Stat. 10, ch. 89.)

COMPILER'S NOTE

This section is duplicated by the last part of § 8–108.

CROSS REFERENCES

Other provisions giving Commissioners general authority to regulate parking, § 40–603.

See notes to § 7–1204.

NOTES TO DECISIONS

TEMPORARY USE

Provision of act of April 16, 1870, ch. 47, 16 Stat. 82, that nothing therein should authorize the occupancy of any portion of public streets or avenues for private purposes did not apply to temporary use in transacting business but only to permanent obstructions. *Crane* v. *District of Columbia* (53 App. D. C. 159, 289 Fed. 557).

STREET VENDORS

Commissioners are not vested with power to prohibit street sales hereunder. *Crane* v. *District of Columbia* (53 App. D. C. 159, 289 Fed. 557).

§ 7–1206 [12: 116]. Portion of streets may be set aside as parks.

The proper authorities of the District are authorized to set apart from time to time, as parks, to be adorned with shade-trees, walks, and inclosed with curb-stones, not exceeding one-half the width of any and all avenues and streets in the said city of Washington, except Pennsylvania Avenue, leaving a roadway of not less than thirty-five feet in width in the center of said avenues and streets or two such roadways on each side of the park in the center of the same; but such inclosures shall not be used for private purposes. (R. S., D. C., § 225; Mar. 3, 1881, 21 Stat. 462, ch. 134.)

AMENDMENT

Act March 3, 1881, 21 Stat. 462, ch. 134, repealed so much of act of April 6, 1870, as prohibited the Commissioners from narrowing the carriage-ways of Louisiana and Indiana Avenues and a portion of Four-and-a-Half Street.

CROSS REFERENCES

Parkways not affected by establishment of building lines on street, § 5–205.

See notes to § 7–1204.

§ 7–1207 [12: 117]. Removal of obstructions from streets—Duty of Director of National Park Service.

It shall be the duty of the Director of the National Park Service to cause obstructions of every kind to be removed from such streets, avenues, and sidewalks in the city of Washington as have been, or may be, improved in whole or in part by the United States, and to keep the same, at all times, free from obstructions. For the purpose of carrying out the provisions of this section the Director of the National Park Service shall have power to institute suits in any court having competent jurisdiction, and it shall be the duty of the United States attorney for the District to prosecute the same. (R. S., D. C., §§ 226 and 227; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

CROSS REFERENCES

For transfer of functions of Director of Public Buildings and Public Parks of the National Capital, to the office of National Parks, Buildings, and Reservations, and then to the National Park Service, see Compiler's Note under § 7–803.

Jurisdiction and control of public ways, § 7–102 and notes.

See § 7–1204 and notes.

§ 7–1208 [12: 118]. Penalty for failure to replace paving stones.

If any person removing the paving-stones or other work done by the authority of the United States shall fail to replace the same to the satisfaction of the Director of the National Park Service, within the time prescribed by him, he shall be subject to a penalty of twenty-five dollars for each and every failure, and shall pay the costs of replacing the same,

the whole to be recovered before any court in said District having competent jurisdiction. (R. S., D. C., § 230.)

Cross References

For transfer of functions of Director of Public Buildings and Public Parks of the National Capital, to the Office of National Parks, Buildings, and Reservations, and then to the National Park Service, see Compiler's Note under § 7–803.

See § 7–1204 and notes.

§ 7–1209 [12: 118a]. Improper appropriation or occupation of streets.

The Secretary of the Interior is directed to prevent the improper appropriation or occupation of any of the public streets, avenues, squares, or reservations in the city of Washington, belonging to the United States, and to reclaim the same if unlawfully appropriated; and particularly to prevent the erection of any permanent building upon any property reserved to or for the use of the United States, unless plainly authorized by Act of Congress, and to report to Congress at the commencement of each session his proceedings in the premises, together with a full statement of all such property, and how, and by what authority, the same is occupied or claimed. Nothing herein contained shall be construed to interfere with the temporary and proper occupation of any portion of such property, by lawful authority, for the legitimate purposes of the United States. (R. S., § 1818.)

Cross Reference

See notes to § 7–1204.

Statutory Reference

This section is in U. S. C., Title 40, § 66.

§ 7–1210 [12: 119]. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Commissioners.

It shall be the duty of the commissioners of the District of Columbia, and they are hereby authorized and empowered, whenever they consider it a public benefit, to grant the Baltimore and Potomac Railroad Company permission to lay, maintain, and use sidetracks and sidings from the main line or lines of said railroad into any real estate in the said city abutting on the streets or avenues on which such line of such company is or may be situated, east of Four-and-a-half Street and south of Virginia and Maryland Avenues, which may be used or occupied for manufacturing, commercial, or other business purposes by parties desiring the use of such facilities. Such sidetracks or sidings shall be laid and maintained under the direction of said commissioners, and in such manner as shall least obstruct the use of the public streets for ordinary purposes: *Provided,* That the right to revoke the use of said sidetracks or sidings is reserved to Congress. (Jan. 19, 1891, 26 Stat. 719, ch. 76, § 2.)

Cross Reference

Other provisions concerning construction and maintenance of viaducts and subways, §§ 7–502, 7–510, 7–515, 7–517, 7–519 to 7–521, 7–523.

NOTES TO DECISIONS

Departure From Established Route

The title to the streets of Washington being in the United States, the authorization for a use of the streets by a railroad for its depots must be by act of Congress, and act of June 21, 1870 (16 Stat. 161, ch. 142), providing for a railroad extension from the terminus at Ninth Street by way of Maryland Avenue to the Long Bridge, does not, by construction, authorize the company to depart from Maryland Avenue on its way to the bridge. *District of Columbia Commissioners* v. *Baltimore & P. R. Co.* (114 U. S. 453, 29 L. Ed. 216, 5 Sup. Ct. 1098).

§ 7–1211 [12: 120]. Certain railroad sidings authorized.

It shall be lawful for the Baltimore and Potomac Railroad Company to extend and construct, from time to time, branch tracks or sidings from the lines of railroad authorized hereunder, into any lot or lots adjacent to any street or avenue along which said lines of railroad are located, upon the application of the owner or owners of such lot or lots, to enable such owners to use their property for the purpose of coal, wood, or lumber yards, manufactories, warehouses, and other business enterprises: *Provided, however,* That no grade crossing of any street or avenue within the city of Washington shall be thereby created, but such connecting tracks shall be carried across such street or avenue in such manner as not to obstruct the free use thereof, and the plans of such connecting tracks shall in every case be first filed with and approved by the commissioners of the District of Columbia. (Feb. 12, 1901, 31 Stat. 772, ch. 353, § 10.)

Cross Reference

See notes to § 7–1210.

§ 7–1212 [12: 121]. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.

In addition to the main or terminal station or depot, the Baltimore and Ohio Railroad Company, or the Washington Terminal Company may from time to time construct, establish, and maintain such additional stations or depots, for passengers or freight, as the company may deem necessary or useful in the conduct of its business, or for the accommodation of the freight and passenger traffic passing over the lines of railroad authorized by this act, at such point or points within said District as the commissioners of the District of Columbia shall approve: *Provided,* That no such station or depot within the city limits shall be located east of Second Street east, and west of North Capitol Street, and it shall be lawful for either of said companies to acquire, by gift, purchase, or condemnation, any land adjacent to any street or avenue along or upon which the lines of railroad and works hereby authorized shall be located, and hold and improve the same in such manner as it may deem necessary or beneficial to accommodate or promote the traffic on said railroad, and to extend and construct tracks of railroad into and upon any lands so acquired and connect the same with the tracks on such adjacent street or avenue: *Provided, however,* That no grade crossing of any street or avenue within the city of Washington shall be thereby created, but such connecting tracks shall be elevated and carried over the portion of such street or avenue crossed in such manner as not to obstruct the free use thereof, and the plans of such connecting tracks and elevated structure shall in every case be first filed with and approved

by the commissioners of the District of Columbia. And it shall be lawful for said companies, or either of them, subject to the same conditions and restrictions, to extend and construct, from time to time, branch tracks or sidings from the lines of railroad authorized hereunder into any lot or lots adjacent to any street or avenue along which said lines of railroad are located, upon the application of the owner or owners of such lot or lots, to enable such owners to use their property for the purposes of coal, wood, or lumber yards, manufactories, warehouses, and other business enterprises. (Feb. 12, 1901, 31 Stat. 777, ch. 354, § 5.)

CROSS REFERENCES

Taxation, §§ 47–718, 47–719.
See notes to § 7–1210.

NOTES TO DECISIONS

DEPARTURE FROM ESTABLISHED ROUTE

When the railroad company wished to depart in any direction from line of its track as prescribed by acts of Congress it was necessary that it obtain permission to do so from Congress. *District of Columbia Commissioners* v. *Baltimore & P. R. Co.* (114 U. S. 453, 29 L. Ed. 216, 5 Sup. Ct. 1098).

ESTOPPEL

By accepting award in condemnation proceeding, landowner estopped to insist petition was not maintainable. *Winslow* v. *Baltimore & O. R. Co.* (208 U. S. 59, 52 L. Ed. 388, 28 Sup. Ct. 190).

NUISANCE

Although tunnel constructed under authority of act of Congress can not be deemed a public nuisance, it may be a private nuisance which would entitle property owner to damages. *Richards* v. *Washington Terminal Co.* (233 U. S. 546, 58 L. Ed. 1088, 34 Sup. Ct. 654, L. R. A. 1915A, 887).

§ 7–1213 [12: 122]. Railroads may use Union Station and terminals—District Court of the United States for the District of Columbia authorized to fix rates.

Any railroad company lawfully existing and authorized to extend a line of railroad into the District of Columbia, or having secured the right to operate over the lines of any other then existing railroad, to a point of connection with the tracks of the Washington Terminal Company, shall have the right to the joint use of said station and terminals authorized in the Act approved February 28, 1903 (32 Stat. 909), upon the payment of a reasonable compensation for the use of the same; and if the parties be unable to agree upon such terms, then the same shall be prescribed by the District Court of the United States for the District of Columbia, upon petition of either party in interest, under such rules of procedure as the said court shall prescribe. (Feb. 28, 1903, 32 Stat. 918, ch. 856, § 11.)

CROSS REFERENCE

Joint use of utility facilities, § 43–302.

NOTES TO DECISIONS

ASSENT OF CITY

Granting the Baltimore and Potomac Railroad Company the right to establish a depot on lot 233 of the city of Washington required the assent of the city to the act, and an act was passed on May 21, 1872, ratifying the action of the city authorities, and setting out in detail the direction of the lateral track to the passenger depot. *District of Columbia Commissioners* v. *Baltimore & P. R. Co.* (114 U. S. 453, 29 L. Ed. 216, 5 Sup. Ct. 1098).

COMPENSATION OF PROPERTY OWNER

Property owner held entitled to compensation for damages specially affecting his property as result of tunnel construction. *Richards* v. *Washington Terminal Co.* (233 U. S. 546, 58 L. Ed. 1088, 34 Sup. Ct. 654, L. R. A. 1915A, 887).

CONSTITUTIONALITY

Not unconstitutional because a revenue bill not originating in House of Representatives, or because appropriating money for exclusive use of railroad companies. *Millard* v. *Roberts* (202 U. S. 429, 50 L. Ed. 1090, 26 Sup. Ct. 674).

§ 7–1214 [12: 123]. Streets to be under or over steam-railroad tracks—Cost of opening streets—Maintenance.

Any and all streets or highways within the District of Columbia now or hereafter planned or projected to cross any line of railroad, other than a street railway, in the District of Columbia, which may be hereafter opened to public use, shall be located, constructed, and maintained either beneath such railroad by a suitable subway, or above the same by a suitable viaduct bridge at such altitude as will not interfere with the free and safe operation thereof: *Provided, however,* That nothing herein contained shall require the location, construction, or maintenance of any such street or highway under or above any spur, industrial, switching or side track, or branch line of any railroad unless the Commissioners of the District of Columbia shall find the same is necessary in the public safety. The cost and expense of opening said streets or highways within the limits of such railroad company's right of way, including the cost of constructing the portion of any viaduct bridge, within said limits, shall be borne and paid half by such railroad company, its successors and assigns, and half by the District of Columbia and the United States, but after construction the cost of maintenance shall be wholly borne and paid as in the case of other public highways in the District of Columbia; and the portions of such streets planned or projected as above which lie within a right of way belonging to such railroad company shall be dedicated by such company as a public thoroughfare when the portions of such street adjoining such right of way have been similarly dedicated or otherwise acquired. (Feb. 28, 1903, 32 Stat. 918, ch. 856, § 10; May 9, 1941, 55 Stat. 182, ch. 93, § 1.)

AMENDMENTS

The act of May 9, 1941, cited to text, added the proviso in the first sentence.

SAVING CLAUSES, ETC.

Secs. 2 and 3 of the act of May 9, 1941, cited to text, provided:

"SEC. 2. Congress reserves the right to alter, amend, or repeal this Act.

"SEC. 3. If this amendatory act, or any part thereof, shall be declared invalid, the act of February 28, 1903, as originally enacted shall remain in full force and effect and unimpaired by this amendatory act."

CROSS REFERENCE

See note to § 7–1210.

§ 7–1215 [12: 124]. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioners—Cost.

The Commissioners of the District of Columbia are authorized whenever in their judgment it may

be necessary for the public safety, and subject to appropriations made therefor by Congress, to construct subways or viaducts and approaches thereto, in accordance with plans and profiles of said works to be approved by them, to carry any street or highway crossing at grade any line of steam-railroad track or tracks in the District of Columbia, or any street or highway within the District of Columbia planned or projected to cross any such line of railroad, under or over said track or tracks: *Provided,* That one-half of the total cost of constructing any viaduct or subway and approaches thereto shall in each case be paid by the railroad company, its successors or assigns, whose tracks are so crossed; and in the event the rights of way of two or more railroad companies are so crossed said half cost as herein provided shall be paid by the said railroad companies, their successors or assigns, in proportion to the widths of their respective land holdings, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the said half cost shall be valid and subsisting liens against the franchises and property of the railroad companies concerned and shall constitute a legal indebtedness against the said railroad companies in favor of the District of Columbia, and said liens may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the District Court of the United States for the District of Columbia, or by any other legal proceeding against the said railroad companies: *Provided,* That no street railway company shall use the said subways, viaducts or any approaches thereto herein authorized for its tracks until said companies shall have paid to the collector of taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section. The said commissioners are further authorized to acquire the necessary land, or any portion of the same, by purchase at such price or prices as in their judgment they may deem reasonable and fair, or, in their discretion, by condemnation in accordance with the provisions of sections 7–202 to 7–215 under a proceeding or proceedings in rem instituted in the District Court of the United States for the District of Columbia: *Provided,* That of the entire amount found to be due and awarded by the jury as damages for, and in respect of, the land to be condemned to carry the provisions of this section into effect, plus the costs and expenses of the proceeding or proceedings taken pursuant hereto, not less than one-half thereof shall be assessed by the jury as benefits, the amounts collected as benefits to be covered into the treasury of the United States to the credit of the District of Columbia. (Mar. 3, 1927, 44 Stat. 1353, ch. 306, §§ 1–3.)

CROSS REFERENCES

Condemnation proceedings, §§ 16–601 et seq.
See note to § 7–1210.

§ 7–1216 [12: 125]. Philadelphia, Baltimore and Washington Railroad Company—Extensions for development of Buzzards Point authorized.

The Philadelphia, Baltimore and Washington Railroad Company is hereby authorized to establish a switch connection with an existing track in its New Jersey Avenue yard, at a point north of the north curb line of I Street Southeast; thence southward on First Street Southeast to and connecting with the existing track on First Street Southeast at or about N Street, with a switch connection at or about Quander Street and spur track running over, across, and through square 743 to and into the United States navy yard; thence southward on First Street Southeast to and thence along Potomac Avenue to the west line of Second Street Southwest, with all necessary switches, extensions, turnouts, and sidings and such other track extensions through and along One-half Street Southwest, and Second Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street, and One-half Street Southeast, south of Potomac Avenue and north of Potomac Avenue to O Street, as may be or become necessary for the establishment of adequate railroad facilities in connection with the development of Buzzards Point as an industrial area in the District of Columbia. (June 18, 1932, 47 Stat. 322; ch. 269, § 1; June 20, 1939, 53 Stat. 849, ch. 229; June 5, 1942, 56 Stat. 326, ch. 353.)

AMENDMENTS

The 1939 amendment struck out the words "One-half Street Southwest, One-half Street Southeast, and Second Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street," and inserted in lieu thereof "One-half Street Southwest, and Second Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street, and One-half Street Southeast, south of Potomac Avenue and north of Potomac Avenue to O Street."

The act of June 5, 1942, cited to text, amended section by inserting all words between words "connection with" and the semicolon in lieu of the following words "the existing track siding leading from Second and Eye Streets Southeast to and into the United States Navy Yard, at a point in said siding south of M Street Southeast, thence running over and across the northwest corner of United States reservation 17 E, on June 18, 1932, controlled and occupied by the United States Navy Department for navy yard and ordnance storage purposes, thence over, across, and through square 743 to First Street Southeast,".

CROSS REFERENCES

Joint use of utility facilities, §§ 7–1223, 43–302.
Taxation, §§ 47–718, 47–719.

§ 7–1217 [12: 126]. Connections with navy-yard tracks.

The Secretary of the Navy is authorized to sell and transfer or to lease to The Philadelphia, Baltimore and Washington Railroad Company, its successors and/or assigns, upon such terms and for such amount as he may deem to be both just and reasonable, the existing railroad track connection with the United States Navy Yard as constructed and established under authority conferred by an Act of Congress approved August 29, 1916, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1917, and for other purposes": *Provided,* That the title to any right of way or property provided by the United States for the purposes of such construction and occupied by

said track connection on June 18, 1932, shall remain in the United States: *And provided further,* That said track connection, insofar as the requirements of the United States Navy Yard may be affected, at all times shall be maintained and operated by said railroad company, its successors or assigns, to the satisfaction of the Secretary of the Navy. (June 18, 1932, 47 Stat. 322, ch. 269, § 2.)

§ 7–1218 [12: 127]. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.

Said railroad company is hereby authorized to construct, maintain, and operate branch tracks, spurs, or sidings into any lot or square zoned or thereafter zoned for industrial or second commercial use abutting upon any street or avenue over and along which said railroad company is hereby specifically authorized to lay and operate tracks, and also to construct tracks to serve any wharf which may be established on the Anacostia River: *Provided,* That the construction of all such railroad tracks and appurtenant turnouts, branch tracks, and sidings, in all respects and things, shall be subject to the prior approval of the commissioners of the District of Columbia after report by the National Capital Park and Planning Commission, such approval to be noted upon identical copies of a suitably prepared plat or chart, one copy to be kept on file in the office of the engineer commissioner of the District of Columbia and the other thereof to be kept on file in the office of the National Capital Park and Planning Commission. (June 18, 1932, 47 Stat. 322, ch. 269, § 3.)

§ 7–1219 [12: 128]. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.

Subject always to the approval of the Commissioners of the District of Columbia, all such railroad tracks, turnouts, branch tracks, spurs, and sidings may be located and constructed in, upon, along, and through public grounds, space, and streets of the United States and/or of the District of Columbia as same, are now or may hereafter be located and established: *Provided,* That except as in sections 7–1216 to 7–1224 expressly authorized no tracks, turnouts, branches, spurs, or sidings shall be constructed along or through South Capitol Street or First Street Southwest in the north and south direction, at grade or otherwise, but each of said streets, with prior approval of said commissioners of the District of Columbia, may be crossed to such extent as may be necessary for the establishment of adequate railroad facilities: *Provided further,* That no permit for the construction of tracks, turnouts, branches, spurs, or sidings shall be issued with respect to squares 600, 602, 604, 606, 608, 610, and 612, or any of said squares, until the particular square or squares for which a permit is sought shall have been zoned industrial: *And provided further,* That the plans for any building fronting on Canal Street from the Anacostia River to P Street Southwest shall have the approval of the Fine Arts Commission as to height and design. (June 18, 1932, 47 Stat. 323, ch. 269, § 4.)

STATUTORY REFERENCE

Fine Arts Commission, U. S. C., title 40, §§ 104–106.

§ 7–1220 [12: 129]. Authority of Commissioners under § 7–1215 not affected.

Nothing contained in sections 7–1216 to 7–1224 shall be construed as limiting or abridging the authority of the commissioners of the District of Columbia under section 7–1215. (June 18, 1932, 47 Stat. 323, ch. 269, § 5.)

§ 7–1221 [12: 130]. Condemnation proceedings by railroad company.

The Philadelphia, Baltimore, and Washington Railroad Company, its successors or assigns, is authorized to acquire any land or property other than public grounds, space, or streets of the United States or the District of Columbia necessary or expedient for right of way for said track extensions, turnouts, branch tracks, spurs, sidings, and connections by purchase or condemnation. In event that said company, its successors or assigns, shall be unable to acquire any piece or parcel of land necessary or expedient for any of the purposes indicated in sections 7–1216 to 7–1224, at a price deemed by it to be reasonable, then, and in such event The Philadelphia, Baltimore, and Washington Railroad Company, its successors and assigns, is authorized to acquire the same by condemnation proceedings to be instituted in its own name by petition filed in the District Court of the United States for the District of Columbia for the ascertainment of its value, in accordance with the provisions of sections 16–601 to 16–611. (June 18, 1932, 47 Stat. 323, ch. 269, § 6.)

CROSS REFERENCE

Condemnation proceedings, §§ 16–601 et seq.

§ 7–1222 [12: 131]. Company to pay portion of cost of paving or repairing streets.

If and when the Commissioners of the District of Columbia shall decide to pave or repave any of the streets over or along which tracks are authorized to be constructed, the railroad company shall be required to bear the expense of the paving and/or repairs to pavements between the rails and on either side of the tracks for a distance of two feet. (June 18, 1932, 47 Stat. 323, ch. 269, § 7.)

§ 7–1223 [12: 132]. Extensions—Use by other carriers.

The authority to establish, construct, acquire, maintain, and operate the tracks, switch connections, extensions, turnouts, sidings, branches, spurs, and other facilities provided for in sections 7–1216 to 7–1224 is given upon the following conditions, to wit: The said facilities shall be open to any and all freight traffic by rail whether originating within or without the District of Columbia either on the said The Philadelphia, Baltimore, and Washington Railroad Company or any other common carrier railroad, upon such just, reasonable, and nondiscriminatory rates, terms, and conditions as may be embraced in public tariffs, subject to the jurisdiction of the Interstate Commerce Commission as provided for other rates under the provisions of the Interstate Commerce Act: *Provided,* That no greater charge shall be made for deliveries to be made upon said facilities than is or are or may be made for delivery of like traffic consigned for delivery at any other delivery point on The Philadelphia, Baltimore, and

Washington Railroad Company in the District of Columbia; special, free, or reduced rates or charges for deliveries of property consigned to the United States or any of its departments, bureaus, or subordinate branches or to or for use of the municipality of the District of Columbia not included: *And provided further,* That any common carrier by railroad now or hereafter authorized to operate in the District of Columbia shall, upon application to and approval by the Interstate Commerce Commission, be permitted to use jointly all such facilities as provided in sections 7–1216 to 7–1224 on such terms and for such compensation as may be prescribed by the said Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act, as amended. (June 18, 1932, 47 Stat. 324, ch. 269, § 8.)

§ 7–1224 [12: 133]. Right of repeal reserved.

The right to alter, amend, or repeal sections 7–1216 to 7–1224 is reserved without regard to any payments required or agreements established under their terms. (June 18 1932, 47 Stat. 324, ch. 269, § 9.)

§ 7–1225 [12: 134]. Pennsylvania Railroad Company—Construction of switch connections authorized.

The Pennsylvania Railroad Company, operating lessee of all of the railroads and appurtenant properties of the Philadelphia, Baltimore, and Washington Railroad Company in the District of Columbia, be, and it is hereby, authorized to establish switch and siding connections with its existing siding tracks in square numbered 4263 (also shown as parcel 154/44) to cross West Virginia Avenue into and through square numbered 4105 along and adjacent to the existing main-line tracks, thence into and through square numbered 4104 and 4099, crossing New York Avenue by means of a suitable overhead bridge, thence to and through square numbered 4099 and the parcels of land known and identified on the plat books of the Surveyor's Office of the District of Columbia as parcels 153/44, 143/25, 142/25, and 142/28, to and through the square known as and numbered 4038 (portions of which are included in parcel 142/28), 4093, south of 4093, and 4098, with all switches, crossings, turnouts, extensions, spurs, and sidings, as may be or become necessary for the development of the squares and parcels of land above indicated for such uses as may be permitted in the use district or districts in which said squares and parcels of land are now or may hereafter be included as defined in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 1.)

§ 7–1226 [12: 135]. Plans to be approved by Commissioners.

Before any of the work authorized in section 7–1225 shall be begun on the ground, a plan or plans thereof shall be prepared and submitted to the Commissioners of the District of Columbia for their approval and only to the extent that such plans shall be so approved shall said work or any portion thereof be permitted or undertaken. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 2.)

§ 7–1227 [12: 136]. Grade crossings subject to approval of Commissioners—Overhead bridge.

Subject only to the approval of the Commissioners of the District of Columbia the crossing of any public street or alley other than New York Avenue, within the limits of the total area noted in section 7–1225 may be at or on grade. The said railroad shall, when and as directed by the Commissioners of the District of Columbia, construct at its entire cost and expense, an additional overhead bridge for the track hereby authorized to be established over such other street located between Montello Avenue and New York Avenue as such street may now or may hereafter be shown on the Plan of the Permanent System of Highways. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 3.)

CROSS REFERENCES

Joint use of utility facilities, § 43–302.
See note to § 7–1210.

§ 7–1228 [12: 137]. Authority of Commissioners not abridged.

Nothing contained in sections 7–1225 to 7–1229 shall be construed as limiting or abridging the authority of the Commissioners of the District of Columbia under sections 7–515, 7–516 and 7–1215. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 4.)

§ 7–1229 [12: 138]. Right of repeal reserved.

Congress reserves the right to amend, alter, or repeal sections 7–1225 to 7–1229. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 5.)

§ 7–1230 [12: 139]. Electrification of existing steam-railroad lines—Structures, equipment.

Steam-railroad companies now operating within the District of Columbia are hereby authorized, after approval of their detailed plans and issuance of a permit by the Commissioners of the District of Columbia, to electrify their lines within the District of Columbia and across the Anacostia and Potomac Rivers with an alternating current overhead catenary or other type of electrification system, with all necessary transmission, signal, and communication conductors and equipment, poles, conduits, underground and overhead construction, substations, and any other structures necessary in such electrification, the provisions of any law or laws to the contrary notwithstanding. (Mar. 27, 1934, 48 Stat. 506, ch. 97, § 1.)

§ 7–1231 [12: 140]. Submarine cables at drawbridge openings.

Submarine cables may be used at drawbridge openings, provided previous approval shall have been obtained from the War Department. (Mar. 27, 1934, 48 Stat. 506, ch. 97, § 2.)

§ 7–1232 [12: 141]. Construction of conduit systems—Government use of three ducts.

Where necessary for such electrification, the Commissioners of the District of Columbia may issue permits to construct conduit systems through or under the surfaces of public streets or other District of Columbia or United States property: *Provided, however,* That three ducts therein shall be reserved

for the use of the United States and the District of Columbia. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 3.)

CROSS REFERENCE

General provisions concerning conduits and overhead wires, §§ 43–1101 to 43–1108 and notes.

§ 7–1233 [12: 142]. Jurisdiction not abridged.

Nothing contained in sections 7–1230 to 7–1234 shall be construed as limiting or abridging the authority of the War Department, the Commissioners of the District of Columbia, or of the Interstate Commerce Commission. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 4.)

§ 7–1234 [12: 143]. Liability for injuries.

The said railroad companies shall be liable for any accident to, or injuries sustained by, any person by reason of any act or omission of the railroad companies or by their agents or servants during the construction, installation, maintenance, or operation of the electrical equipment and apparatus of the railroad trains. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 5.)

§ 7–1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.

The services of draftsmen, assistant engineers, levelers, transitmen, rodmen, chainmen, computers, copyists, overseers, and inspectors temporarily required in connection with sewer, water, street, street-cleaning, or road work, or construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by appropriations may be employed exclusively to carry into effect District of Columbia appropriations when ordered by the Commissioners in writing, and all such necessary expenditures for the proper execution of said work shall be paid from and equitably charged against the sums appropriated for said work; and the Commissioners in their Budget estimates shall report the number of such employees performing such services, and their work, and the sums paid to each, and out of what appropriation: *Provided,* That the expenditures hereunder shall not exceed $42,000 during any one fiscal year: *Provided further,* That, excluding inspectors in the sewer department, one inspector in the electrical department, and one inspector in the repair shop, no person shall be employed in pursuance of the authority contained in this paragraph for a longer period than nine months in the aggregate during any one fiscal year. (June 28, 1944, 58 Stat. 530, ch. 300, § 2.)

CODIFICATION

Section comprised first paragraph of section 2 of act June 28, 1944, cited to text.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 2, 57 Stat. 344.
1943—June 27, 1942, ch. 452, § 2, 56 Stat. 458.
1942—July 1, 1941, ch. 271, § 2, 55 Stat. 537.
1941—June 12, 1940, ch. 333, § 2, 54 Stat. 341.

§ 7–1236. Employment of temporary laborers and mechanics—Per diem rate of pay.

The Commissioners, or their duly designated representatives, are authorized to employ temporarily such laborers, skilled laborers, drivers, hostlers, and mechanics as may be required exclusively in connection with sewer, water, street, and road work, and street cleaning, or the construction and repair of buildings and bridges, furniture and equipment, and any general or special engineering or construction or repair work, at per diem rates of pay to be fixed and adjusted from time to time by a wage board and approved by the Commissioners, and to incur all necessary engineering and other expenses, exclusive of personal services, incidental to carrying on such work and necessary for the proper execution thereof, said laborers, skilled laborers, drivers, hostlers, and mechanics to be employed to perform such work as may not be required by law to be done under contract, and to pay for such services and expenses from the appropriations under which such services are rendered and expenses incurred. (June 28, 1944, 58 Stat. 531, ch. 300, § 2.)

CODIFICATION

Section comprised third paragraph of section 2 of act June 28, 1944, cited to text.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 2, 57 Stat. 344.
1943—June 27, 1942, ch. 452, § 2, 56 Stat. 458.
1942—July 1, 1941, ch. 271, § 2, 55 Stat. 538.
1941—June 12, 1940, ch. 333, § 2, 54 Stat. 341.

§ 7–1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.

All horses, harness, horse-drawn vehicles necessary for use in connection with construction and supervision of sewer, street, street lighting, road work, and street-cleaning work, including maintenance of said horses and harness, and maintenance and repair of said vehicles, and purchase of all necessary articles and supplies in connection therewith, or on construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by District of Columbia appropriations, may be purchased, hired, and maintained, and motortrucks may be hired exclusively to carry into effect said appropriations, when ordered by the Commissioners in writing; and all such expenditures necessary for the proper execution of said work, exclusive of personal services, shall be paid from and equitably charged against the sums appropriated for said work; and the Commissioners in the Budget estimates shall report the number of horses, vehicles, and harness purchased, and horses and vehicles hired, and the sums paid for same, and out of what appropriation; and all horses owned or maintained by the District shall, so far as may be practicable, be provided for in stables owned or operated by said District: *Provided,* That such horses, horse-drawn vehicles, and carts as may be temporarily needed for hauling and excavating material in connection with works authorized by appropriations may be temporarily employed for such purposes under the conditions named in section 7–1236 in relation to the employment of laborers, skilled laborers, and mechanics. (June 28, 1944, 58 Stat. 531, ch. 300, § 3.)

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 3, 57 Stat. 345.
1943—June 27, 1942, ch. 452, § 3, 56 Stat. 459.
1942—July 1, 1941, ch. 271, § 3, 55 Stat. 538.
1941—June 12, 1940, ch. 333, § 3, 54 Stat. 341.

§ 7–1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.

The Commissioners are authorized to employ in the execution of work, the cost of which is payable from the appropriation account created in the District of Columbia Appropriation Act, approved April 27, 1904, and known as the miscellaneous trust-fund deposits, District of Columbia, necessary personal services, horses, carts, and wagons, and to hire therefor motortrucks when specifically and in writing authorized by the Commissioners, to establish and fix fees to be charged for such work, maintain operating balances, and to incur all necessary expenses incidental to carrying on such work, and necessary for the proper execution thereof, including the purchase, exchange, maintenance, and operation of motor vehicles for inspection and transportation purposes; such services and expenses to be paid from said appropriation account or operating balances: *Provided*, That the Commissioners may delegate to their duly authorized representatives the employment under this section of laborers, mechanics, and artisans. (June 28, 1944, 58 Stat. 531, ch. 300, § 4.)

REFERENCE IN TEXT

Words "District of Columbia Appropriation Act, approved April 27, 1904" refers to act April 27, 1904, ch. 1628, 33 Stat. 363.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 4, 57 Stat. 345.
1943—June 27, 1942, ch. 452, § 4, 56 Stat. 459.
1942—July 1, 1941, ch. 271, § 4, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 4, 54 Stat. 342.

Chapter 13.—WASHINGTON NATIONAL AIRPORT

Sec.
7–1301. Administration of airport—Definitions.
7–1302. Powers and duties of administrator—Rules and regulations.
7–1303. Lease of space or property.
7–1304. Authority to make arrests—Carrying of firearms—Park Police patrol.
7–1305. Penalty for violations.
7–1306. Deposit of collateral by person charged with violation.
7–1307. Agreements for municipal services—Charges—Appropriations authorized.

§ 7–1301. Administration of airport—Definitions.

That for the purposes of this chapter—

(a) "Administrator" means the Administrator of the Civil Aeronautics Authority.

(b) "Airport" means the Washington National Airport, which shall consist of, and include, the tract of land, together with all structures, improvements, and other facilities located thereon, lying partly in the District of Columbia, and partly in the state of Virginia, particularly described as follows:

Commencing at a point of beginning, said point being the intersection of the property line of property owned by the Richmond, Fredericksburg and Potomac Railroad Company, and dredging base line at station 0+18.99 referenced south 6,808.21, west 9,078.02, running in a southeasterly direction on a bearing of south 22°51′18″ east a distance of 6,270.91 feet, more or less, to station 62+89.90 of said dredging base line. Thence 13°30′ right on a bearing of south 9°21′18″ east a distance of 1,332.29 feet, more or less, to station 76+22.19 of said base line. Thence 11°04′19″ right on a bearing of south 1°43′01″ west a distance of 1,231.20 feet, more or less, to station 88+53.39 of said base line. Thence 12°40′41″ right on a bearing of south 14°23′42″ west a distance of 2,409.32 feet, more or less, to station 112+62.71 on said base line. Thence 1°15′44.3″ right on a bearing of south 15°39′26.3″ west a distance of 4,938.38 feet, more or less, to United States Coast and Geodetic Survey Station WATER, referenced south 22,220.86, west 8,395.54. Thence 17°09′25.6″ left on a bearing of south 1°29′59.3″ east a distance of 85.58 feet, more or less, to a corner of the property line between the United States of America and Smoot Sand and Gravel Corporation. Thence 85°59′59.3″ right on a bearing of south 84°30′00″ west a distance of 1,516.41 feet, more or less, to a monument located at a corner on the property line of the Richmond, Fredericksburg and Potomac Railroad Company, said monument being referenced south 22,451.75, west 9,902.73. Thence 85°50′06.7″ right on a bearing of north 8°09′54″ west a distance of 442.68 feet, more or less. Thence 5°00′12″ left on a bearing of north 13°10′06″ west a distance of 578.64 feet, more or less. Thence 4°57′25″ left on a bearing of north 18°07′31″ west a distance of 462.94 feet, more or less. Thence 1°34′50″ left on a bearing of north 19°42′21″ west a distance of 943.56 feet, more or less, to the point of a curve having an angle of 27°52′45″ right radius 1,241.15 feet, long chord 597.98 feet, on a bearing of north 5°45′58″ west. Thence along the arc of said curve a distance of 603.92 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 8°10′24″ east a distance of 232.33 feet, more or less, to the point of a curve having an angle of 36°59′09″ left, radius 1,046 feet, long chord 663.56 feet on a bearing of north 10°19′10.5″ west. Thence along the arc of said curve a distance of 675.22 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 28°48′45″ west a distance of 256.75 feet, more or less. Thence 30°33′10″ left on a bearing of north 59°21′55″ west a distance of 287.84 feet, more or less. Thence 40°45′20″ right on a bearing of north 18°36′35″ west a distance of 1,142.08 feet, more or less. Thence 5°43′29″ right on a bearing of north 12°53′06″ west a distance of 118.02 feet, more or less, to the point of a curve having an angle of 26°20′50″ right, radius 3,665.71 feet, long chord 1,670.85 feet on a bearing of north 0°17′19″ east. Thence along the arc of said curve a distance of 1,685.66 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 13°27′44″ east a distance of 2,002.11 feet, more or less, to the point of a curve having an angle of 10°36′25″ left, radius 2,864.79 feet, long chord of 529.59 feet on a bearing of north 8°09′31.5″ east. Thence along the arc of said curve a distance of 530.25 feet, more or less, to the point of tangency of said curve. Thence along a tangent

to said curve on a bearing of north 2°51′19″ east a distance of 124.53 feet, more or less. Thence 6°57′52″ left on a bearing of north 4°06′33″ west a distance of 571.33 feet, more or less. Thence 7°22′39″ left on a bearing of north 11°29′12″ west a distance of 811.63 feet, more or less. Thence 8°16′52″ right on a bearing of north 3°12′20″ east a distance of 70.41 feet, more or less, to the point of a curve having an angle of 7°43′12″ right, radius 5,479.58 feet, long chord 737.75 feet on a bearing of north 7°03′56″ east. Thence along the arc of said curve a distance of 738.31 feet, more or less, to the point of tangency of said curve, said point being on the old property line between Mary E. Cullinane and Milton Hopfenmaier property. Thence along said property line on a bearing of north 75°11′50″ east a distance of 204.72 feet, more or less, to a monument marked U. S. D. 1–N. P. S., reference south 18,419.16, west 10,829.26. Thence along the same bearing of north 75°11′50″ east a distance of 215 feet, more or less. Thence 34°36′06″ left on a bearing of north 40°35′44″ east a distance of 1,509 feet, more or less, to the point of a curve having an angle of 5°45′ left, radius 7,239.41 feet, long chord of 723.20 feet, on a bearing of north 37°53′14″ east. Thence along the arc of said curve a distance of 726.51 feet, more or less, to the point of a compound curve having an angle of 6°00′ left, radius 2,217.01 feet, long chord of 232.06 feet on a bearing of north 32°10′44″ east. Thence along the arc of said curve a distance of 232.15 feet, more or less, to the point of a compound curve having an angle of 57°01′20″ left, radius 1,303.74, long chord 1,244.62, on a bearing of north 0°40′04″ east. Thence along the arc of said curve a distance of 1,297.22 feet, more or less, to the point of a compound curve having an angle of 7°59′54.3″ left, radius 2,217.01 feet, long chord 309.23 feet on a bearing of north 31°49′33″ west. Thence along the arc of said curve a distance of 310 feet, more or less, to the intersection of said curve with the property line of the Richmond, Fredericksburg and Potomac Railroad Company and the United States of America. Thence in a northeasterly direction along a bearing of north 34°30′00″ east a distance of 340 feet, more or less, to the point of beginning;

excepting, however, such portion thereof as the President may, by executive order or orders, prescribe, which portion shall be added to, and administered as part of, the Mount Vernon Memorial Highway, authorized by the Act approved May 23, 1928 (45 Stat. 721), as amended. (June 29, 1940, 54 Stat. 686, ch. 444, § 1.)

§ 7–1302. Powers and duties of Administrator—Rules and regulations.

The Administrator shall have control over, and responsibility for, the care, operation, maintenance, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof. (June 29, 1940, 54 Stat. 687, ch. 444, § 2.)

§ 7–1303. Lease of space or property.

The Administrator is empowered to lease, upon such terms as he may deem proper, space or property within or upon the airport for purposes essential or appropriate to the operation of the airport. (June 29, 1940, 54 Stat. 687, ch. 444, § 3.)

CROSS REFERENCE

Other provisions for lease of public buildings and property, § 9–202 and notes.

§ 7–1304. Authority to make arrests—Carrying of firearms—Park Police patrol.

(a) The Administrator, and any Civil Aeronautics Administration employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this Act; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Director of the National Park Service, in his discretion, subject to the supervision and direction of the Secretary of the Interior, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses, and in the same manner and circumstances, as is provided in this section with respect to employees designated by the Administrator. (June 29, 1940, ch. 444, § 4, as added May 15, 1947, 61 Stat. 94, ch. 62.)

§ 7–1305. Penalty for violations.

Any person who knowingly and willfully violates any rule or regulation prescribed under this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500 or imprisoned not more than six months, or both. (June 29, 1940, ch. 444, § 5, as added May 15, 1947, 61 Stat. 94, ch. 62.)

§ 7–1306. Deposit of collateral by person charged with violation.

The officer on duty in command of those employees designated by the Administrator as provided in section 4 may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this Act, for appearance in court or before the appropriate United States commissioner; and such collateral shall be deposited with the United States commissioner at Alexandria, Virginia. (June 29, 1940, ch. 444, § 6, as added May 15, 1947, 61 Stat. 94, ch. 62.)

§ 7–1307. Agreements for municipal services—Charges—Appropriations authorized.

The Administrator may enter into agreements with the State of Virginia, or with any political subdivision thereof, for such municipal services as the Administrator shall deem necessary to the proper and efficient government of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however,* That where the charge for any such service is established by the laws of the State of Virginia, the Administrator may not pay for such service an amount in excess of the charge so established. There is hereby authorized to be appropriated such sums as may be necessary for the making of payment for services under any such agreement. (June 29, 1940, ch. 444, § 6, as added May 15, 1947, 61 Stat. 95, ch. 62.)

Chapter 14.—PUBLIC AIRPORT

Sec.
7–1401. Construction and operation of airport authorized.
7–1402. Selection of site.
7–1403. Acquisition and construction of facilities.
7–1404. Maintenance and operation.
7–1405. Lease of space or property.
7–1406. Contracts for supplies and services.
7–1407. Transfers of property by federal agencies.
7–1408. Authority to make arrests—Park Police patrol.
7–1409. Agreements for municipal services.
7–1410. Penalty for violations.
7–1411. Definitions.
7–1412. Appropriations authorized.

§ 7–1401. Construction and operation of airport authorized.

The Secretary of Commerce (hereinafter referred to as the "Secretary") is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor). (Sept. 7, 1950, 64 Stat. 770, ch. 905, § 1.)

§ 7–1402. Selection of site.

For the purpose of carrying out this chapter, the Secretary is authorized to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), such lands and interests in lands and appurtenances thereto, including avigation easements or air-space rights, as may be necessary or desirable for the construction, maintenance, improvement, operation, and protection of the airport: *Provided,* That before making commitments for the acquisition of land, or the transfer of any lands, the Secretary shall consult and advise with the National Capital Park and Planning Commission as to the conformity of the proposed location with the Commission's comprehensive plan for the National Capital and its environs, and said Commission shall, upon request, submit a report and recommendations thereon within thirty days: *Provided further,* That the choice of site by the Secretary shall be made only after consultation with the governing body in the county in which the airport is to be located, with respect to the suitability of the site to be selected, and its possible impact on the vicinity. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 2)

§ 7–1403. Acquisition and construction of facilities.

For the purposes of this chapter, the Secretary is empowered to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), rights-of-way or easements for roads, trails, pipe lines, power lines, railroad spurs, and other similar facilities necessary or desirable for the construction or proper operation of the airport.

The Secretary is authorized to construct any streets, highways, or roadways (including bridges) as may be necessary to provide access to the airport from existing streets, highways, or roadways. Upon completion of construction of any street, highway, or roadway within the District of Columbia, such street, highway, or roadway shall be transferred to the District of Columbia without charge, and thereafter shall be maintained by the District of Columbia. Upon construction of any street, highway, or roadway within a State or political subdivision thereof, such street, highway, or roadway may be transferred to such State or political subdivision thereof, without charge, on the condition that such street, highway, or roadway thereafter be maintained as a public street, highway, or roadway by such State or political subdivision thereof. Sept. 7, 1950, 64 Stat. 771, ch. 905, § 3.)

§ 7–1404. Maintenance and operation.

The Secretary shall have control over and responsibility for the care, operation, maintenance, improvements, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof: *Provided,* That the authority herein contained may be delegated by the Secretary to such official or officials of the Department of Commerce as the Secretary may designate. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 4.)

§ 7–1405. Lease of space or property.

The Secretary is empowered to lease under such conditions as he may deem proper and for such periods as may be desirable space or property within or upon the airport for purposes essential or appropriate to the operation of the airport: *Provided,* That no lease for the use of any hangar or space therein shall extend for a period exceeding three years. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 5.)

§ 7–1406. Contracts for supplies and services.

The Secretary is authorized to contract with any person for the furnishing of supplies or performance of services at or upon the airport necessary or desirable for the proper operation of the airport, including but not limited to, contracts for furnishing food and lodging, sale of aviation fuels, furnishing of aircraft repairs and other aeronautical services, and such other services and supplies as may be necessary or desirable for the traveling public. No such

contract, not including contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than five years, except the restaurant. The provisions of section 3709 of the Revised Statutes shall not apply to contracts authorized under this section, to leases authorized under section 7–1405 hereof, or to contracts for architectural or engineering services necessary for the design and planning of the airport. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 6.)

§ 7–1407. Transfers of property by federal agencies.

Any executive department, independent establishment, or agency of the Federal Government or the District of Columbia, for the purposes of carrying out this chapter, is authorized to transfer to the Secretary, without compensation, upon his request, any lands, interests in lands (including avigation easements or air-space rights), buildings, property, or equipment under its control and in excess of its own requirements, which the Secretary may consider necessary or desirable for the construction, care, operation, maintenance, improvement, or protection of the airport. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 7.)

§ 7–1408. Authority to make arrests—Park Police patrol.

(a) The Secretary, and any Department of Commerce employee appointed to protect life and property on the airport, when designated by the Secretary, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Secretary may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Secretary, be assigned by the Secretary of the Interior, in his discretion, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses, and in the same manner and circumstances, as is provided in this section with respect to employees designated by the Secretary.

(d) The officer on duty in command of those employees designated by the Secretary as provided in subsection (a) of this section may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Commissioner; and such collateral shall be deposited with such United States Commissioner. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 8.)

§ 7–1409. Agreements for municipal services.

The Secretary may enter into agreements with the State, or any political subdivision thereof, in which the airport or any portion thereof is situated, for such State or municipal services as the Secretary shall deem necessary to the proper and efficient operation and protection of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however,* That where the charge for any such service is established by the laws of the State, the Secretary may not pay for such service in excess of the charge so established. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 9.)

§ 7–1410. Penalty for violations.

Any person who knowingly and willfully violates any rule, regulation, or order issued by the Secretary under this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 or to imprisonment not exceeding six months, or to both such fine and imprisonment. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 10.)

§ 7–1411. Definitions.

Unless the context otherwise requires, the definitions of the words and phrases used in this chapter shall be the definitions assigned to such words and phrases by the Civil Aeronautics Act of 1938, as amended. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 11.)

§ 7–1412. Appropriations authorized.

There is hereby authorized to be appropriated the sum of $14,000,000 for the purpose of carrying out the provisions of this chapter, said appropriation to remain available until expended. There are hereby authorized to be appropriated from year to year such sums as may be necessary for the proper development, improvement, maintenance, protection, control, and operation of said airport or as may be otherwise necessary to carry out the purpose of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 212.)

TITLE 8.—PARKS AND PLAYGROUNDS

Chap. Sec.
1. Parks and Playgrounds 8–101
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Chapter 1.—PARKS AND PLAYGROUNDS

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§ 8–101 [20: 1531]. Park and playground system—National Capital Park and Planning Commission.

(a) *Establishment of commission; composition; term; service without compensation; expenses; executive and disbursing officer.*—To develop a comprehensive, consistent, and coordinated plan for the National Capital and its environs in the States of Maryland and Virginia, to preserve the flow of water in Rock Creek, to prevent pollution of Rock Creek and the Potomac and Anacostia Rivers, to preserve

forests and natural scenery in and about Washington, and to provide for the comprehensive, systematic, and continuous development of park, parkway, and playground systems of the National Capital and its environs there is constituted a commission to be known as the National Capital Park and Planning Commission, composed of the Chief of Engineers of the Army, the Engineer Commissioner of the District of Columbia; the Director of the National Park Service, the Chief of the Forest Service, the chairmen of the Committees on the District of Columbia of the Senate and House of Representatives, and four eminent citizens well qualified and experienced in city planning, one of whom shall be a bona fide resident of the District of Columbia, to be appointed for the term of six years by the President of the United States: *Provided,* That the first members appointed under this section shall continue in office for terms of three, four, five, and six years, respectively, from April 30, 1926, the terms of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. All members of the said commission shall serve without compensation therefor, but each shall be paid actual expenses of travel when attending meetings of said commission or engaged in investigations pertaining to its activities, and an allowance of $8 per day in lieu of subsistence during such travel and services. At the close of each Congress the presiding officer of the Senate and the Speaker of the House of Representatives shall appoint, respectively, a Senator and a Representative elect to the succeeding Congress to serve as members of this commission until the chairmen of the committees of the succeeding Congress shall be chosen. The Director of the National Park Service shall be executive and disbursing officer of said commission.

(b) *Duties; employment of personal services and experts; cooperation with other departments.*—The said commission is hereby charged with the duty of preparing, developing, and maintaining a comprehensive, consistent, and coordinated plan for the National Capital and its environs, which plan shall include recommendations to the proper executive authorities as to traffic and transportation; plats and subdivisions; highways, parks, and parkways; school and library sites; playgrounds; drainage, sewerage, and water supply; housing, building, and zoning regulations; public and private buildings; bridges and water-fronts; commerce and industry; and other proper elements of city and regional planning. It is the purpose of this section to obtain the maximum amount of cooperation and correlation of effort between the departments, bureaus, and commissions of the Federal and District Governments. To this end plans and records, or copies thereof, shall be made available to the National Capital Park and Planning Commission, when requested. The commission may, as to the environs of the District of Columbia, act in conjunction and cooperation with such representatives of the States of Maryland and Virginia as may be designated by such States for this purpose. The said commission is hereby authorized to employ the necessary personal services, including the personal services of a director of planning and other expert city planners, such as engineers, architects, and landscape architects. Such technical experts may be employed at per diem rates not in excess of those paid for similar services elsewhere and as may be fixed by the said commission without regard to the provisions of sections 661 to 674 of Title 5 of the U. S. Code or any rule or regulation made in pursuance thereof.

(c) *Highway commission abolished; powers and duties transferred.*—The commission established by section 2 of the Act entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities" (Twenty-seventh Statutes at Large, pages 532 and 533), known as the Highway Commission, is hereby abolished, and all the functions, powers, and duties conferred and imposed upon said Highway Commission by law are hereby transferred to and conferred and imposed upon the National Capital Park and Planning Commission hereby constituted, and all records of said Highway Commission are hereby transferred to said National Capital Park and Planning Commission.

(d) *Authorities and duties of National Capital Park Commission transferred.*—All authority, powers, and duties conferred and imposed by law on the National Capital Park Commission shall after April 30, 1926, be held, exercised, and performed by the National Capital Park and Planning Commission hereby constituted. All appropriations heretofore made for expenditure by the National Capital Park Commission are hereby made available for the use of the commission hereby constituted. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726.)

Compiler's Note

This section in the act of April 30, 1926, ch. 198, provided that one member of the Commission should be the Director of Public Buildings and Public Parks of the National Capital, and that such officer should be executive and disbursing officer of the Commission. The office of Public Buildings and Public Parks of the Capital was abolished and its functions transferred to the Office of National Parks, Buildings, and Reservations of the Department of the Interior by Executive Order No. 6166, June 10, 1933. See U. S. C., title 5, § 132, note. The name of the Office of National Parks, Buildings, and Reservations was changed to the National Park Service by act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, U. S. C., title 28, § 1.

Amendments

The first section of the act of June 6, 1924, ch. 270, was amended to read substantially as above by act of April 30, 1926.

The amendment of 1928 changed the allowance for subsistence from a possible maximum of $10 to an outright allowance of $8 per day in lieu of subsistence.

Cross References

Appropriation and payment of cost of park and playground system, § 8–106 and notes.

Approval of abandonment of highways to provide land for educational or religious institutions, § 7–113.

Approval of branch tracks and sidings to be constructed by Philadelphia, Baltimore and Washington Railroad Company to develop Buzzards Point; record of plat, § 7–1216.

Approval of design and plan of certain buildings, § 5–405.

Approval of harbor regulations, § 22–1701.

Approval of location of memorial fountain to members of Metropolitan Police, § 4–901.

Approval of replat and method of condemnation under Alley Dwelling Act, § 5–104.

Approval of site for refuse incinerators, § 6–505.

Approval or alteration of permanent highway plans, §§ 7–109, 7–122.

Approval sale of lands belonging to District of Columbia or United States, §§ 9–301, 9–304.

Building regulations for building abutting or adjoining certain parks and parkways, § 5–410.

Designation of representative as member of Zoning Advisory Council, § 5–417.

Duty to report sales of public lands so that said lands can be entered for taxation, § 47–409.

General provisions concerning conduits and overhead wires in public places, § 43–1101 and notes.

Height and open spaces around Federal buildings subject to approval of National Capital Park and Planning Commission, § 5–428.

Members of Board of Zoning Adjustment, § 5–420.

Payment of salaries of playground employees from District revenues, § 47–133.

Preparation of plats defining areas within which application for building permits shall be submitted to the Commission of Fine Arts, § 5–411.

Recommendations for closing public highways, § 7–401.

CROSS REFERENCES

Recreation Board created and playgrounds transferred to its jurisdiction, see §§ 8–201 to 8–219.

Transfer of unexpended funds of Community Center and Playgrounds Department, see § 8–214.

STATUTORY REFERENCES

This section is in U. S. C., title 40, § 71.

U. S. C., title 40, § 102, provides that "no more ailanthus trees shall be purchased for or planted in the public grounds."

U. S. C., title 40, § 103, provides that "only such trees, shrubs, and plants shall be propagated at the greenhouses and nursery as are suitable for planting in the public reservations, to which purpose only the said productions of the greenhouses and nursery shall be applied."

§ 8–102 [20: 1532]. Acquisition of land by commission—Advice of Commission of Fine Arts—Approval of President.

Said commission or a majority thereof is authorized and directed to acquire such lands as in its judgment shall be necessary and desirable in the District of Columbia and adjacent areas in Maryland and Virginia, within the limits of the appropriations made for such purposes, for suitable development of the National Capital park, parkway, and playground system. Said commission is authorized to acquire such lands by purchase when they can be acquired at prices reasonable in the judgment of said commission, otherwise by condemnation proceedings, such proceedings to acquire lands within the District of Columbia to be in accordance with the provisions of section 120 of title 40 of the Code of the Laws of the United States, the Chief of Engineers of the Army being, for the purposes of sections 8–101, 8–102, 8–106, 8–107, hereby clothed with all the power vested by section 120 of title 40 of the Code of the Laws of the United States in the board thereby created. Said commission is hereby authorized to acquire such lands, located in Maryland or Virginia, either by purchase or condemnation proceedings, by such arrangements as to acquisition and payment for the lands as it shall determine upon by agreement with the proper officials of the States of Maryland and Virginia. In the selection of lands to be acquired the advice of the Commission of Fine Arts shall be requested. The designation of all lands to be acquired by condemnation, all contracts for purchase of lands, and all agreements between said commission and the officials of the States of Maryland and Virginia shall be subject to the approval of the President of the United States. (June 6, 1924, 43 Stat. 463, ch. 270, § 2.)

ARCHBOLD PARKWAY

The Chief of Engineers, United States Army, is hereby authorized and directed to accept, as an addition to the park system of the District of Columbia, the land, approximately 28.12 acres in extent, lying along Foundry Branch between the Glover Parkway and Reservoir Road, donated by Mrs. Anne Archbold to the United States for park purposes in accordance with the terms of her dedication as shown on the map of said area dated November 10, 1924, on file in the Office of Public Buildings and Grounds (National Park Service), which tract shall be known as the "Archbold Parkway"; and the Chief of Engineers, United States Army (Director of National Park Service) shall be, and is hereby, further authorized to accept dedications of additional land in the District of Columbia and adjacent thereto on request of the National Capital Park Commission and in accordance with the plans of said commission for the extension of the park system of the District of Columbia under the authority contained in Public Act Numbered 202, Sixty-eighth Congress, approved June 6, 1924. (Feb. 25, 1925, 43 Stat. 979, ch. 321.)

GEORGE WASHINGTON MEMORIAL PARKWAY AND PLAYGROUND SYSTEM

The acquisition, establishment, and development of the George Washington Memorial Parkway along the Potomac from Mount Vernon and Fort Washington to the Great Falls, and for the acquisition of lands in the District of Columbia and the States of Maryland and Virginia requisite to the comprehensive park, parkway, and playground system of the National Capital. (May 29, 1930, 46 Stat. 482, ch. 354.)

CROSS REFERENCE

Transfer of site of Industrial Home School authorized, § 32–503.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 72.

§ 8–103 [20: 1533]. Acquisition of land subject to limited rights reserved to grantor—Acquisition of limited permanent rights in land adjoining park property.

The authority of the National Capital Park and Planning Commission, established by section 8–101, is hereby enlarged as follows:

Said commission is hereby authorized to acquire, for and in behalf of the United States of America, by gift, devise, purchase, or condemnation, in accordance with the provisions of sections 8–101, 8–102, 8–106, 8–107, (1) fee title to land subject to limited rights, but not for business purposes, reserved to the grantor: *Provided,* That such reservation of rights shall not continue beyond the life or lives of the grantor or grantors of the fee: *Provided further,* That in the opinion of said commission the permanent public park purposes for which control over said land is needed are not essentially impaired by said reserved rights and that there is a substantial saving in cost by acquiring said land subject to said limited rights as compared with the cost of acquiring unencumbered title thereto; (2) permanent rights in land adjoining park property sufficient to prevent the use of said land in certain specified ways which would essentially impair the value of the park property for

its purposes: *Provided,* That in the opinion of said commission the protection and maintenance of the essential public values of said park can thus be secured more economically than by acquiring said land in fee or by other available means: *Provided further,* That all contracts for acquisition of land subject to such limited rights reserved to the grantor and for acquisition of such limited permanent rights in land shall be subject to the approval of the President of the United States. (Dec. 22, 1928, 45 Stat. 1070, ch. 48, § 1.)

CROSS REFERENCE

See compiler's note to § 8–101.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 72a.

§ 8–104 [20: 1533a]. Establishing and making clear the title of the United States to lands along Potomac River, Anacostia River, and Rock Creek.

For the purpose of establishing and making clear the title of the United States in and to any part or parcel of land or water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the banks of said waterways, and also the upland immediately adjacent thereto, including made land, flat lands and marsh lands, in which persons and corporations and others may have or pretend to have any right, title, claim, or interest adverse to the complete title of the United States as set forth in an Act entitled "An Act providing for the protection of the interest of the United States in lands and water comprising any part of the Potomac River, the Anacostia River, Eastern Branch, and Rock Creek, and adjacent lands thereto," approved April 27, 1912 (37 Stat. 93), and in order to facilitate the same, by making equitable adjustments of such claims and controversies between the United States of America and such adverse claimants, the Secretary of the Interior is authorized to make and accept, on behalf of the United States, by way of compromise when deemed to be in the public interest such conveyances, including deeds of quitclaim and restrictive and collateral covenants, of the lands in dispute as shall be also approved by the National Capital Park and Planning Commission and the Attorney-General of the United States. (June 4, 1934, 48 Stat. 836, ch. 375.)

CROSS REFERENCE

See compiler's note to § 8–101.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 72b.

NOTES TO DECISIONS

DISCRETION AS TO USE

The United States, under the cession from Maryland and by virtue of powers surrendered by the states under the Constitution, may exercise their discretion in use of portion of land below high water of Anacosta River in District of Columbia in the public right of fishing, or in the promotion of commerce and navigation. *U. S.* v. *Belt,* 1944 (142 F. 2d 761, 79 U. S. App. D. C. 87).

RIPARIAN RIGHTS

Where Maryland ceded District of Columbia territory to United States and act of ratification, Acts Md. 1791, ch. 45, provided that nothing therein contained should be construed to vest in United States any right of property or affect rights of individuals otherwise than as transferred by individuals to United States, and where commissioners of the United States appointed to lay out city of Washington made agreement with owners of lots along Anacostia River to reconvey to lot owners one-half of their original frontage and lot owners received back lots in one-half quantity surrendered bordering on river and acquired by purchase remaining lots which the commissioners offered for sale, the proprietors of lots binding the high-water line of the Anacostia River and their successors in interest were riparian proprietors with all rights and privileges pertaining to such riparian property. *U. S.* v. *Belt,* 1944 (142 F. 2d 761, 79 U. S. App. D. C. 87).

On establishment of District of Columbia, the United States succeeded to Maryland's right of regulation of riparian rights or proprietors of lots along Anacostia River so that the common-law rights of riparian owners, within the limits of the District, are subject to change and modification by act of Congress to the same extent and with the same limitations that change or modification might have been made by Maryland while the land was within its boundaries. *U. S.* v. *Belt,* 1944 (142 F. 2d 761, 79 U. S. App. D. C. 87).

§ 8–105 [20: 1534]. Lease of lands acquired for park, parkway, or playground purposes.

The Director of the National Park Service is authorized, subject to the approval of the National Capital Park and Planning Commission, to lease, for a term not exceeding five years, and to renew such lease, subject to such approval, for an additional term not exceeding five years, pending need for their immediate use in other ways by the public, and on such terms as the director shall determine, land or any existing building or structure on land acquired for park, parkway, or playground purposes. (Dec. 22, 1928, 45 Stat. 1070, ch. 48, § 2.)

CROSS REFERENCES

Leases for playgrounds unaffected, see § 8–210.

§ 8–106 [20: 1535]. Appropriation for acquisition of such lands—Control—Use.

There is authorized to be appropriated, each year, in the annual District of Columbia Appropriation Act, a sum not exceeding 1 cent for each inhabitant of the continental United States as determined by the last preceding decennial census, said sum to be used by said commission for the payment of its expenses and for the acquisition of the lands herein authorized to be acquired by said commission for the purposes named, the compensation for the land, the expense of surveys, ascertainment of title, condemnation proceedings, if any, and necessary conveyancing to be paid from said appropriations. The funds so appropriated shall be paid from the revenues of the District of Columbia and the general funds of the Treasury in the same proportion as other expenses of the District of Columbia. The land so acquired within the District of Columbia shall be a part of the park system of the District of Columbia and be under control of the Director of the National Park Service. Areas suitable for playground purposes may, in the discretion of said commission, be assigned to the control of the Commissioners of the District of Columbia for playground purposes. The land so acquired outside the District of Columbia shall be controlled as determined by agreement between said commission and the proper officers of the States of Maryland and Virginia, such

agreements to be subject to the approval of the President. (June 6, 1924, 43 Stat. 463, ch. 270, § 3; Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

COMPILER'S NOTE

Section 4 of an act approved May 29, 1930, 46 Stat. 485, provided as follows: "There is hereby further authorized to be appropriated the sum of $16,000,000, or so much thereof as may be necessary, out of any money in the Treasury of the United States not otherwise appropriated, for the acquiring of such lands in the District of Columbia as are necessary and desirable for the suitable development of the National Capital park, parkway, and playground system, in accordance with the provisions of the Act of June 6, 1924 (43 Stat. 462; §§ 8–101, 8–102, 8–106, 8–107), as amended, except as in this section otherwise provided. Such funds shall be appropriated for the fiscal year 1931 and thereafter as required for the expeditious, economical, and efficient accomplishment of the purposes of this act and shall be reimbursed to the United States from any funds in the treasury to the credit of the District of Columbia as follows, to wit: $1,000,000 on the 30th day of June, 1931; and $1,000,000 on the 30th day of June each year thereafter until the full amount expended hereunder is reimbursed without interest. The National Capital Park and Planning Commission shall, before purchasing any lands hereunder for playground, recreation center, community center, and similar municipal purposes, request from the Commissioners of the District of Columbia a report thereon. Said commission is authorized to accept the donation to the United States of any lands deemed desirable for inclusion in said park, parkway, and playground system, and the donation of any funds for the acquisition of such lands under this act."

CROSS REFERENCES

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

See compiler's note to § 8–101.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 73.

§ 8–107 [20: 1536]. Report of commission to Congress—Estimate for Bureau of the Budget.

Said commission shall report to Congress annually on the first Monday of December the lands acquired during the preceding fiscal year, the method of acquisition, and the cost of each tract. It shall also submit to the Bureau of the Budget on or before September 15 of each year its estimate of the total sum to be appropriated for expenditure under the provisions of sections 8–101, 8–102, 8–106, 8–107 during the succeeding fiscal year. (June 6, 1924, 43 Stat. 464, ch. 270, § 4.)

CROSS REFERENCE

See notes to § 8–106.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 74.

§ 8–108 [20: 1537]. Park system—Control—Inclusions—Exclusions, improvements, parking spaces—"Business streets"—Conditions requisite.

The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States.

The said park system shall be held to comprise:

(a) All public spaces laid down as reservations on the map of 1894 accompanying the annual report for 1894 of the officer in charge of public buildings and grounds;

(b) All portions of the space in the streets and avenues of the said District, after the same shall have been set aside by the Commissioners of the District of Columbia for park purposes.

Provided, That no areas less than two hundred and fifty square feet between sidewalk lines shall be included within the said park system, and no improvements shall be made in unimproved public spaces in streets between building lines or building lines prolonged until the outlines of such portions as are to be improved as parks shall have been laid out by the commissioners of the District of Columbia: *And provided further,* That the said director is authorized temporarily to turn over the care of any of the parking spaces included in Classes (a) and (b) above, to private owners of adjoining lands under such regulations as he may prescribe and with the condition that the said private owners shall pay special assessments for improvements contiguous to such parking, under the same regulations as are or may be prescribed for private lands: *And provided further,* That the Commissioners of the District of Columbia are authorized and directed to denominate portions of streets in the District of Columbia as business streets and to authorize the use, on such portions of streets, for business purposes by abutting property owners, under such general regulations as said commissioners may prescribe, of so much of the sidewalk and parking as may not be needed, in the judgment of said commissioners, by the general public, under the following conditions, namely: First, wherein a portion of a street not already denominated a business street a majority of a frontage not less than three blocks in length is occupied and used for business purposes; and second, where a portion of a street has already been denominated a business street, and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (July 1, 1898, 30 Stat. 570, ch. 543, § 2; Feb. 2, 1904, 33 Stat. 10, ch. 89; Apr. 14, 1906, 34 Stat. 112, ch. 1622.)

AMENDMENTS

The 1904 amendment changed the last proviso to read as above.

The 1906 amendment corrected a typographical error by striking out of the first proviso in the fifth paragraph the words "Class B" and substituting therefor "Classes (a) and (b)."

COMPILER'S NOTE

By act July 1, 1898, cited to text, this section applied to transfers of land from the jurisdiction of the Chief of Engineers of the United States Army, as established by said act to that of the Commissioners of the District of Columbia, or vice versa. The Office of Public Buildings and Grounds under the Chief of Engineers was abolished and the functions of the Chief of Engineers and of the Secretary of War with respect thereto were transferred to the Director of Public Buildings and Public Parks of the National Capital by act Feb. 26, 1925, ch. 339, § 3, 43 Stat. 983. The Office of Public Buildings and Public Parks of the National Capital was abolished and the functions thereof were transferred to the Office of National Parks, Buildings, and Reservations of the Department of the Interior by Ex. Ord. No. 6166, § 3, June 10, 1933, set out as note under 5 U. S. C. § 132. The name of the latter office was changed to "National Park Service" by act Mar. 2,

1934, ch. 38, § 1, 48 Stat. 389. The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by section 303 (b) of Reorg. Plan No. I, July 1, 1939, 4 F. R. 2729, 53 Stat. 1427, set out as note under 5 U. S. C. § 133t.

CROSS REFERENCES

Driving animals or vehicles over footways, penalty, § 22–1118.

General provisions concerning jurisdiction and control of streets, § 7–102 and notes.

Rules and regulations generally, § 1–226 and notes.

The last proviso of this section is duplicated in § 7–1205.

See compiler's notes to §§ 8–101, 8–106.

U. S. Park Police see § 4–201 et seq.

NOTES TO DECISIONS

POWER VESTED IN COMMISSION

Whether the space or part of a sidewalk and parking is needed by the public is a question committed to the judgment of the Commissioners and not that of the courts. *United States ex rel. Crupper* v. *Newman* (47 App. D. C. 345).

§ 8–109 [20: 1538]. Control by director of vehicles and traffic regulations.

The Director of the National Park Service is authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District of Columbia, under his control, subject to the penalties prescribed in sections 40–601 to 40–616. (June 5, 1920, 41 Stat. 898, ch. 235, § 1.)

DERIVATION

Sundry Civil Appropriation Act, fiscal year 1921, cited to text.

CHANGE OF NAME

Change of name, and transfer of functions, see note under § 8–108.

REPEAL

Repeal and saving clauses in Act March 3, 1925, ch. 443, § 16 (a), (b), 43 Stat. 1126, as affecting this section, see § 40–614.

CROSS REFERENCES

Park grounds excepted from operation of the Traffic Act of 1925, § 40–613.

See compiler's note to § 8–101.

§ 8–110 [20: 1539]. Street parking.

The jurisdiction and control of the street parking in the streets and avenues of the District of Columbia is transferred to and vested in the Commissioners of the District of Columbia. (July 1, 1898, 30 Stat. 570, ch. 543, § 1.)

CROSS REFERENCES

Parking restrictions on public or private property, see §§ 40–810 and 40–811.

Regulation of public off-street parking facilities, see Motor Vehicle Parking Facility Act of 1942, §§ 40–801 to 40–809.

NOTES TO DECISIONS

AUTHORITY OF COMMISSIONERS

In determining whether vendor suing purchaser for breach of contract for sale of lots in Square 1067 on 15th Street SE., near the Anacostia River in Washington, D. C., had ability to obtain wharfage facilities and privilege of running pipe line from wharf to lots as required by contract, Commissioners of District of Columbia, National Capital Park and Planning Commission, and United States Engineers Office had legal authority to make decisions involving eventual granting of such facilities and privilege. *Decatur Corporation* v. *Friedman* (D. C. D. C. 1941, 39 F. Supp. 692, affirmed 135 F. 2d 812, 77 U. S. App. D. C. 326).

§ 8–111 [20: 1540]. Small parks at certain street intersections.

Public parks acquired by the condemnation of small park areas at the intersections of streets outside the limits of the original city of Washington, shown on the map on file showing areas surrounded by streets, in the office of the engineer commissioner, shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (Mar. 4, 1913, 37 Stat. 971, ch. 150, § 1; July 21, 1914, 38 Stat. 550, ch. 191; Aug. 1, 1914, 38 Stat. 625, ch. 223, § 1.)

AMENDMENT

This section is a composite of the credits cited in the history line.

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–112 [20: 1540a]. Meridian Hill Park.

Meridian Hill Park is a part of the park system of the District of Columbia, under the control of the Director of the National Park Service. The sum annually appropriated and expended for the maintenance and improvement of said park shall be paid by the United States and the District of Columbia in the proportions fixed by law. (June 25, 1910, 36 Stat. 700, ch. 383, § 36.)

COMPILER'S NOTE

The act of June 29, 1922, 42 Stat. 668, ch. 249, title 20, § 670a of the 1929 code, which is set out as a note to § 47–134 of this code, formed the basis for various sections of the code which provide for the 60 percent payment by the District of certain expenses, was repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to the act of Aug. 17, 1937, 50 Stat. 673, ch. 690. This repealing act does not provide any substitute provision, and consequently the aforesaid sections are left without foundation in the statutes. The aforesaid 1922 act, p. 671, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply. The division of expenses between the District and the United States, if any, is apparently a matter of practice, not controlled by the statutes as they now stand. If there is no division it would seem that the District would pay all expenses, if any, over and above the lump-sum appropriation as apportioned to the various agencies.

CROSS REFERENCES

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

See compiler's note to § 8–106.

§ 8–113 [20: 1540b]. Montrose Park.

Montrose Park is a part of the park system of the District of Columbia, under the control of the Director of the National Park Service. The sum that shall be annually appropriated and expended for the maintenance and improvement of said park shall be paid by the United States and the District of Columbia in the proportions fixed by law. (Mar. 2, 1911, 36 Stat. 1006, ch. 192.)

CROSS REFERENCES

Apportionment, see compiler's note to § 8–112.

Portion of park transferred for highway purposes, see note to § 7–1201.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

See Compiler's Notes to §§ 8–106, 8–112.

§ 8–114 [20: 1540d]. Portion of Water Street made part of park system—Consent of owners.

The Commissioners of the District of Columbia are authorized to close upper Water Street, between Twenty-second and Twenty-third Streets, northwest, lying north of Potomac Park and south of square 62: *Provided,* That the consent in writing of the owners of three-fourths of all private property on the south side of square 62 is first had and obtained; and upon the closing of said street between the limits named the Commissioners of the District of Columbia are authorized to transfer the land contained in the bed of said street to the Director of the National Park Service, as part of the park system of the District of Columbia: *Provided further,* That the said commissioners are authorized to enter upon said closed area at all times for the purpose of maintenance and repair of all existing sewers and sewer appurtenances. (May 13, 1932, 47 Stat. 154, ch. 180, § 1.)

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–115 [20: 1540e]. Transfer of jurisdiction over property between United States and District of Columbia.

Federal and District authorities administering properties within the District of Columbia owned by the United States or by the said District are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon: *Provided,* That prior to the consummation of any transfer under this section such proposed transfer shall be recommended by the National Park Service: *Provided further,* That all such transfers and agreements shall be reported to Congress by the authorities concerned. (May 20, 1932, 47 Stat. 161, ch. 197, § 1.)

CROSS REFERENCES

Jurisdiction of land, buildings, and facilities of Recreation Board, see § 8–215.

Power of Metropolitan Police over Federal buildings and grounds, § 4–120.

§ 8–116 [20: 1540f]. Transfer of jurisdiction—Existing laws unaffected.

Nothing in sections 8–115, 8–116 shall be construed to repeal the provisions of any existing law or laws authorizing the transfer of jurisdiction of certain lands between and among federal and District authorities, but all such laws shall remain in full force and effect. (May 20, 1932, 47 Stat. 162, ch. 197, § 2.)

§ 8–117 [20: 1540g]. Whitehaven Parkway—Boundaries of at Huidekoper Place to be adjusted.

In order to readjust the boundaries of Whitehaven Parkway at Huidekoper Place and preserve the trees and other natural park values, the commissioners of the District of Columbia are authorized to close, vacate, and abandon for highway and alley purposes the area contained in parcel designated "A," as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1817, and to transfer said area so closed, vacated, and abandoned to the United States to be under the jurisdiction of the Director of the National Park Service for park purposes. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 1.)

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–118 [20: 1540h]. Whitehaven Parkway — Federal property in exchange.

The commissioners of the District of Columbia are authorized to use for street and alley purposes the area comprised within the parcels designated "B," as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1817; and the Director of the National Park Service is authorized to make the necessary transfer of said land to the District of Columbia, same to be under the jurisdiction of the said commissioners for street and alley purposes. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 2.)

CROSS REFERENCE

See compiler's note under § 8–101.

§ 8–119 [20: 1540i]. Whitehaven Parkway—Exchange authorized with property owners.

Upon the dedication by the lawful owner or owners of the land contained in the parcel designated "C" and the transfer by plat as provided herein and/or the conveyance by deed of the land contained in the parcel designated "D," in accordance with map showing said parcels filed in the office of the surveyor of the District of Columbia, numbered as map 1817, the said parcel "C" to be dedicated to the District of Columbia for street purposes and the said parcel "D" transferred by plat and/or conveyed by deed to the United States, to be under the jurisdiction of the Director of the National Park Service, then the said director, with the approval of the Secretary of the Interior, acting for and in behalf of the United States of America, is authorized and directed to transfer by plat as provided herein and/or convey by deed all the land comprised in the parcel designated "E" as shown on said map filed in the office of the surveyor of the District of Columbia and numbered as map 1817, said transfer and/or conveyance to be made to the owner or owners making the transfer and/or conveyance of said parcel designated "D" to the United States, such transfers and/or deeds of conveyance to pass title in fee simple to the said land, and any and all of such transfers when duly executed and consummated shall constitute legal conveyances of the parcels herein described to the parties in interest: *Provided, however,* That good and sufficient title, satisfactory to the Commissioners of the District of Columbia and the Director of the National Park Service, shall be given with respect to the land contained in said parcels "C" and "D," respectively: *And provided further,* That upon the transfer by plat and/or the conveyance by deed of the said parcel designated "E," as provided herein, the land contained in said parcel shall be subject to assessment and taxation the same in all respects as other private property in the District of Columbia. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 3.)

CROSS REFERENCE

See compiler's note under § 8–101.

§ 8–120 [20: 1540j]. Whitehaven Parkway—Plats to be prepared.

The surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing the parcels of land to be transferred and dedicated in accordance with the provisions of sections 8–117 to 8–120, with certificates affixed thereon to be signed by the parties in interest making the necessary transfers and dedication, which plat or plats, after being signed by the various interested parties and officials, and approved by the commissioners of the District of Columbia, upon recommendation of the National Capital Park and Planning Commission, shall be recorded upon order of said commissioners in the office of the surveyor of the District of Columbia, and said plat or plats and certificates when so recorded shall constitute a legal dedication and legal transfers of the property described for the purposes designated according to the provisions of sections 8–117 to 8–120. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 4.)

§ 8–121 [20: 1540k]. Beach Parkway — Exchange of property to extend.

In order to extend Beach Parkway northward to Western Avenue as provided for by the plans of the National Capital Park and Planning Commission for the park system of the District of Columbia and to preserve the flow of water in Rock Creek Park and to extend West Beach Drive to connect Beach Drive and Rock Creek Park with Western Avenue, the Secretary of the Interior is authorized to convey by and on behalf of the United States of America to the owners of parcel 78/5, or to such party or parties as said owner or owners shall designate, the title of the United States in and to a piece of land containing approximately fifty-five thousand square feet at and near the intersection of Western Avenue and West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, being a part of reservation 339: *Provided,* That the owners of said parcel 78/5 shall furnish the United States of America with a good and sufficient title in fee simple, free of all encumbrances, to that piece of land lying along and east of the center line of West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, and extending east to the creek immediately north of the present north line of United States reservation 432 and extending north to United States reservation 339 and containing approximately fifty-eight thousand five hundred square feet: *Provided further,* That the owners of parcel 78/5 dedicate to the District of Columbia for street purposes the west half, forty-five feet in width, of West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, along their property immediately north of the north line of reservation four hundred and thirty-two (432). (Aug. 27, 1935, 49 Stat. 881, ch. 741, § 1.)

§ 8–122 [20: 1540*l*]. Beach Parkway—Dedication and conveyances of exchanged land.

The dedication and transfers provided for in section 8–121 hereof are designated approximately upon plat file numbered 3.9–97 in the files of the National Capital Park and Planning Commission. The dedication and conveyances shall be by proper deed and other instruments containing full legal description by exact survey of the land exchanged and dedicated as provided for by law. (Aug. 27, 1935, 49 Stat. 881, ch. 741, § 2.)

§ 8–123 [20: 1540m]. Beach Parkway—Power of Secretary of Interior to sell not curtailed.

Nothing in sections 8–121 to 8–123 shall be construed as curtailing the power of the Secretary of the Interior to sell the remainder of parcel 4 as provided for in Public Law Numbered 299, Seventy-second Congress, and should the exchange and dedication as provided for in section 8–121 fail to become effective the Secretary of the Interior is still authorized to sell the entire area of parcel 4 as provided for in that act. (Aug. 27, 1935, 49 Stat. 882, ch. 741, § 3.)

CROSS REFERENCE

Sale of public property, § 9–301 et seq.

§ 8–124 [20: 1541]. Squares 612 and 613 made part of park system.

Squares 612 and 613, so called, shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (Apr. 17, 1917, 40 Stat. 10, ch. 3.)

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

§ 8–125 [20: 1542]. Fort Davis and Fort Dupont Parks part of park system.

The public parks on the sites of Fort Davis and Fort Dupont shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (June 26, 1912, 37 Stat. 179, ch. 182; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–126 [20: 1543]. Jurisdiction over reservation No. 185.

Control and jurisdiction over reservation one hundred and eighty-five is vested in the commissioners of the District of Columbia, said reservation to be used by said District as a property yard: *Provided,* That when in the judgment of the Director of the National Park Service the use of said reservation for park purposes is desirable, the commissioners of the District of Columbia, upon his request, are authorized and directed to retransfer said reservation to his jurisdiction. (May 18, 1910, 36 Stat. 383, ch. 248.)

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–127 [20: 1544]. Use of spaces or reservations for widening roadways.

When, in the judgment of the commissioners of the District of Columbia, the public necessity or con-

venience requires them to enter upon any of the spaces or reservations under the jurisdiction of the Director of the National Park Service for the purpose of widening the roadway of any street or avenue adjacent thereto or to establish sidewalks along the same, the Director of the National Park Service is authorized to grant the necessary permission upon the application of the commissioners. (July 1, 1898, 30 Stat. 570, ch. 543, § 4.)

CROSS REFERENCES

Jurisdiction and control of streets, § 7–102 and notes.
See compiler's note to § 8–101.

§ 8–128 [20: 1545]. Use of public grounds for playgrounds.

The Director of the National Park Service may authorize the temporary use of the Monument Grounds or ground south of the Executive Mansion or other reservations in the District of Columbia for playgrounds for children and adults, under regulations to be prescribed by him. (Mar. 3, 1903, 32 Stat. 1122, ch. 1007.)

CROSS REFERENCES

See compiler's note to § 8–101.

Maintenance and improvement of playgrounds, see § 8–217.

§ 8–129 [20: 1546]. Licenses for temporary structures on reservations used as playgrounds.

The Director of the National Park Service is authorized to grant licenses, revocable by him, without compensation, to erect temporary structures upon reservations used as children's playgrounds, under such regulations as he may impose. (May 27, 1908, 35 Stat. 355, ch. 200, § 1.)

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–130 [20: 1547]. Part of Washington Aqueduct for playground purposes.

The Chief of Engineers is authorized to transfer for playground purposes the possession, use, and control of all that portion of the land of the Washington Aqueduct adjacent to the Champlain Avenue pumping station and lying outside of the fence around said pumping station existing on August 31, 1918, to the control and jurisdiction of the Commissioners of the District of Columbia. Nothing herein shall be construed as affecting the superintendence and control of the Secretary of War over the Washington Aqueduct, its rights, appurtenances, and fixtures connected with the same and over appropriations and expenditures therefor as now provided by law. (Aug. 31, 1918, 40 Stat. 951, ch. 164, § 1.)

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 100.

§ 8–131 [20: 1548]. Authority to make rules and regulations for playgrounds and recreation centers.

Authority is granted the commissioners to make rules and regulations governing the conduct of the municipal playgrounds and recreation centers coming under their control. (Mar. 3, 1915, 38 Stat. 905, ch. 80.)

TRANSFER OF FUNCTIONS

Community center and playgrounds department transferred to Recreation Board, see § 8–214.

CROSS REFERENCE

Rules and regulations generally, § 1–226 and notes.

§ 8–132 [20: 1549]. Volunteer aid for playgrounds.

The supervisor of playgrounds of the District of Columbia may, in his discretion and with the consent and approval of the commissioners, accept the services of such persons as may volunteer to aid in the conduct, management, and upkeep of the said playgrounds: *Provided,* That this shall not be construed to authorize the expenditure or the payment of any money on account of any such volunteer service. (Mar. 3, 1917, 39 Stat. 1019, ch. 160.)

CROSS REFERENCES

Acceptance of volunteer services, see § 8–209.
Power of Commissioners to accept volunteer services § 1–215.

§ 8–133 [20: 1550]. Buildings on reservations, parks, or public grounds—Authority of Congress.

There shall not be erected on any reservation, park, or public grounds, of the United States within the District of Columbia, any building or structure without express authority of Congress. (Aug. 24, 1912, 37 Stat. 444, ch. 355, § 1.)

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 68.

NOTES TO DECISIONS

ENJOINING USE OF LAND

Authority having been given the Commissioners by this act to erect an engine house in a park, there is no right in an adjoining property-owner to enjoin such erection to divert the land from park purposes. *Reichelderfer* v. *Quinn* (287 U. S. 315, 77 L. Ed. 331, 53 Sup. Ct. 177, 83 A. L. R. 1429, revg. 60 App. D. C. 325, 53 Fed. (2d) 1079).

Property owners may restrain improper use of land acquired by condemnation for public grounds. *Quinn* v. *Dougherty* (58 App. D. C. 339, 30 Fed. (2d) 749).

§ 8–134 [20: 1551]. Plans for buildings and bridges in National Zoological Park.

All plans and specifications for the construction of buildings in the National Zoological Park shall be prepared under the supervision of the municipal architect of the District of Columbia, and all plans and specifications for bridges in said park shall be prepared under the supervision of the engineer of bridges of the District of Columbia. (Aug. 24, 1912, 37 Stat. 437, ch. 355, § 1.)

CROSS REFERENCES

Building regulations for buildings abutting or adjoining Zoological Park, § 5–410.
Municipal architect, § 1–306.

§ 8–135 [20: 1552]. Transfers of jurisdiction between Director and Commissioners of District—Change of official maps.

When in accordance with law or mutual legal agreement, spaces or portions of public land are transferred from the jurisdiction of the Director of the National Park Service as established by sections 5–204, 8–108, 8–110, 8–127, 8–135, 8–143 to that of the commissioners of the District of Columbia, or vice versa, the letters exchanged between them of transfer and acceptance shall be sufficient authority for the necessary change in the official maps and for record when necessary. (July 1, 1898, 30 Stat. 570, ch. 543, § 5.)

CROSS REFERENCE

See compiler's note to § 8–101.

STATUTORY REFERENCE

This section is in U. S. C., Title 40, § 79.

§ 8–136 [20: 1553]. Jurisdiction of reservation No. 32 transferred to Commissioners.

The jurisdiction and control of public reservation numbered thirty-two, bounded by Pennsylvania Avenue, Fourteenth Street, E Street, and Thirteen-and-a-half Street northwest, in the city of Washington, District of Columbia, is hereby transferred from the Chief of Engineers of the United States Army to the Commissioners of the District of Columbia, in order to provide a suitable approach to the new District building to be located fronting said reservation. (Feb. 10, 1904, 33 Stat. 12, ch. 155.)

§ 8–137 [20: 1554]. Jurisdiction of reservation No. 290 transferred to Commissioners.

The action of the commissioners in locating a pound and stable for the health department on reservation numbered two hundred and ninety, located along James Creek Canal at the intersection of South Capitol and I Streets southeast, under the authorization contained in the District Appropriation Act approved March 2, 1911, is ratified and confirmed, and the jurisdiction and control over said reservation is transferred to the commissioners of the District of Columbia; and the title to said reservation shall be in the name of the District of Columbia. (Mar. 4, 1913, 37 Stat. 962, ch. 150.)

§ 8–138 [20: 1555]. Jurisdiction of reservation No. 8 transferred to Commissioners.

The jurisdiction and control of such portion of public reservation numbered eight as may be required for the location and operation of a public convenience station and approaches thereto is hereby transferred from the Chief of Engineers of the United States Army to the commissioners of the District of Columbia, such transfer to take effect from the date of notice by said commissioners to the Chief of Engineers of the United States Army of the portion of said reservation selected, and said commissioners are further authorized to make all necessary rules and regulations for the management of said station and fix the charges to be made for the use thereof. (May 26, 1908, 35 Stat. 286, ch. 198.)

CROSS REFERENCE

Rules and regulations generally, § 1–226 and notes.

§ 8–139 [20: 1556]. Public convenience stations—Establishment—Location—Control transferred to Commissioners.

The Commissioners of the District of Columbia are authorized and empowered to construct and establish, in the city of Washington, District of Columbia, two public convenience stations, each of the same to afford accommodations for twenty males and ten females.

The said public convenience stations shall be located on public space to be selected by the said commissioners of the District of Columbia. And the jurisdiction and control of such portion of any public reservation so selected as shall be required for the location of such stations and their approaches is hereby transferred from the Chief of Engineers of the United States Army to the commissioners of the District of Columbia, such transfer to take effect from the date of notice by the said commissioners to the Chief of Engineers of the United States Army of the location of sites of such stations. (Mar. 3, 1905, 33 Stat. 984, ch. 1414, §§ 1, 2.)

§ 8–140 [20: 1557]. Public convenience stations—Authority to make rules, regulations, and charges.

Upon the construction and establishment of the public convenience stations referred to in section 3–139 the said commissioners are further authorized and empowered to make all necessary rules and regulations for the management of the same, as well as to fix the charge, if any, to be made for the use of these conveniences. (Mar. 3, 1905, 33 Stat. 984, ch. 1414, § 3.)

COMPILER'S NOTE

Section 4 of the act of March 3, 1905, 33 Stat. 984, ch. 1414, made an appropriation for the construction, establishment, and maintenance of said comfort stations.

§ 8–141 [20: 1558]. Part of reservation 13 transferred to Commissioners for use as burial ground.

All of that portion of reservation thirteen lying 600 feet east of the east curb line of Nineteenth Street east and south of the south line of B Street south is transferred to the control of the commissioners of the District of Columbia for the purpose of the burial of the indigent dead of the District, to be an addition to the burial grounds of the Washington Asylum. (Aug. 6, 1890, 26 Stat. 306, ch. 724.)

§ 8–142 [20: 1558a]. Site of former Georgetown Reservoir transferred to jurisdiction of Commissioners.

The site of the former Georgetown Reservoir (Wisconsin Avenue, between R Street and Brown Place, northwest) is transferred to the jurisdiction and control of the Commissioners of the District of Columbia. (Feb. 23, 1931, 46 Stat. 1381, ch. 282.)

CROSS REFERENCE

Rules and regulations generally, § 1–226 and notes.

§ 8–143 [20: 1559]. Authority to make regulations for care of public grounds.

The Director of the National Park Service and the said commissioners are authorized to make all needful rules and regulations for the Government and proper care of all the public grounds placed by sections 5–204, 8–108, 8–110, 8–127, 8–135, 8–143, under their respective charge and control; and to annex to such rules and regulations such reasonable penalties as will secure their enforcement. (July 1, 1898, 30 Stat. 571, ch. 543, § 6.)

CROSS REFERENCES

Control of land, buildings, and facilities of Recreation Board, see §§ 8–215 to 8–217.

NOTES TO DECISIONS

APPROVAL OF REGULATIONS

National Capital Park Regulations, promulgated by the Department of the Interior, are not required to be approved by the President. 1945, 40 Op. Atty. Gen. August 30.

EVIDENCE

Defendant's own testimony that his alleged indecent exposure in public park was purely accidental because he was urinating and did not know that anyone was observing him justified his conviction, where he knowingly exposed his person within a short distance and in full unobstructed view of a women's dormitory. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 56 A. 2d 851).

INDECENT EXPOSURE

Though an alleged indecent exposure must be intentional in sense that criminal intent is essential element of any crime charged, the intent required is general and not specific, and an indecent exposure in a public place likely to be observed by others is a criminal offense regardless of purpose with which it is made; the only thing required being that defendant be aware of existence of facts making his conduct criminal. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 56 A. 2d 851).

INSTRUCTIONS

In prosecution for making an obscene and indecent exposure in a public park, refusal to charge that to find defendant guilty it was necessary to find that the exposure was "willful" and "deliberate" was not error, since "willful" and "deliberate" have varied meanings and without some qualifying explanation requested charge would have been misleading. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 56 A. 2d 851).

In view of defendant's failure to assign error regarding general charge, appellate court was required to assume that, in prosecution for obscene and indecent exposure in a public park, an instruction was given that the exposure was required to be intentional, in view of fact that record, though not setting forth charge in full, stated that court charged fully on all other issues. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 56 A. 2d 851).

§ 8–144 [20: 1560]. Authority to make regulations—Extended to sidewalks.

The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by sections 5–204, 8–108, 8–110, 8–127, 8–135, 8–143, for the Government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and the carriageways of such streets as lie between and separate the said public grounds. (Mar. 4, 1909, 35 Stat. 994, ch. 299, § 1.)

NOTES TO DECISIONS

FINALITY

The decision of the Commissioners of District in regulating use of driveways across sidewalk will not be disturbed, if it has any reasonable basis in the facts. *Brownlow* v. *O'Donoghue Bros.* (App. D. C. 1921, 276 F. 636).

REASONABLENESS

The Commissioners of the District can make reasonable regulations for the use of driveways across sidewalks, but the right to regulate does not include the right to prohibit. *Brownlow* v. *O'Donoghue Bros.* (App. D. C. 1921, 276 F. 636).

§ 8–145 [20: 1561]. Public spaces resulting from filling of canals under jurisdiction of director.

All public spaces resulting from the filling of canals in the original City of Washington, except such portions as are included in the navy yard or in actual use as roadways and sidewalks, and except the portions assigned by law to the District of Columbia for use as a property yard and the location of a sewerage pumping station, respectively, are placed under the jurisdiction of the Director of the National Park Service and shall be laid out as reservations as a part of the park system of the District of Columbia. (Aug. 1, 1914, 38 Stat. 633, ch. 223, § 1.)

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 82.

§ 8–146 [20: 1562]. Rock Creek Park—Establishment.

The tract of land lying on both sides of Rock Creek, beginning at Klingle Ford Bridge, and running northwardly, following the course of said creek, acquired under the Act of September 27, 1890, chapter 1001, shall be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park. (Sept. 27, 1890, 26 Stat. 492, ch. 1001, § 1.)

DERIVATION

Section 1 of act Sept. 27, 1890, cited to text, entitled "An Act authorizing the establishment of a public park in the District of Columbia."

Sections 2–6 of said act, now executed, created a commission to select the land for a park and provided for the survey and acquisition thereof by purchase or condemnation, the assessment of the cost and expenses on the lands benefited, the collection of the assessments and the disposition of the proceeds thereof, and made an appropriation for the expenses.

COMPILER'S NOTE

As enacted this section following the words "the course of said creek," contained the following language: "of a width of not less at any point than six hundred feet, nor more than twelve hundred feet, including the bed of the creek, of which not less than two hundred feet shall be on either side of said creek, south of Broad Branch road and Blagden Mill road and of such greater width north of said roads as the commissioners designated in this act may select, shall be secured, as hereinafter set out and be perpetually dedicated * * *," and at the end thereof following the words Rock Creek Park was a proviso clause reading: "The whole tract so to be selected and condemned under the provisions of this act shall not exceed two thousand acres nor the total cost thereof exceed the amount of money herein appropriated."

CROSS REFERENCE

Building regulations for buildings abutting or adjoining Rock Creek Park, § 5–410.

NOTES TO DECISIONS

APPRAISAL

The Rock Creek Park Commission, limited by the act creating it to the expenditure of a certain sum of money, and having appraised the land proposed to be taken at less than that amount, but fearing that many of the owners would not accept the amounts awarded, and that the appraisement by judicial proceeding would cause entire cost to exceed amount appropriated, should nevertheless proceed with its work, and if necessary make selection and acquire such of the lands selected most to be desired as would come within the appropriation. 1891 (20 Op. Atty. Gen. 67).

The President was authorized to determine, parcel by parcel, whether the valuation of the lands embraced within the reduced area of the contemplated Rock Creek Park, as recommended by the Rock Creek Park Commission, bringing the total cost within the amount appropriated by the act on which this section is based is reasonable or unreasonable. 1892 (20 Op. Atty. Gen. 377).

Where an appropriation for acquiring title to land for a public park is limited to $1,200,000, and the law required the President to decide that the prices to be paid for various parcels of land are reasonable, and the commission

appointed by the act on which this section is based had presented for his decision a report of appraisers in condemnation that would make the cost of the park considerably exceed that amount, it would not be lawful for the President to decide that the prices as submitted are reasonable. 1892 (20 Op. Atty. Gen. 326).

Appraisers in proceedings to condemn land under act on which this section is based could rely not only upon evidence brought before them, but on their own judgment and observation, and could fix the value of the land at its market price for residence or other purposes, excluding speculative values. *Shoemaker* v. *U. S.*, 1893 (13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

The court refused to administer to the appraisers appointed under the act on which this section is based, an oath to fix the value of the lands to be taken upon the whole evidence, guided by the rules of law furnished by the court, but instead administered an oath to faithfully and impartially appraise the value to the best of their skill and judgment. Said act did not prescribe any form for the oath. This was a rightful exercise of the court's discretion, and the oath actually administered did not leave the appraisers at liberty to make their appraisement at their discretion without regard to the evidence. *Shoemaker* v. *U. S.*, 1893 (13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

ASSESSMENTS

The fact that a public park in the District of Columbia is dedicated by Congress to the use and enjoyment of the people of the United States as done by this section does not render inapplicable the rule as to assessments of benefits. *Craighill* v. *Lambert*, 1898 (18 S. Ct. 217, 168 U. S. 611, 42 L. Ed. 599).

COMMISSION, ACQUISITION OF LAND

The mere fact that the law on which this section is based required the commission, if unable to agree with the owner of the land selected within 30 days' time, to apply for an assessment of the value of such land as it had been unable to purchase at its appraised price, did not preclude the commission from later purchasing by agreement the land of certain property owners, although judicial proceedings had been commenced for the assessment of the value of the land. 1891 (20 Op. Atty. Gen. 129).

CONSTITUTIONALITY

The appropriation of a fixed sum to pay all expenses of the Park Commission, including the cost of lands taken, was merely a limitation of the amount to be expended by the Government, and was not a direction to the appraisers to keep within any given limit in valuing any particular piece of property, and hence section did not arbitrarily fix value of property taken, and was constitutional. *Shoemaker* v. *U. S.*, 1893 (13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

Section was constitutional, and did not impose a judicial function upon the President, whose duty was merely to decide whether the United States would take the land at the appraised value, and not to decide whether such value was reasonable. *Shoemaker* v. *U. S.*, 1893 (13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

Section was not an attempt by Congress to exercise the appointing power, since its effect was merely to lay upon the two engineers, being officers already appointed, new duties germane to their offices. *Shoemaker* v. *U. S.*, 1893 (13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

Act on which section is based provided for the assessment of a proportional part of the cost upon property specially benefited by the improvement, but in the condemnation proceedings held thereunder no special request as to the legal effect of this provision was made to the trial court, and there was no specific assignment of error as to it, nor was any person actually assessed for special benefits a party to the writ of error. Therefore the court was not called upon to consider the constitutionality of such provision. *Shoemaker* v. *U. S.*, 1893 (13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

PROCEEDINGS OF COMMISSION, VALIDITY OF

The validity and regularity of the proceedings culminating in recommendation of reduced area of contemplated park by Rock Creek Park Commission were judicial questions for the determination of the court and not for the Executive. 1892 (20 Op. Atty. Gen. 377).

§ 8–147. Rock Creek Parkway—Area.

The total area of lands finally to be acquired for said parkway shall not exceed the area and parcels described and delineated on map numbered 2, contained in House Document Numbered 1114 of the Sixty-fourth Congress, first session. (July 1, 1916, 39 Stat. 282, ch. 209, § 1; Mar. 4, 1921, 41 Stat. 1382, ch. 161, § 1.)

AMENDMENT

The section was repeated in the act of 1921.

CROSS REFERENCE

Area of park, §§ 8–158, 8–159, and 8–160 note.

§ 8–148 [20: 1563]. Rock Creek Park—Control and regulations.

The public park authorized and established by section 8–146 shall be a part of the park system of the District of Columbia, defined by section 8–108 and shall be under the control of the Director of the National Park Service, whose duty it shall be, as soon as practicable, to lay out and prepare roadways and bridle paths, to be used for driving and for horseback riding, respectively, and footways for pedestrians; and whose duty it shall also be to make and publish such regulations as he deems necessary and proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, animals, or curiosities within said park, and their retention in their natural condition, as nearly as possible. (Sept. 27, 1890, 26 Stat. 495, ch. 1001, § 7; July 1, 1918, 40 Stat. 650, ch. 113, § 1.)

DERIVATION

Act Sept. 27, 1890, cited to text, and Sundry Civil Appropriation Act, fiscal year 1919, also cited to text.

AMENDMENT

Before amendment of July 1, 1918, this section provided that this park should be "under the joint control of the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army."

CHANGE OF NAME

Change of name, see note under § 8–108.

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

NOTES TO DECISIONS

PRIOR BOARD

The board of control under this section, as originally enacted, had no power to authorize the water department of the District of Columbia to construct a reservoir for the use of the District within the limits of Rock Creek Park. 1897 (21 Op. Atty. Gen. 566).

§ 8–149 [20: 1564]. Rock Creek Park—Lease of buildings and grounds authorized.

The Director of the National Park Service is authorized to rent or lease, for periods not exceeding one year at any one time, the buildings and arable ground in Rock Creek Park, for such rental as shall seem proper to the director, and deposit the proceeds of such rents or leases with the collector of taxes to the credit of the United States and said District in the same proportions as appropriations for the ex-

penses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (Aug. 7, 1894, 28 Stat. 252, ch. 232; July 1, 1918, 40 Stat. 650, ch. 113, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENTS

As originally enacted this section read: "The authorities in joint control of Rock Creek Park were authorized * * *." This was changed to "The Director of the National Park Service is authorized * * *," on the authority of Ex. Ord. No. 6166, June 10, 1933, and Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.

The act of 1918 made Rock Creek Park a part of the park system.

The act of Feb. 21, 1921, changed the proportions from equal parts to those fixed by appropriations for the particular fiscal year.

CROSS REFERENCES

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

See compiler's notes to §§ 8–101, 8–106.

§ 8–150 [20: 1565]. Rock Creek Park—Acceptance of dedicated property authorized.

The Director of the National Park Service is authorized to accept dedications of land for the purpose of adding to Rock Creek Park, without expense to the United States or the District of Columbia, and such land, when accepted, shall become a part of said park and be under the jurisdiction of the said director. (Apr. 27, 1904, 33 Stat. 376, ch. 1628; July 1, 1918, 40 Stat. 650, ch. 113.)

AMENDMENT

Before enactment of the act of July 1, 1918, this section vested authority to accept donations of land in the "board of control."

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

§ 8–151 [20: 1566]. Rock Creek Park—Injury or diminution of the flow of water in Rock Creek.

In order to protect Rock Creek and its tributaries, none of the moneys appropriated on or before June 7, 1924, for the opening, widening, or extending of any street, avenue, or highway in the District of Columbia shall be expended for the opening, widening, or extension of any street, avenue, or highway which shall or may in the judgment of the District Commissioners permanently injure or diminish the existing flow of Rock Creek or any of its tributaries, nor shall permission so to do at private expense be granted to any private person or corporation except by the joint consent and approval of the Commissioners of the District of Columbia and the Director of the National Park Service. (June 7, 1924, 43 Stat. 574, ch. 302.)

CROSS REFERENCES

Jurisdiction and control of streets, § 7–102.

See compiler's notes to §§ 8–101, 8–106.

§ 8–152 [20: 1567]. Piney Branch Parkway part of park system.

The Piney Branch Parkway is made a part of the park system of the District of Columbia defined by section 8–108. (July 1, 1918, 40 Stat. 650, ch. 113, § 1.)

EXCHANGE OF LANDS AUTHORIZED

In order to better adjust the boundaries of Piney Branch Parkway and to make said parkway more usable and more readily developed, the Secretary of the Interior is authorized to convey, by and on behalf of the United States of America, to the owners of parcel 69/47, or to such party or parties as said owners shall designate, the title of the United States in and to a triangular piece of land containing approximately twenty-two thousand square feet at the northern boundary of Piney Branch Parkway near Argyle Terrace and abutting parcel 69/47: *Provided,* That the owners of said parcel 69/47 shall furnish the United States of America with a good and sufficient title in fee simple, free of all encumbrances, to a triangular piece of land containing approximately twenty-six thousand square feet, abutting the northern boundary of Piney Branch Parkway at its intersection with the eastern boundary of Rock Creek Park. The transfers provided for herein are designated approximately upon plat file numbered 3.6–114 in the files of the National Capital Park and Planning Commission. The conveyances shall be by proper deed and other instruments containing full legal description by exact survey of the land exchanged, as provided by law. (Aug. 3, 1939, 53 Stat. 1177, ch. 412.)

§ 8–153 [20: 1568]. Potomac Park—Establishment.

The entire reclaimed area formerly known as the Potomac Flats, together with the tidal reservoirs, are made and declared a public park, under the name of the Potomac Park, and to be forever held and used as a park for the recreation and pleasure of the people. (Mar. 3, 1897, 29 Stat. 624, ch. 375.)

CROSS REFERENCE

Building regulations for building abutting or adjoining Potomac Park and Parkway, § 5–410.

§ 8–154 [20: 1569]. Potomac Park—Control.

The Potomac Park is made a part of the park system of the District of Columbia under the exclusive charge and control of the Director of the National Park Service and subject to the provisions of section 8–143. (Aug. 1, 1914, 38 Stat. 634, ch. 223, § 1.)

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

§ 8–155 [20: 1570]. Potomac Park—Restriction on construction of lagoon or speedway.

No part of any money appropriated in this or any other act shall be expended for or toward the construction of any lagoon, or other artificial body of water, or speedway, on any portion of said park unless specifically authorized by Congress. (Aug. 1, 1914, 38 Stat. 634, ch. 223, § 1.)

§ 8–156 [20: 1571]. Potomac Park—Temporary occupancy by Department of Agriculture.

The Director of the National Park Service is authorized to grant permission to the Department of Agriculture for the temporary occupation of such area or areas of Potomac Park, not exceeding a total of seventy-five acres in extent, as may not be needed in any one season for the reclamation or park improvement, the said areas to be used by the Department of Agriculture as testing grounds: *Provided,* That nothing herein contained shall be construed to change the essential character of the lands so used, which lands shall continue to be a public park, as provided in section 8–153: *And provided further,*

That said area or areas shall be vacated by the Department of Agriculture at the close of any season upon the request of the said director: *And provided further,* That the entire park shall remain under the charge of the said director. (Mar. 3, 1899, 30 Stat. 1378, ch. 458, § 2.)

AMENDMENT

The original act of March 3, 1899 vested in the Secretary of War authority to grant permission to the Department of Agriculture to use these lands, and provided that the lands should remain under his charge.

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

STATUTORY REFERENCE

This section is in U. S. C., Title 40, § 89.

§ 8–157 [20: 1572]. Potomac Park—Licenses for boathouses on banks of tidal reservoir.

Licenses may be granted for the erection of boathouses along the banks of the tidal reservoir on the Potomac River fronting Potomac Park, under regulations to be prescribed by the Director of the National Park Service, and all such licenses granted under this authority shall be revocable, without compensation, by the Secretary of War. (May 27, 1908, 35 Stat. 355, ch. 200, § 1.)

CROSS REFERENCE

See compiler's notes to §§ 8–101, 8–106.

§ 8–158 [20: 1573]. Parkway connecting Potomac Park with Zoological and Rock Creek Parks—Reimbursement of part of cost to United States.

For the purpose of preventing the pollution and obstruction of Rock Creek and of connecting Potomac Park with the Zoological Park and Rock Creek Park, a commission, to be composed of the Secretary of the Treasury, the Secretary of War, and the Secretary of Agriculture, is authorized and directed to acquire, by purchase, condemnation or otherwise, such land and premises as were not, on March 4, 1913, the property of the United States in the District of Columbia shown on the map on file in the office of the Engineer Commissioner of the District of Columbia, dated May 17, 1911, and lying on both sides of Rock Creek, including such portion of the creek bed as may be in private ownership, between the Zoological Park and Potomac Park; and the sum of $1,300,000 is hereby authorized to be expended toward the acquirement of such lands. All lands belonging, on March 4, 1913, to the United States or to the District of Columbia lying within the exterior boundaries of the land to be acquired by this section as shown and designated on said map are appropriated to and made a part of the parkway herein authorized to be acquired. One-half of the cost of the said lands shall be reimbursed to the Treasury of the United States out of the revenues of the District of Columbia in eight equal annual installments, with interest at the rate of 3 per centum per annum, upon the deferred payments. (Mar. 4, 1913, 37 Stat. 885, ch. 147, § 22.)

DERIVATION

Public Building Appropriation Act, Mar. 4, 1913, cited to text. Said act contained further temporary provisions relating to condemnation proceedings.

LANDS WITHIN PARKWAY

Act Sept. 1, 1916, ch. 433, 39 Stat. 689, provided certain described lands were reincluded as a part of the connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park.

Act July 1, 1916, ch. 209, § 1, 39 Stat. 282, directed that the lands when acquired for the parkway in question be part of the park system of the District of Columbia, subject to the provisions of § 8–108.

STREET ALTERATIONS

Act June 29, 1922, ch. 249, § 1, 42 Stat. 703, and Act June 7, 1924, ch. 302, § 1, 43 Stat. 574, prohibited the granting of permission to open, widen, or extend, at private expense, any street, avenue, or highway in the District of Columbia which would or might in the judgment of the District Commissioners permanently injure or diminish the existing flow of Rock Creek or any of its tributaries, except by the joint consent and approval of the commissioners of the District of Columbia and the officer in charge of Public Buildings and Grounds (now the Director of the National Park Service).

ROCK CREEK AND POTOMAC PARKWAY COMMISSION

To enable the commission created by section 22 of the Public Buildings Act approved March 4, 1913 (37 Stat. L. 885), to continue proceedings toward the acquisition of lands required for a connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park, $100,000, together with the unexpended balance of the appropriation for this purpose for the fiscal year 1917, to be available until expended and to be payable one-half out of the Treasury of the United States and one-half out of the revenues of the District of Columbia. The total area of lands finally to be acquired for said parkway shall not exceed the area and parcels described and delineated in the map numbered 2, contained in House Document Numbered 1114 of the Sixty-fourth Congress, first session. (June 12, 1917, 40 Stat. 126, ch. 27.)

CROSS REFERENCES

Building regulation for buildings abutting or adjoining certain parks and parkways, § 5–410.

Transfer of National Zoological Park to control of regents of Smithsonian Institution, see 20 U. S. C. § 81.

NOTES TO DECISIONS

LANDS OUTSIDE BOUNDARIES

Described tract of land acquired by the United States for the Naval Observatory, was not within exterior boundaries of the parkway provided for in this section hence within jurisdiction of the Navy Department. 1924 (34 Op. Atty. Gen. 126).

§ 8–159 [20: 1574]. Boundaries of parkway authorized by section 1573 changed.

The authority of the commission created by section 8–158 is extended to include the acquisition of such additional lands and premises lying adjacent to or in the immediate vicinity of the taking lines as shown on the map on file in the office of the executive and disbursing officer and known as the map of the Rock Creek and Potomac Parkway (in four sheets) dated May, 1923, as may in its discretion, subject to the approval of the Commission of Fine Arts, be necessary for the best development of the connecting parkway between Rock Creek Park, the Zoological Park, and Potomac Park: *Provided,* That the total sum expended for lands needed for this parkway shall not exceed that authorized by section 8–158, and amended by the Second Deficiency Act of May 5, 1926: *Provided further,* That the commission may exclude such lands and premises, not owned by the United States on March 2, 1929, but within the taking lines heretofore authorized for the said parkway, as may in its discretion, and upon the advice of

the Commission of Fine Arts, be found not to be desirable or necessary for the connecting parkway. (Mar. 2, 1929, 45 Stat. 1523, ch. 542.)

§ 8–160 [20: 1575]. Connecting parkway to be part of park system.

When the lands authorized to be purchased pursuant to sections 8–147, 8–158, for a connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park, shall have been acquired, said lands shall be a part of the park system of the District of Columbia subject to the provisions of section 8–108. (July 1, 1916, 39 Stat. 282, ch. 209.)

PARKS—ACQUISITION OF LAND AUTHORIZED

To enable the commission created by section 22 of the Public Buildings Act approved March 4, 1913 (37 Stat. L. 885), to continue proceeding toward the acquisition of lands required for a connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park, $75,000: *Provided,* That the following areas and parcels described and delineated on map numbered 2, contained in House Document Numbered 1114, Sixty-fourth Congress, first session, as a part of total area to be acquired for said parkway shall be excluded from the total area finally to be acquired, to wit: Three hundred and fifteen square feet of lot 801 in square 2,541, three hundred and forty-nine square feet of lot 836, one thousand three hundred and three square feet of lot 74 in square 2,543, five hundred and forty-nine square feet of lot 58, two thousand one hundred and six square feet of lot 800 in square 1,262, three thousand six hundred square feet of lot 20 in square 23, one hundred and ninety-nine square feet of lot 80 in square 1,238, and fifty square feet of lot 3 in square numbered 1: *Provided further,* That the following-described lots and parcels that are without the taking line shall be included in the area finally to be acquired, namely, four thousand four hundred and eighty-three square feet of lot numbered 1, two thousand nine hundred and nineteen square feet of lot 2, three thousand two hundred and fifty-nine square feet of lot 3 in square 2,510, six thousand eight hundred and seventy-nine square feet of lot 1 in square 47, and about nine hundred and two square feet of lot 803 in square 2,543: *Provided further,* That in order to protect Rock Creek and its tributaries, none of the moneys herein or heretofore appropriated for the opening, widening, or extending of any street, avenue, or highway in the District of Columbia shall be expended for the opening, widening, or extension of any street, avenue, or highway which shall or may in the judgment of the District commissioners permanently injure or diminish the existing flow of Rock Creek or any of its tributaries, nor shall permission so to do at private expense be granted to any private person or corporation except by the joint consent and approval of the commissioners of the District of Columbia and the officer in charge of public buildings and grounds. (Feb. 28, 1923, 42 Stat. 1366, ch. 148.)

§ 8–161 [20: 1576]. Anacostia Park.

The entire area of the Anacostia River and Flats reclaimed and to be reclaimed from the mouth of the river to the District line is made and declared a part of the park system of the District of Columbia and designated Anacostia Park. (Aug. 31, 1918, 40 Stat. 950, 951, ch. 164, § 1.)

TREE NURSERY

The transfer to the jurisdiction of the Commissioners of the District of Columbia of a certain portion of the Anacostia Park for use as a tree nursery. (May 7, 1926, 44 Stat. 405, ch. 251.)

§ 8–162 [20: 1577]. Glover Parkway and Children's Playground.

The Commissioners of the District of Columbia are authorized and directed to accept the land lying along Foundry Branch between Massachusetts Avenue and Reservoir Street, dedicated by Charles C. Glover for park purposes, and containing approximately seventy-seven and one-half acres, as more accurately shown on map number 1003, filed in the office of the surveyor of the District of Columbia, which tract of land shall be known as "The Glover Parkway and Children's Playground"; and the said commissioners are further authorized to accept any dedications of additional land contiguous to this tract for park purposes. (June 6, 1924, 43 Stat. 464, ch. 271, § 1.)

§ 8–163 [20: 1578]. Glover Parkway and Children's Playground—Part of park system of District.

The Glover Parkway and Children's Playground and additions thereto, when acquired, shall become a part of the park system of the District of Columbia. (June 6, 1924, 43 Stat. 464, ch. 271, § 2.)

§ 8–164 [20: 1578a]. Theodore Roosevelt Island—Acceptance authorized—Maintenance and development.

The Director of the National Park Service is authorized to accept and receive as a gift from the Roosevelt Memorial Association (Incorporated), for and in behalf of the United States, the island in the Potomac River heretofore variously known as Barbadoes, Analostan, and Masons Island, together with accretions thereto; and upon acceptance of this gift of land, the said island shall after May 21, 1932, be known as Theodore Roosevelt Island and shall be maintained and administered by the Director of the National Park Service as a natural park for the recreation and enjoyment of the public: *Provided,* That no general plan for the development of the island be adopted without the approval of the Roosevelt Memorial Association; and so long as this association remains in existence, no development, inconsistent with this plan, shall be executed without the association's consent. (May 21, 1932, 47 Stat. 163, ch. 200, § 1; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1.)

AMENDMENT

The amendment of Feb. 11, 1933, changed the name of this island from "Roosevelt Island" to "Theodore Roosevelt Island."

CROSS REFERENCE

See compiler's note to § 8–101.

§ 8–165 [20: 1578b]. Theodore Roosevelt Island—Means of access to be provided—Appropriation authorized.

The Director of the National Park Service is authorized to provide suitable means of access to and upon the said Theodore Roosevelt Island as appropriations are made available from time to time and subject to the approval of the National Capital Park and Planning Commission; and the appropriations needed for such construction and annually for the care, maintenance, and improvement of the said lands and improvements, are hereby authorized to be made from any funds not otherwise appropriated from the Treasury of the United States. (May 21, 1932, 47 Stat. 164, ch. 200, § 2; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1.)

CROSS REFERENCES

See compiler's note to § 8–101.
See amendment note to § 8–164.

§ 8–166 [20: 1578c]. Theodore Roosevelt Island—Structures authorized.

The Director of the National Park Service is further authorized and directed to permit the Roosevelt Memorial Association (Incorporated) to erect on said Theodore Roosevelt Island such monument or memorial and related structures as may be recommended by it and approved by the National Commission of Fine Arts and the National Capital Park and Planning Commission. (May 21, 1932, 47 Stat. 164, ch. 200, § 3; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1.)

CROSS REFERENCES

See compiler's note to § 8–101.
See amendment note to § 8–164.

§ 8–167 [20: 1578d]. Theodore Roosevelt Island—Designation.

In all public documents, records, and maps of the United States in which such island is designated or referred to it shall be designated as "Theodore Roosevelt Island." (Feb. 11, 1933, 47 Stat. 799, ch. 48, § 2.)

§ 8–168 [20: 1581]. Public bathing beach authorized.

The Commissioners of the District of Columbia are hereby authorized and permitted to construct a beach and dressing houses upon the east shore of the tidal reservoir against the Washington Monument Grounds, and to maintain the same for the purpose of free public bathing, under such regulations as they shall deem to be for the public welfare; and the Secretary of War is requested to permit such use of the public domain as may be required to accomplish the objects above set forth. (Sept. 26, 1890, 26 Stat. 490, ch. 949.)

§ 8–169 [20: 1582]. Bathing pools and beaches—Construction authorized.

The Director of the National Park Service is authorized and directed to locate and construct in the District of Columbia, subject to the approval of the National Capital Park and Planning Commission, and after consultation with the Commission of Fine Arts, as appropriations shall be provided therefor, artificial bathing pools or beaches, not exceeding 6 in number, with suitable buildings, shower baths, lockers, provisions for the use of filtered water, purification of the water, and all things necessary for the proper conduct of such pools or beaches, and to conduct and maintain the same. The cost of construction of any of these pools or beaches, with buildings and equipment, shall not exceed $150,000 each, and the appropriation of the sums necessary for the purposes named is hereby authorized to be paid in like manner as other appropriations for the expenses of the government of the District of Columbia. (May 4, 1926, 44 Stat. 394, ch. 234; Feb. 28, 1929, 45 Stat. 1412, ch. 384, § 1.)

AMENDMENT

The amendment of Feb. 28, 1929, changed the number of pools to be constructed from 2 to 6, and the cost of construction from a maximum of $345,000 for 2 to a maximum of $150,000 for each pool, with buildings and equipment. The original section provided that one pool should be for the white race and one for the colored race, and the amending act contained no such specification.

BATHING AND SWIMMING POOL

A plot of ground comprising not to exceed forty-two thousand square feet in the southwest corner of square numbered 3,530, being a portion of the site of the McKinley High School and the Langley Junior High School, is hereby made available for one of the bathing pools authorized by the act approved May 4, 1926. (May 16, 1928, 45 Stat. 583, ch. 580.)

CROSS REFERENCES

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.
See compiler's note to § 8–101.

§ 8–170 [20: 1583]. Bathing pools and beaches—Operation—Fees.

The Director of the National Park Service may, in the interest of economy and good administration, with the consent of the commissioners of the District of Columbia, transfer for such period as he shall determine, to said commissioners the possession, control, and maintenance of any of said bathing pools or beaches. Otherwise they shall be operated and maintained by the said Director of the National Park Service and in either case the official conducting any bathing pool or beach is hereby authorized to charge and collect a reasonable fee for the use and enjoyment of such pool or beach, such fees to be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury to the credit of the District of Columbia. (May 4, 1926, ch. 234, as added Feb. 28, 1929, 45 Stat. 1412, ch. 384, § 2.)

CROSS REFERENCES

Comprehensive recreation program, see § 8–209.
Recreation Board's trust fund, see § 8–211.
Trust fund for recreational fees, see § 8–211.
Disposition of fees, § 47–126.
See compiler's note to § 8–101 and note to § 8–171.

§ 8–171 [20: 1583a]. Bathing pools and beaches—Operation—Funds.

The Director of the National Park Service in his discretion, is authorized to operate, through the Welfare and Recreational Association of Public Buildings and Grounds, bathing pools under his jurisdiction, and thereupon there may be deposited in the treasury under the special fund to the credit of said association moneys received for the operation of such pools and be there available for the purposes of said special fund and this shall be a compliance with the provisions of sections 8–169 and 8–170. (July 3, 1930, 46 Stat. 1007, ch. 853.)

COMPILER'S NOTE

This section if acted on supersedes, at least in part, § 8–170.

CROSS REFERENCES

Comprehensive recreation program, see § 8–209.
Recreation Board's trust fund, see § 8–211.
Trust fund for recreational fees, see § 8–211.
See compiler's note to § 8–104.

Chapter 2.—RECREATION BOARD

ARTICLE I.—MEMBERSHIP OF THE RECREATION BOARD

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8–218. Services of other agencies.
8–219. Transfer of equipment, machinery, etc., of Community Center and Playgrounds Department.

ARTICLE I.—MEMBERSHIP OF THE RECREATION BOARD

§ 8–201. Recreation Board created.

There is hereby created in and for the District of Columbia a Recreation Board hereinafter referred to as "the Board". (Apr. 29, 1942, 56 Stat. 261, ch. 265.)

EFFECTIVE DATE

Section 8 of Art. III of act April 29, 1942, cited to text, provided as follows: "This Act shall take effect thirty days after the date of its approval."

REPEAL OF INCONSISTENT LAWS

Section 7 of Art. III of act April 29, 1942, cited to text, provided as follows: "All Acts or parts of Acts in conflict with this Act are hereby repealed."

CROSS REFERENCES

Park and playground system, see § 8–101.

§ 8–202. Composition of Board—Qualifications—Tenure.

The Board shall consist of seven members as follows: A representative of the Board of Commissioners selected by that Board; a representative of the Board of Education selected by that Board; the Superintendent of the National Capital Parks ex-officio; and four members, who shall have been for five years immediately preceding their selection bona fide residents of the District of Columbia, appointed by the Commissioners of the District of Columbia for a term of four years each, except the original appointments which shall be for terms of one, two, three, and four years, respectively. The appointment of the four citizens shall be without regard to race, sex, or creed, and shall take judicious account of the various parent, civic, and other organizations through which residents of the District voice their civic wishes and advance the common welfare. The two members of the Board representing the Board of Commissioners and the Board of Education shall be designated annually by their respective agencies. (Apr. 29, 1942, 56 Stat. 261, ch. 265, art. I, § 1.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–203. Liability of members.

The members of the Board shall not be personally liable in damages for any official action of the said Board performed in good faith, nor shall any member of said Board be liable for any costs that may be taxed against them or the Board on account of any such official action; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said Board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (Apr. 29, 1942, 56 Stat. 261, ch. 265, art. I, § 2.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–204. Appointment to vacancies.

Vacancies shall be filled for the unexpired term by the agency which made the original selection. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 3.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–205. Compensation.

The members of the Board shall serve without compensation for such service. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 4.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–206. Officers—Rules and regulations.

The Board shall select from among its citizen membership its Chairman and its secretary and is hereby authorized and empowered to adopt all necessary rules and regulations for the conduct of its business. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 5.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–207. Meetings.

The Board shall hold stated meetings and such additional meetings as they may from time to time

deem necessary. All meetings of the Board shall be open to the public. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 6.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

ARTICLE II.—FUNCTIONS AND ADMINISTRATIVE RESPONSIBILITIES OF THE BOARD

§ 8–208. Determination of general policy—Supervision of expenditures.

The Board shall determine all questions of general policy relating to public recreation in and for the District of Columbia, and shall supervise and direct expenditure of all appropriations and/or other funds made available to the Board. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 1.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–209. Superintendent of Recreation—Appointment and duties—Qualifications—Other employees—Compensation—Part-time employees—Compensation—Volunteer services.

The Board is hereby authorized to appoint a Superintendent of Recreation, which position is hereby authorized and created, who shall be the chief executive officer of the Board but not a member thereof, and shall be charged with the general organization, administration, and supervision of the program of public recreation contemplated and provided for by this chapter. The Superintendent shall be a person of such training, experience, and capacity as will especially qualify him to discharge the duties of the office. He shall possess those qualifications of education, training, and experience in recreation work as well as executive and administrative experience which will assure a thorough knowledge of current theory and practice in public recreation and give promise of the administrative ability necessary to administer a program of public recreation in and for the Nation's Capital.

The Board, upon the recommendation of the Superintendent, is empowered to appoint, promote, demote, and terminate the employment of such personnel as are necessary to carry out the purposes of this chapter. The Superintendent may suspend for cause for a period not exceeding thirty days any employee of the Board.

All present personnel of the Community Center and Playgrounds Department whose services have heretofore been rated satisfactory shall be retained by the Board with the understanding that this provision does not contemplate the continued employment of individuals whose service is inefficient, and such personnel shall continue to function under existing rules and regulations until such time as classification and Civil Service requirements have been effected.

The Superintendent and all other regular annual personnel of the Recreation Board shall be employees of the District of Columbia. Their salaries and positions shall be fixed in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), without regard to race, sex, or creed, and the Civil Service requirements as agreed upon between the Civil Service Commission and the District Commissioners or any existing agreement between them relative to the selection and change of status of District of Columbia employees.

Upon recommendation of the Superintendent, the Board is authorized to employ, on a part-time basis, at rates of pay to be fixed by the Board without reference to the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and without reference to Civil Service requirements, and without regard to the prohibition against double salaries provided by section 1763, Revised Statutes (U. S. C., title 5, § 58), such teachers, custodial, and other employees of the United States, the District of Columbia, and the Board of Education, upon approval by the present employer, as may be necessary to keep in operation and to conduct therein appropriate phases of the recreation program authorized by this chapter.

The respective facilities of the United States, the District of Columbia, and the Board of Education shall, by the agreement of the respective agencies of the Government having control of such facilities, be made available to the Board under the terms of this chapter.

The Superintendent is authorized to employ for a ninety-day period as full- or part-time employees, such referees, umpires, swimming-pool guards and attendants, gymnasium and playground supervisors, and other similar special employees as may be necessary to carry out the recreation program authorized by this chapter, at rates of pay to be fixed by the Board without reference to the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and without reference to Civil Service requirements, and without regard to the prohibition against double salaries provided by section 1763, Revised Statutes (U. S. C., title 5, § 58): *Provided,* That the retention in the District service of any such employees for a period longer than ninety days shall be subject to the approval of the Board.

The Board is authorized to accept upon recommendation of the Superintendent the gratis services of such persons as may volunteer to aid in the conduct of any of its activities. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 2.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

CROSS REFERENCES

Acceptance of volunteer services, see § 8–132.

§ 8–210. Comprehensive program for public recreation.

The Board shall have power and authority to adopt, conduct, direct, or cause to be conducted or directed, under its supervision, a comprehensive program of public recreation which shall include the operation and direction of games, sports, arts

and crafts, hobby shops, music, drama, speech, nursery play, dancing, lectures, forum for informal discussion, and such other physical, social, mental, and creative opportunities for leisure-time participation as the Board shall deem advisable to offer in major recreation centers, playfields, athletic fields, playgrounds, tennis courts, baseball diamonds, swimming pools, beaches, golf courses, community centers, and social centers in schools, parks, or other publicly owned buildings, as well as other recreational facilities which may be agreed upon between the Board and the agencies having jurisdiction over such facilities. The public properties utilized by the Board for the above purposes shall include those designated by the National Capital Park and Planning Commission, in accordance with a comprehensive plan, as suitable and desirable units of the District of Columbia recreational system.

Nothing in this chapter contained shall be construed as affecting any rights under any existing lease or leases lawfully entered into by any agency mentioned or affected by this chapter, nor shall anything in this chapter contained be construed as affecting the right of any such agency in the future lawfully to enter into leases of land or premises under its control for recreational purposes. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 3.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

CROSS REFERENCES

Glover Parkway and Children's Playground, see § 8–162.
Lease of lands acquired for playground purposes, see § 8–105.
Washington Aqueduct used for playground purposes, see § 8–130.

§ 8–211. Trust fund created—Depository for fees and receipts—Expenditure—Quarterly audit.

The Board is hereby authorized to create a trust fund similar to that now operated by the Community Center and Playgrounds Department in which shall be deposited all fees and receipts from those activities which the Board may deem it advisable to conduct on a fee basis or any other basis, the moneys in such trust fund to be available to the Board to defray in whole or in part the expense of conducting its activities, the fund to be audited quarterly by the auditor of the District of Columbia. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 4.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

CROSS REFERENCES

Trust fund for fees of bathing pools and beaches, see §§ 8–170 and 8–171.

§ 8–211a. Advances to superintendent of recreation.

The disbursing officer of the District of Columbia is authorized to advance to the superintendent of recreation, upon requisitions previously approved by the auditor of the District of Columbia and upon such security as the Commissioners may require of said superintendent, sums of money to be used for the expense of conducting activities of the Recreation Board under the trust fund created by the Act of April 29, 1942, the total of such advancements not to exceed $2,000 at any one time. (June 19, 1948, 62 Stat. 543, ch. 555, § 1.)

SIMILAR PROVISIONS

1951—Act July 18, 1950, 64 Stat. 347, ch. 467, § 1.
1950—Act June 29, 1949, 63 Stat. 303, ch. 279, § 1.

COMPILER'S NOTE

Section is from Appropriation Act, 1949, and was not enacted as an amendment to Act April 29, 1942, which constitutes this chapter.

§ 8–212. Annual budget.

The Board shall prepare and submit to the Commissioners of the District of Columbia an annual budget itemizing the appropriations necessary for the performance of its functions and duties under this chapter, including appropriations necessary for the purchase of books, literature, newspapers, periodicals, technical reference material, trophies, and medals, and as provided in section 8–217, of this chapter, the Board's share of the cost of improvement, maintenance, and upkeep of the buildings and grounds used by the Board and which are under the jurisdiction of the Board of Education, the Board of Commissioners, or the National Park Service. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 5.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–213. Annual report.

The Board shall submit to the Commissioners an annual report of its activities, together with recommendations for further activities and development, or curtailment. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. II, § 6.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

ARTICLE III.—RELATIONSHIP OF THE BOARD TO OTHER AGENCIES

§ 8–214. Transfer of functions of Community Center and Playgrounds Department—Transfer of unexpended funds.

All the functions of the Community Center and Playgrounds Department now under the joint control of the Board of Commissioners and the Board of Education are hereby transferred to and shall, after the effective date of this chapter, be vested in the said Recreation Board. The transfer of all such functions shall include transfer of the unexpended balance of the appropriation of the Community Center and Playgrounds Department, any unexpended balance in trust funds, and the salary of the coordinator now carried in the appropriation of the National Capital Parks. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 1.)

REFERENCES IN TEXT

Words "effective date of this chapter," means thirty days from date of its approval, April 29, 1942, see note under § 8–201.

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

CROSS REFERENCES

Appropriation for acquisition of lands for playground purposes, see §§ 8–102 and 8–105.

§ 8–215. Control of lands, buildings, and facilities used.

The control of all land, buildings, and other facilities used by the Board shall be in accordance with agreements reached between the Board and the governmental agencies having jurisdiction over such properties. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 2.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–216. Powers of Board of Education, Commissioners of District of Columbia, or National Park Service unabridged.

No power or authority conferred by this chapter shall be construed to abridge the powers of the Board of Education, the Commissioners of the District of Columbia, or the National Park Service to refuse the use of any ground, building, or facility under their individual or collective control whenever the use of any such ground, building, or facility for recreational purposes would interfere with the use or purpose for which such ground, building, or facility was acquired or created, and nothing herein expressed or implied shall be construed to abrogate any powers vested in the Board of Education by the Organic Act of 1906 insofar as the control of public education and all necessary facilities and personnel is concerned. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 3.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

CROSS REFERENCES

Authority of Board of Education, see §§ 31–801 and 31–802.

Erection of temporary structures, see § 8–129.

Use of public grounds for playgrounds, see § 8–128.

§ 8–217. Agreements for maintenance and improvement of playgrounds, etc., under control of Board of Education, Commissioners of District of Columbia, or National Park Service—Transfer of equipment and personnel.

The maintenance and improvement of all playgrounds and recreation areas and facilities now under the control of the Board of Education, or of the Commissioners of the District of Columbia, or of the National Park Service, or which may hereafter be acquired by any of said agencies for said purpose, may be provided for by agreement between the Board and the Board of Education, the Commissioners of the District of Columbia, and the National Park Service, respectively. The Board is hereby authorized to transfer to the said agencies such funds, equipment, and personnel as may be necessary to carry said agreements into effect. (Apr. 29, 1942, 56 Stat. 264, ch. 265, § 4.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–218. Services of other agencies.

The Board is authorized to arrange with other governmental agencies for services on a reimbursable basis. Apr. 29, 1942, 56 Stat. 264, ch. 265, § 5.)

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

§ 8–219. Transfer of equipment, machinery, etc., of Community Center and Playgrounds Department.

All equipment, machinery, supplies, and materials of the Community Center and Playgrounds Department shall, on the effective date of this chapter, be transferred to the Board. (Apr. 29, 1942, 56 Stat. 264, ch. 265, § 6.)

REFERENCES IN TEXT

Words "effective date of this chapter," mean thirty days from date of its approval, April 29, 1942, see note under § 8–201.

EFFECTIVE DATE

See note under § 8–201.

REPEAL OF INCONSISTENT LAW

See note under § 8–201.

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Chap. Sec.
1. Regulating Provisions 9–101
2. Construction of Public Buildings 9–201
3. Sale of Public Lands 9–301

Chapter 1.—REGULATING PROVISIONS

Sec.
9–101. Wharf property—Control by Commissioners of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.
9–102. Authority to make rules and regulations for wharf property—Leases—Rents.
9–103. Furnishing of steam to buildings in Judiciary Square—Payment—Installation expenses.
9–104. Secretary of the Interior authorized to furnish steam from Central Heating Plant.
9–105. Capitol grounds—Protection of buildings and property—Authority to make regulations.
9–106 to 9–117. Repealed.
9–118. Capitol grounds area.
9–119. Public travel in and occupancy of Capitol grounds.
9–120. Obstruction of roads in Capitol grounds.
9–121. Sale of goods in Capitol grounds—Advertising—Begging.
9–122. Removal or injury of property in Capitol grounds.
9–123. Firearms or fireworks, orations and loud language, forbidden in Capitol grounds.
9–124. Parades or assemblages and displays forbidden in Capitol grounds.
9–125. Prosecution and punishment of offenses in Capitol grounds.
9–126. Policing of Capitol buildings and grounds—Powers of Capitol police—Arrests by Metropolitan police.
9–127. Employees in Capitol or Capitol grounds to assist authorities.
9–128. Suspension of prohibition against use of Capitol grounds.
9–129. Capitol Police Board power to suspend prohibitions.
9–130. Concerts on Capitol grounds.
9–131. Traffic regulations by Capitol Police Board—Penalties—Prosecutions.
9–132. "Capitol Buildings" defined.

§ 9–101 [20: 1579]. Wharf property—Control by Commissioners of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.

With the exceptions hereinafter provided, the Commissioners of the District of Columbia shall have the exclusive charge and control of all wharf property belonging to the United States or to the District of Columbia within said District, including all the wharves, piers, bulkheads, and structures thereon and waters adjacent thereto within the pier lines, and all slips, basins, docks, water-fronts, land under water, and structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which on March 3, 1899, were owned or possessed by the United States or the District of Columbia, or to which they or either of them was on that date or may thereafter become entitled, or which they or either of them may acquire under the provisions hereof or otherwise; and said Commissioners of the District of Columbia shall have exclusive charge and control of the repairing, building, rebuilding, maintaining, altering, strengthening, leasing, and protecting said property and every part thereof, and all the cleaning, dredging, and deepening necessary in and about the same within the pier lines. Said commissioners are also authorized and empowered to make all needful rules and regulations for the government and control of all wharves, piers, bulkheads, and structures thereon, and waters adjacent thereto within the pier lines, and all the basins, slips, and docks, with the land under water, in said District not owned by the United States or the District of Columbia: *Provided,* That the following described property shall be placed under the immediate jurisdiction and control of the Chief of Engineers of the United States Army: The banks of the Potomac River from the north line of the Arsenal Grounds to the southern curb line of N Street south; also five hundred linear feet of shore-line in the Flushing Reservoir at the foot of Seventeenth Street, west, and west from the western curb of said street, including a levee one hundred feet wide. (Mar. 3, 1899, 30 Stat. 1377, ch. 458, § 1.)

Cross References

Harbor regulations, §§ 22–1701 to 22–1703.
Jurisdiction and control over fish wharf, § 10–135.

NOTES TO DECISIONS

Jurisdiction To Grant Wharfing Privileges

Commissioners of District of Columbia, National Capital Park and Planning Commission, and United States Engineers Office had legal authority to make decisions involving eventual granting of wharfing facilities and privilege. *Decatur Corporation* v. *Friedman* (D. C., D. C. 1941, 39 F. Supp. 692, affirmed 135 F. 2d 812, 77 U. S. App. D. C. 326).

Riparian Rights

Riparian rights claimed by the appellants, which originally were appurtenant to the land by virtue of its adjoining the Potomac River, passed to the United States by the conveyance which vested in them the ownership of the land on which the street was laid out and has been built. *Potomac Steamboat Co.* v. *Upper Potomac Steamboat Co.* (109 U. S. 672, 27 L. Ed. 1070, 3 Sup. Ct. 445, 4 Sup. Ct. 15).

The Compact of 1785 between Maryland and Virginia relating to the mutual use of the waters of the Potomac and the rights of riparian owners was never in force in the District of Columbia. *United States ex rel. Greathouse* v. *Hurley* (61 App. D. C. 360, 63 Fed. (2d) 137).

§ 9–102 [20: 1580]. Authority to make rules and regulations for wharf property—Leases—Rents.

Said commissioners and the Chief of Engineers of the United States Army are authorized and empowered to make all needful rules and regulations for the government and proper care of all the property placed in their charge and under their respective control by the provisions of section 9–101 and to annex such reasonable penalties to said rules and

regulations as will secure their enforcement; and also to make and enforce rules and regulations in regard to building and repairing wharves, the rental thereof, and the rate of wharfage. All rents so collected shall be covered into the treasury of the United States, to be placed to the credit of the United States and to the credit of the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. No lease made under the provisions of said section 9–101 shall extend beyond the period of ten years. (Mar. 3, 1899, 30 Stat. 1378, ch. 458, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

Prior to act of 1921, this section provided that rents so collected should be covered into the treasury of the United States, one-half to be placed to the credit of the United States and one-half to the credit of the District of Columbia.

CROSS REFERENCES

Harbor regulations, §§ 22–1701 to 22–1703.

Metropolitan Police charged with duty to enforce regulations for harbor, § 4–106.

Rental of fish wharf, § 10–135.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

NOTES TO DECISIONS

LICENSE TO ERECT WHARF

The Chief of Engineers of the Army is not and never has been vested with authority to grant licenses for the erection of wharves along the river front of the city of Washington, D. C., 1886 (18 Op. Atty. Gen. 441).

REGULATIONS, MANDAMUS TO COMPEL

A mandamus will not lie to the mayor, board of aldermen, and board of common council of the city of Washington, to compel them "to make such regulations as they may deem proper, prescribing the manner of erecting private wharves within the limits of the city of Washington." *Kennedy* v. *Washington,* 1829 (3 Cranch C. C. 595, 14 Fed. Cas. No. 7,708).

§ 9–103 [20: 1592]. Furnishing of steam to buildings in Judiciary Square—Payment—Installation expenses.

The Secretary of the Interior, through the National Park Service is authorized to furnish steam from the Central Heating Plant to such buildings as may be erected by the District of Columbia on the property bounded by Fourth and Fifth Streets, and D and G Streets, Northwest, in the District of Columbia, and known as Judiciary Square: *Provided,* That the District of Columbia agrees to pay for the steam furnished at reasonable rates, not less than cost, as may be determined by the Secretary of the Interior: *And provided further,* That the District of Columbia agrees to provide all necessary connections with the Government mains at its own expense, and in a manner satisfactory to the Secretary of the Interior. (Apr. 27, 1937, 50 Stat. 95, ch. 136.)

§ 9–104 [20: 1592a]. Secretary of the Interior authorized to furnish steam from Central Heating Plant.

The Secretary of the Interior, through the National Park Service is authorized to furnish steam from the Central Heating Plant to such buildings as may be erected by the District of Columbia on the property in the District of Columbia bounded by C Street, Third Street, Indiana Avenue, D Street, and John Marshall Place Northwest, and known as square 533; on the property bounded by C Street, John Marshall Place, Louisiana Avenue, and Sixth Street Northwest, and known as square 490; on the property bounded by Pennsylvania Avenue, John Marshall Place, C Street, and Sixth Street Northwest, and known as square 491; and on the property bounded by Pennsylvania Avenue, Third Street, C Street, and John Marshall Place Northwest, and known as reservation 10: *Provided,* That the District of Columbia agrees to pay for the steam furnished at reasonable rates, not less than cost, as may be determined by the Secretary of the Interior: *And provided further,* That the District of Columbia agrees to provide all necessary connections with the Government mains at its own expense, and in a manner satisfactory to the Secretary of the Interior. (June 21, 1939, 53 Stat. 852, ch. 236.)

COMPILER'S NOTE

Act of June 29, 1940, 54 Stat. 694, ch. 451, authorized the furnishing of steam from the Central Heating Plant to the National Academy of Sciences.

§ 9–105 [20: 1601]. Capitol grounds — Protection of buildings and property—Authority to make regulations.

The Sergeants at Arms of the Senate and of the House of Representatives are authorized to make such regulations as they may deem necessary for preserving the peace and securing the Capitol from defacement, and for the protection of the public property therein, and they shall have power to arrest and detain any person violating such regulations, until such person can be brought before the proper authorities for trial. (R. S., § 1820.)

DERIVATION

Act March 30, 1867, 15 Stat. 12, ch. 20, § 2; April 29, 1876, 19 Stat. 41, ch. 86.

COMPILER'S NOTE

The act of March 4, 1929, 45 Stat. 1694, ch. 708, as amended, provided for the enlargement of the Capitol grounds as follows:

SEC. 1. "The commission created by the act entitled 'An Act to create a commission to be known as the Commission for the Enlarging of the Capitol Grounds, and for other purposes,' approved April 11, 1928, is authorized and directed to carry out the plan for the enlarging of the Capitol Grounds recommended by the commission in Scheme B of its report to the Congress contained in House Document Numbered 252, Seventieth Congress, first session, with certain modifications, as follows:

"(1) Provision for an avenue extending from the western fountain in front of the Union Station southwesterly to Pennsylvania Avenue, joining said avenue between Second and Third Streets Northwest;

"(2) Closing of North Capitol Street south of D Street;

"(3) Closing of C Street to vehicular traffic between New Jersey Avenue and Delaware Avenue, and removal of street-car tracks from C Street and re-laying them in a depression and subway between New Jersey Avenue and Delaware Avenue, and extending the street-car tracks on C Street from Delaware Avenue to First Street Northeast;

"(4) Removal of street-car tracks from Delaware Avenue and B Street (including the spur extending from Delaware Avenue into the Capitol Grounds) and re-laying them on First Street Northeast;

"(5) Construction of an underground garage extending from Delaware Avenue to New Jersey Avenue;

"(6) Acquisition of private property and removal of existing buildings, as hereinafter provided; and

"(7) Construction of terraces and fountains, grading, landscaping, and architectural treatment."

SEC. 2. "For the purposes of this act the Architect of the Capitol is authorized, under the direction of the commission—

"(1) To acquire, on behalf of the United States, by purchase, condemnation, or otherwise, all or any part of the privately owned lands, including buildings and other structures, in lot 800 of square numbered 574; square numbered 575; lots 1, 2, and 818 of square numbered 630; lot 1 of square numbered 631; the western half of square numbered 633; and reservation numbered 12, as such squares and reservation appear on the records of the office of the surveyor of the District of Columbia as of the date of the approval of this act.

"The Architect of the Capitol is authorized to acquire all or any part of the lands, including buildings or other structures, in lot 801 of square 574 and lot 821 of square 630 as such squares appear on the records of the office of the Surveyor of the District of Columbia as of the date of the approval of this amendatory act. Any condemnation proceedings instituted under authority of this act shall be in accordance with the provisions of the act entitled 'An Act to provide for the acquisition of land in the District of Columbia for the use of the United States,' approved March 1, 1929 (§§ 16–619 to 16–644).

"(2) When title to the property specified in subdivision (1) of this section has been vested in the United States, to provide for the demolition and removal, as expeditiously as possible, of any structures thereon; and to provide for the demolition and removal, as expeditiously as possible, of any structures on other lands within the area of the proposed development.

"(3) To enter into contracts, to purchase materials, supplies, equipment, and accessories, in the open market, to employ the necessary personnel, including professional services without reference to section 35 of the act approved June 25, 1910, and to make such expenditures, including expenditures for advertising and travel and the purchase of technical and reference books, as may be necessary."

SEC. 3. "All privately owned lands acquired under the provisions of this Act, together with all other lands within the area of development proposed in Scheme B of House Document Numbered 252, Seventieth Congress, first session, including streets and roadways, shall be a part of the Capitol Grounds under the jurisdiction and control of the Architect of the Capitol, and all lands within such area heretofore under the jurisdiction and control of the Commissioners of the District of Columbia are hereby transferred to the jurisdiction and control of the Architect of the Capitol; except that any street or roadway within such area under the jurisdiction and control of the Commissioners of the District of Columbia shall not be transferred to the jurisdiction and control of the Architect of the Capitol until such time as the Architect of the Capitol files notice in writing with the Commissioners of the District of Columbia that such transfer is necessary for the proposed development."

SEC. 4. "(a) It shall be the duty of any street-railway company, the removal of whose tracks is necessary under the plan of the proposed development, when so requested in writing by the Architect of the Capitol, to remove any of such tracks, to repair and restore the space vacated, and to re-lay such tracks on the streets designated, as may be directed by the Architect of the Capitol, the total cost thereof to be borne by said companies.

"(b) Whenever, in carrying out the provisions of this act, it becomes necessary to change the grade of any street occupied by the tracks of any street-railway company the company shall adjust the grade of such tracks to the new grade of the street, the total cost of such adjustment to be borne by said company."

STATUES

Act of June 8, 1940, 54 Stat. 260, ch. 294, provides for removal of the statue of John Marshall from its present site in the Capitol grounds to a new site in proximity to the Supreme Court Building. Act of June 11, 1940, 54 Stat. 299, ch. 317, authorizes selection of a site in the Capitol grounds and erection thereon of a statue of George Washington.

WASHINGTON POST OFFICE—CUSTODY AND CONTROL

The Post Office Department shall have exclusive jurisdiction, control, and custody of the Washington City post office and the additions thereto, located at North Capitol Street and Massachusetts Avenue, to be operated and maintained by it the same as other public buildings under its custody and control. (Mar. 1, 1933, 47 Stat. 1419, ch. 162; June 10, 1933, Ex. Ord. No. 6166, § 1.)

CROSS REFERENCES

Jurisdiction of Metropolitan Police includes Federal buildings, § 4–120.

Metropolitan Police, § 4–101 et seq.

United States Park Police, §§ 4–201 to 4–208.

White House Police, §§ 4–301 to 4–306.

STATUTORY REFERENCES

Capitol Police for Capitol Grounds and terraces, U. S. C. title 40, §§ 206–215.

This section is in U. S. C., title 40, § 193.

CAPITOL GROUNDS

§§ 9–106 to 9–117. Repealed July 31, 1946, 60 Stat. 720, ch. 707, § 15.

Sections 9–106 to 9–116 were from Act July 1, 1882, 22 Stat. 126, ch. 258, §§ 1–11, and §§ 881–890 of the 1901 Code.

Section 9–117 was from Act June 6, 1900, 31 Stat. 613, ch. 791, § 1.

Section 9–106 which related to trespass on Capitol grounds is now covered by § 9–119.

Section 9–107 which related to obstruction of roads is now covered by § 9–120.

Section 9–108 which related to sale of goods on Capitol grounds is now covered by § 9–121.

Section 9–109 which related to injuries to Capitol grounds is now covered by § 9–122.

Section 9–110 which related to fireworks on Capitol grounds is now covered by § 9–123.

Section 9–111 which related to parades on Capitol grounds is now covered by § 9–124.

Section 9–112 which related to prosecutions of offenses is now covered by § 9–125.

Section 9–113 which related to arrests on Capitol grounds is now covered by § 9–126.

Section 9–114 which related to employees' aid is now covered by § 9–127.

Section 9–115 which related to suspension of regulations over Capitol grounds is now covered by § 9–128.

Section 9–116 which related to authority of Capitol Police Commission to suspend regulations is now covered by § 9–129.

Section 9–117 which related to concerts on Capitol grounds is now covered by § 9–130.

PROSECUTIONS UNAFFECTED BY REPEAL

Sec. 15 of the act of July 31, 1946, which repealed sections provided: "*Provided, however,* That any violation of any of the provisions of said Acts hereby repealed, occurring before the date of this repeal, may be prosecuted to the same extent as if this Act had not been enacted."

§ 9–118. Capitol grounds area.

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8, and the jurisdiction and control over the United States Capitol Grounds, heretofore vested by law in the Architect of the Capitol, is hereby

extended to the entire area of the United States Capitol Grounds as defined on the aforementioned map, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof: *Provided,* That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further,* That the Commissioners of the District of Columbia shall be permitted to enter any part of said United States Capitol Grounds for the purpose of repairing or maintaining or, subject to the approval of the Architect of the Capitol, for the purpose of constructing or altering, any utility service of the District of Columbia government. (July 31, 1946, 60 Stat. 718, ch. 707, § 1.)

APPLICABILITY OF §§ 9–118 TO 9–132 TO OTHER LAWS

Section 16 (b) of the act of July 31, 1946, cited to text provided:

(b) Nothing in this Act shall be construed to repeal, amend, alter, or supersede (1) section 1820 of the Revised Statutes (U. S. C., title 40, sec. 193); (2) an Act entitled "An Act to protect the public property, turf, and grass of the Capitol Grounds from injury", approved April 29, 1876 (19 Stat. 41; U. S. C., title 40, sec. 214); (3) except as provided in section 9 of this Act, section 15 of an Act entitled "An Act for the preservation of the public peace and the protection of property within the District of Columbia", approved July 29, 1892 (27 Stat. 325; U. S. C., title 40, sec. 101); (4) the second proviso in the item "Capitol garages" under the caption "Capitol Buildings and Grounds" contained in an Act entitled "An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932 (47 Stat. 382, 391; U. S. C., title 40, sec. 185a); or (5) an Act entitled "An Act to authorize the use of part of the United States Capitol Grounds east of the Union Station for the parking of motor vehicles", approved July 8, 1943 (57 Stat. 390).

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193a.

§ 9–119. Public travel in and occupancy of Capitol Grounds.

Public travel in and occupancy of said United States Capitol Grounds shall be restricted to the roads, walks, and places prepared for that purpose by flagging, paving, or otherwise. (July 31, 1946, 60 Stat. 718, ch. 707, § 2.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193b.

§ 9–120. Obstruction of roads in Capitol Grounds.

It is forbidden to occupy the roads in said United States Capitol Grounds in such manner as to obstruct or hinder their proper use, or to use the roads in the area of said United States Capitol Grounds, south of Constitution Avenue and B Street and north of Independence Avenue and B Street, for the conveyance of goods or merchandise, except to or from the Capitol on Government service. (July 31, 1946, 60 Stat. 718, ch. 707, § 3.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193c.

§ 9–121. Sale of goods in Capitol Grounds—Advertising—Begging.

It is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, subscriptions, or contributions therein. (July 31, 1946, 60 Stat. 718, ch. 707, § 4.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193d.

§ 9–122. Removal or injury of property in Capitol Grounds.

It is forbidden to step or climb upon, remove, or in any way injure any statue, seat, wall, fountain, or other erection or architectural feature, or any tree, shrub, plant, or turf in said United States Capitol Grounds. (July 31, 1946, 60 Stat. 718, ch. 707, § 5.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193e.

§ 9–123. Firearms or fireworks, orations and loud language, forbidden in Capitol Grounds.

It is forbidden to discharge any firearm, firework or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language in said United States Capitol Grounds. (July 31, 1946, 60 Stat. 718, ch. 707, § 6.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193f.

§ 9–124. Parades or assemblages and displays forbidden in Capitol Grounds.

It is forbidden to parade, stand, or move in processions or assemblages in said United States Capitol Grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided in sections 9–128 and 9–129. (July 31, 1946, 60 Stat. 719, ch. 707, § 7.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193g.

§ 9–125. Prosecution and punishment of offenses in Capitol Grounds.

Offenses against sections 9–119 to 9–124 shall be punishable by a fine not exceeding $100, or imprisonment not exceeding sixty days, or by both such fine and imprisonment, prosecution for such offenses to be had in The Municipal Court for the District of Columbia, upon information by the United States Attorney or any of his assistants: *Provided,* That in cases where public property is damaged in an amount exceeding $100, the offense shall be punishable by imprisonment for not more than five years. (July 31, 1946, 60 Stat. 719, ch. 707, § 8.)

OFFENSES COMMITTED PRIOR TO JULY 31, 1946

Section 15 of the act of July 31, 1946, provided in part: "*Provided, however,* That any violation of any of the provisions of said Acts hereby repealed, occurring before the date of this repeal, may be prosecuted to the same extent as if this Act had not been enacted."

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193h.

§ 9–126. Policing of Capitol Buildings and Grounds—Powers of Capitol Police—Arrests by Metropolitan Police.

The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of sections 9–118 to 9–132 and regulations promulgated under section 9–131 and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States or of any State, or any regulation promulgated pursuant thereto: *Provided,* That the Metropolitan Police force of the District of Columbia are hereby authorized to make arrests within the United States Capitol Buildings and Grounds for any violations of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds, with the exception of the streets and roadways shown on the map referred to in section 9–118 as being under the jurisdiction and control of the Commissioners of the District of Columbia. For the purpose of this section, the word "grounds" shall include the House Office Building parking area. (July 31, 1946, 60 Stat. 719, ch. 707, § 9.)

CROSS REFERENCE

Definition of "Capitol Buildings" see § 9–132.

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 212a.

§ 9–127. Employees in Capitol or Capitol Grounds to assist authorities.

It shall be the duty of all persons employed in the service of the Government in the Capitol or in the United States Capitol Grounds to prevent, as far as may be in their power, offenses against sections 9–118 to 9–132, and to aid the police, by information or otherwise, in securing the arrest and conviction of offenders. (July 31, 1946, 60 Stat. 719, ch. 707, § 10.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193i.

§ 9–128. Suspension of prohibition against use of Capitol Grounds.

In order to admit of the due observance within the United States Capitol Grounds of occasions of national interest becoming the cognizance and entertainment of Congress, the President of the Senate and the Speaker of the House of Representatives, acting concurrently, are hereby authorized to suspend for such proper occasions so much of the prohibitions contained in sections 9–119 to 9–124, as would prevent the use of the roads and walks of the said grounds by processions or assemblages, and the use upon them of suitable decorations, music, addresses, and ceremonies: *Provided,* That responsible officers shall have been appointed, and arrangements determined which are adequate, in the judgment of said President of the Senate and Speaker of the House of Representatives, for the maintenance of suitable order and decorum in the proceedings, and for guarding the Capitol and its grounds from injury. (July 31, 1946, 60 Stat. 719, ch. 707, § 11.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193j.

§ 9–129. Capitol Police Board power to suspend prohibitions.

In the absence from Washington of either of the officers designated in section 9–128, the authority therein given to suspend certain prohibitions of this Act shall devolve upon the other, and in the absence from Washington of both it shall devolve upon the Capitol Police Board: *Provided,* That notwithstanding the provisions of sections 9–124 and 9–128, the Capitol Police Board is hereby authorized to grant the Commissioners of the District of Columbia authority to permit the use of Louisiana Avenue for any of the purposes prohibited by said section 9–124. (July 31, 1946, 60 Stat. 719, ch. 707, § 12.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193k.

§ 9–130. Concerts on Capitol Grounds.

Nothing in sections 9–118 to 9–129 shall be construed to prohibit the giving of concerts in the United States Capitol Grounds, at such times as will not interfere with the Congress, by any band in the service of the United States, when and as authorized by the Architect of the Capitol. (July 31, 1946, 60 Stat. 720, ch. 707, § 13.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193*l*.

§ 9–131. Traffic regulations by Capitol Police Board—Penalties—Prosecution.

(a) The Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, shall have exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking and impounding of vehicles and limiting the speed thereof, within the United States Capitol Grounds, except on those streets and roadways shown on the map referred to in section 9–118 as being under the jurisdiction and control of the Commissioners of the District of Columbia; and said Board is hereby authorized and empowered to make and enforce all necessary regulations therefor and to prescribe penalties for violation of such regulations, such penalties not to exceed a fine of $300 or imprisonment for not more than ninety days. Notwithstanding the foregoing provisions of this section those provisions of sections 40–601 to 40–617, for the violation of which specific penalties are provided in said sections, shall be applicable to the United States Capitol Grounds. Prosecutions for violation of such regulations shall be in The Municipal Court for the District of Columbia, upon information by the Corporation Counsel of the District of Columbia or any of his assistants.

(b) Regulations authorized to be promulgated under this section shall be promulgated by the Capitol Police Board within six months after approval of sections 9–118 to 9–132: *Provided,* That until such regulations are promulgated and become effective, the traffic regulations of the District of Columbia shall be applicable to the United States Capitol Grounds.

(c) All regulations promulgated under the authority of this section shall, when adopted by the Capitol Police Board, be printed in one or more of the daily newspapers published in the District of Columbia, and shall not become effective until the expiration of ten days after the date of such publication.

(d) It shall be the duty of the Commissioners of the District of Columbia, or any officer or employee of the government of the District of Columbia designated by said Commissioners, upon request of the Capitol Police Board, to cooperate with the Board in the preparation of the regulations authorized to be promulgated under this section, and any future amendments thereof. (July 31, 1946, 60 Stat. 720, ch. 707, § 14.)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 212b.

§ 9–132. "Capitol Buildings" defined.

The provisions of sections 9–118 to 9–125 and 9–127 to 9–131, shall not be construed to extend inside the Capitol Buildings; and the words "Capitol Buildings" as used in this Act, shall be construed to include the United States Capitol, Senate Office Building, House Office Buildings, Capitol Power Plant, and Legislative Garage. (July 31, 1946, 60 Stat. 721, ch. 707, § 16 (a).)

STATUTORY REFERENCE

This section is in the U. S. Code, title 40, § 193m.

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

Sec.

9–201. Municipal center—Establishment.
9–202. Municipal center—Rental.
9–203. Electric light and power plants—Construction.
9–204. Public buildings—Loans for construction authorized — Projects enumerated — Location determined.
9–205. Public buildings—Funds available for acquiring lands for public use—Condemnation proceedings.
9–206. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.
9–207. Public buildings—Reports to be submitted to Congress.
9–208. May borrow money from United States for public works—Approval of President—Certain projects authorized.
9–209. Purposes for which funds may be used.
9–210. Repayment of funds.
9–211. Estimates and report to Congress.
9–212. Limitations on borrowing power.
9–213. Interest on funds borrowed from Public Works Administration.
9–214. Interest to be determined by Secretary of Treasury.
9–215. Authorized to borrow additional funds for public works—Approval of President—Certain project specified.
9–216. Purposes for which funds may be used.
9–217. Repayment—Interest—Included in annual budget.
9–218. Estimates and report to Congress.

§ 9–201 [20: 1584]. Municipal center—Establishment.

The Commissioners of the District of Columbia are authorized and directed to acquire by purchase, condemnation, or otherwise, all of squares numbered 490, 491, 533, and reservation 10, in the District of Columbia, including buildings and other structures thereon, as a site for a municipal center, and to construct thereon necessary buildings to house municipal activities: *Provided,* That the Commissioners of the District of Columbia are hereby authorized to close and vacate such portions of streets and alleys as lie between or within such squares, as in the judgment of said commissioners may be necessary, and the portions of such streets and alleys so closed and vacated shall thereupon become parts of such sites: *Provided further,* That if this property or any part thereof shall be condemned, the Commissioners of the District of Columbia shall be entitled to enter immediately into the possession of any such property for which an award shall have been made by paying the amount of such award into the registry of the District Court of the United States for the District of Columbia. (Feb. 28, 1929, 45 Stat. 1408, ch. 379, § 1.)

COMPILER'S NOTES

The act of July 3, 1930 (46 Stat. 957, ch. 848), provided: "For the preparation of plans and design of buildings for the municipal center, and for a model and estimates of cost of the complete group of buildings, including supplies, equipment, and traveling and other necessary expenses, and the employment, by contract or otherwise, of such architectural and other professional services as shall be approved by the Commissioners of the District of Columbia without reference to the Classification Act of 1923, as amended, $65,000."

By the act of February 23, 1931 (46 Stat. 1384, ch. 282), the following appropriation was made in connection with the municipal center: "For beginning the construction of the first unit of the municipal center, $1,500,000 to be immediately available; and the Commissioners of the District of Columbia are authorized to enter into contract or contracts for the preparation of site and completion of such unit at a total cost not exceeding $6,000,000: *Provided,* That not to exceed $200,000 of this appropriation shall be available for the preparation of plans and specifications, cost of superintendence of construction, and employment of such architectural or other professional services as shall be approved by the Commissioners of the District of Columbia without reference to section 3709 of the Revised Statutes (U. S. C., title 41, § 5), or the Classification Act of 1923, as amended."

The District of Columbia Appropriation Act for 1933 (June 29, 1932, 47 Stat. 350, ch. 308), contained the following provision with respect to the municipal center: "For the acquisition of land in the municipal center, and for grading and paving the streets, and relocation and construction of District of Columbia owned utilities within and/or adjacent to the municipal center, $222,000, and in addition thereto not to exceed $1,278,000 of the unexpended balance of the appropriation for the municipal center contained in the District of Columbia Appropriation Act for the fiscal year 1932, of which sums not to exceed $900,000 shall be available for the acquisition of land in the municipal center, and not to exceed $600,000 shall be available for grading and paving of streets, and relocation and construction of District of Columbia owned utilities within and/or adjacent to the municipal center: *Provided,* That the Washington Railway and Electric Company is hereby directed to rebuild and relocate at its own expense the tracks of said company in D Street Northwest between Fifth Street and Indiana Avenue, and in Indiana Avenue east of Fifth Street to the vicinity of Second Street, in accordance with plans and profiles to be approved by the Commissioners of the District of Columbia, and in the

event of the failure of said Washington Railway and Electric Company to perform the work herein directed within the time fixed by the said Commissioners the said work shall be performed by the District of Columbia and this appropriation shall be available for such purposes, and the cost of said work shall be a valid and subsisting lien against the franchises and property of the said railway company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the Commissioners of the District of Columbia in the Supreme Court of the District of Columbia, or by any other lawful proceeding against the said railway company."

CROSS REFERENCES

Acceptance and maintenance of memorial fountain for Metropolitan Police Department, § 4–901.

Construction of children's tuberculosis sanitarium, § 32–312.

Employment of agents in purchase of school sites or other public buildings, § 1–812.

General provisions concerning streets, § 7–102 and notes.

General provisions for closing alleys and streets through lands belonging to District of Columbia, §§ 7–309 to 7–311.

Testing of building materials, §§ 1–813, 1–814.

§ 9–202 [20: 1584a]. Municipal center—Rental.

The Commissioners of the District of Columbia are authorized in their discretion to rent, until their removal becomes necessary, at fair rental values, buildings acquired by the District in the municipal center, and to use such part of the rentals heretofore and hereafter collected as may be necessary for expenses of collection, repairs, and alterations to buildings by day labor or otherwise, expenses of moving and preservation and operating expenses of such buildings as may continue in private occupancy, the balance of the rentals to be covered into the treasury to the credit of the revenues of the District of Columbia. (July 3, 1930, 46 Stat. 957, ch. 848.)

CROSS REFERENCES

Lease of lands acquired for park or playground purposes, § 8–105.

Lease of Rock Creek Park, § 8–148.

Leases to "authority" of the United States under the Alley Dwelling Act, § 5–115.

Leasing Washington National Airport, § 2–1603.

Rental of fish wharf, § 10–135.

Rental of wharves, § 9–102.

Rental of Wholesale Producers' Market and farmers' street markets, §§ 10–136, 10–137.

Sale or rental of public property under Alley Dwelling Act, §§ 5–103, 5–114.

§ 9–203. Electric light and power plants—Construction.

No appropriation made before or after March 4, 1907, for the construction or equipment of any executive or municipal building in the District of Columbia shall be expended for the production of electricity for light or power, unless, in the judgment of the Secretary of the Treasury, such necessary electric current for light and power can not be obtained at a less cost. (Mar. 4, 1907, 34 Stat. 1371, ch. 2918, § 9.)

§ 9–204 [20: 1587]. Public buildings—Loans for construction authorized—Projects enumerated—Location determined.

The commissioners of the District of Columbia are hereby authorized to borrow for the District of Columbia from the Federal Emergency Administration of Public Works created by the National Industrial Recovery Act (which, for the purposes of sections 9–204 to 9–207, shall be construed to include any agency created or designated by the President for similar purposes under the Emergency Relief Appropriation Act of 1935); and said administration is authorized to lend to said commissioners the sum of $10,750,000, or any part thereof, out of funds authorized by law for said administration, for the acquisition, purchase, construction, establishment, and development of a tuberculosis hospital, a sewage-disposal plant, an extension of or addition to Gallinger Municipal Hospital, a jail or other enclosure for prisoners at Lorton, Virginia, and a building or buildings for the police court, the municipal court, the recorder of deeds, and the juvenile court, or any of them, said court buildings to be located on such portions or parts of Judiciary Square, or the area bounded by Fourth and Fifth Streets, D and G Streets, northwest, as shall be approved by said commissioners, and the National Capital Park and Planning Commission, or any one or more of said projects as the said Commissioners may determine; and to advance to the Children's Hospital of the District of Columbia in compensation for clinical examination of tubercular children, the sum of $100,000 or so much thereof as may be necessary for alterations and enlargement of building, equipment, and accessories. (June 25, 1934, 48 Stat. 1215, ch. 743, § 1; May 6, 1935, 49 Stat. 174, ch. 91, § 1.)

AMENDMENT

The amendment of 1935 added the parenthetical clause in the first part of this section and all the projects which follow provision for the jail at Lorton, Virginia.

CROSS REFERENCES

Authority to amend contracts and agreements made under this act (§§ 9–204 to 9–207) by which funds have been loaned or advanced to Commissioners, § 9–212.

Limitation on borrowing power under this act (§§ 9–204 to 9–207), § 9212.

§ 9–205 [20: 1588]. Public buildings—Funds available for acquiring lands for public use—Condemnation proceedings.

The sum authorized by section 9–204, or any part thereof, shall, when borrowed, be available to the commissioners of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee simple title to land, or rights or easements in land, for the public uses authorized by sections 9–204 to 9–207, and for the preparation of plans, designs, estimates, models, and contracts, for architectural, and other necessary professional services, without reference to the Classification Act of 1923, as amended, and section 5 of Title 41, U. S. Code, for the construction of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, apparatus, and any and all other expenditures necessary for or incident to the complete construction of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to sections 9–204 to 9–207, shall be

had and made in accordance with existing provisions of law, except as otherwise herein provided. (June 25, 1934, 48 Stat. 1215, ch. 743, § 2.)

§ 9–206 [20: 1589]. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.

Seventy per centum of so much of said sum authorized by section 9–204 as may be expended as therein provided shall be reimbursed to the Federal Emergency Administration of Public Works from any funds in the treasury to the credit of the District of Columbia, as follows, to wit: Not less than $1,000,000 on the 30th day of June each year after such sum shall have been advanced to said District until the full amount expended hereunder is reimbursed, without interest for the first three years after any such advances and with interest at not exceeding 4 per centum per year thereafter on annual balances as of each June 30: *Provided,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of Public Act Numbered 284, Seventy-first Congress, entitled "An Act for the acquisition, establishment, and development of the George Washington Memorial Parkway, and so forth," approved May 29, 1930 (46 Stat. 485, ch. 354), to reimburse the United States for sums appropriated by the Congress under that act, the total reimbursement required under both that act and sections 9–204 to 9–207 shall be not less nor more than $1,300,000 in any one fiscal year: *Provided,* That the Commissioners may, in their discretion, repay more than said amount: *And provided further,* That the Commissioners may, in their discretion, allocate any reimbursement as between the sums due by them to the United States under the aforesaid act and the sums due by them to the Federal Emergency Administration of Public Works under sections 9–204 to 9–207: *Provided,* That such sums as may be necessary for the reimbursement herein required of or permitted by the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners of the District of Columbia, the first reimbursement to be made on June 30, 1936. Until 70 per centum of so much of said sum authorized by section 9–204 as may be expended as therein provided shall be reimbursed to the Federal Emergency Administration of Public Works, with interest as provided in this section, 10 cents of the tax levied and collected upon each $100 of the assessed valuation of all real and tangible personal property subject to taxation in the District of Columbia shall be deposited in the treasury of the United States to the credit of a special account for such reimbursement to the Federal Emergency Administration of Public Works and shall not be available for any other purpose. The commissioners may, in their discretion, anticipate from said special account the payments required by sections 9–204 to 9–207: *Provided,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of said Public Act Numbered 284, Seventy-first Congress, reimbursement shall be not less than $300,000 in any one fiscal year. (June 25, 1934, 48 Stat. 1215, ch. 743, § 3; May 6, 1935, 49 Stat. 175, ch. 91, § 2.)

COMPILER'S NOTE

This section partially supersedes § 1–219 in authorizing anticipation of taxes.

AMENDMENT

Section 2 of act of 1935 added the final proviso.

CROSS REFERENCE

George Washington Memorial Parkway, see note to § 8–102.

§ 9–207 [20: 1590]. Public buildings—Reports to be submitted to Congress.

The Commissioners of the District of Columbia shall submit with their annual estimates to the Senate and the House of Representatives a report of their activities and expenditures under section 9–204. (June 25, 1934, 48 Stat. 1216, ch. 743, § 4.)

§ 9–208. May borrow money from United States for public works—Approval of President—Certain projects authorized.

The commissioners of the District of Columbia are hereby authorized to accept advancements for the District of Columbia from the Federal Emergency Administration of Public Works, created by the National Industrial Recovery Act, and said administration with the approval of the President is authorized to advance to said commissioners the sum of $18,150,000, or any part thereof, in addition to any sums heretofore advanced to the District of Columbia by said administration, out of funds authorized by law for said administration, for the acquisition, purchase, construction, establishment, and development of public works, including among others a building or buildings for the municipal court, the recorder of deeds, and the juvenile court, or any of them, said buildings to be located on such portions or parts of Judiciary Square, or the area bounded by Fourth and Fifth Streets, D and G Streets, Northwest, or upon such other area or areas as shall be approved by said commissioners and the National Capital Park and Planning Commission and the making of such advances is hereby included among the purposes for which funds heretofore appropriated or authorized for said administration, including funds appropriated by the Public Works Administration Appropriation Act of 1938, may be used, in addition to the other purposes specified in the respective acts appropriating or authorizing said funds. (June 25, 1938, 52 Stat. 1203, ch. 704, § 1.)

§ 9–209. Purposes for which funds may be used.

The sum authorized by section 9–208, or any part thereof shall, when advanced, be available to the commissioners of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee-simple title to land, or rights or easements in land, for the public uses authorized by sections 9–208 to 9–212, and for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services without reference to the Classification Act of 1923, as amended, U. S. C., title 5, ch. 13, and U. S. C., title 41, § 5; for the construc-

tion of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to sections 9–208 to 9–212 shall be had and made in accordance with existing provisions of law except as otherwise herein provided. (June 25, 1938, 52 Stat. 1204, ch. 704, § 2.)

§ 9–210. Repayment of funds.

The Federal Emergency Administration of Public Works shall be repaid 55 per centum of any moneys advanced under section 9–208 in annual instalments over a period of not to exceed twenty-five years with interest thereon for the period of amortization: *Provided,* That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners of the District of Columbia, the first reimbursement to be made on June 30, 1941: *Provided further,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of Public Act Numbered 284, Seventy-first Congress [46 Stat. 485, ch. 354], reimbursement under that act shall be not less than $300,000 in any one fiscal year. (June 25, 1938, 52 Stat. 1204, ch. 704, § 3.)

§ 9–211. Estimates and report to Congress.

The Commissioners of the District of Columbia shall submit with their annual estimates to the Congress a report of their activities and expenditures under section 9–208. (June 25, 1938, 52 Stat. 1204, ch. 704, § 4.)

§ 9–212. Limitations on borrowing power.

The Commissioners of the District of Columbia are not authorized to borrow any further sum or sums under the provisions of sections 9–204 to 9–207. (June 25, 1938, 52 Stat. 1204, ch. 704, § 5.)

§ 9–213. Interest on funds borrowed from Public Works Administration.

The commissioner of Public Works, under the direction and supervision of the Federal Works Administrator, and the commissioners of the District of Columbia are authorized to amend existing contracts and agreements by which funds have been loaned or advanced or are obligated to be loaned or advanced to said commissioners, for the acquisition, purchase, construction, establishment, and development of public works, pursuant to the authority of sections 9–204 to 9–207, or sections 9–208 to 9–212, so as to provide for the payment of interest on the amounts of such loans and advances to be repaid to the Public Works Administration at such rate as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia were said District authorized by law to issue and sell obligations to the public at the par value thereof, in a sum equal to the repayable amounts of such loans and advances, maturing serially over a period of fifteen years in approximately equal annual instalments, including both principal and interest, and secured by a first pledge of and lien upon all the general-fund revenues of said District. (July 1, 1940, 54 Stat. 706, ch. 494, § 1.)

§ 9–214. Interest to be determined by Secretary of Treasury.

The Secretary of the Treasury is authorized and directed to advise the Commissioner of Public Works and the Commissioners of the District of Columbia of such interest rate which, in his opinion and in the aforesaid circumstances, would be available to the District of Columbia on the date of enactment of this joint resolution. (July 1, 1940, 54 Stat. 706, ch. 494, § 2.)

§ 9–215. Authorized to borrow additional funds for public works—Approval of President—Certain project specified.

The commissioners of the District of Columbia are hereby authorized to accept advancements for the District of Columbia from the Federal Emergency Administration of Public Works, or its successor, and said administration, or its successor, with the approval of the President is authorized to advance to said commissioners the sum of $450,000, or any part thereof, in addition to any sums heretofore advanced to the District of Columbia by said administration, or its successor, out of funds authorized by law for said administration, or its successor, for a building for the office of the recorder of deeds to be located on premises now known as 515 D Street Northwest, formerly used as the police court, as recommended by a committee appointed by the commissioners under order of January 12, 1940, and the making of such advances is hereby included among the purposes for which funds heretofore appropriated or authorized for said administration or its successor, including funds appropriated by the Public Works Administration Appropriation Act of 1938, may be used, in addition to the other purposes specified in the respective acts appropriating or authorizing said funds. (July 11, 1940, 54 Stat. 757, ch. 583, § 1.)

§ 9–216. Purposes for which funds may be used.

The sum authorized by section 9–215, or any part thereof shall, when advanced, be available to the commissioners of the District of Columbia for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services required for carrying out the provisions of sections 9–215 to 9–219; for the construction of a recorder of deeds building, including materials and labor, heating, lighting, elevators, plumbing, landscaping, transportation or rental thereof, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete

construction and equipment for use of the aforesaid building and plant. (July 11, 1940, 54 Stat. 757, ch. 583, § 2.)

§ 9–217. Repayment — Interest — Included in annual budget.

The Federal Emergency Administration of Public Works, or its successor, shall be repaid 55 per centum of any moneys advanced under section 9–215 in annual instalments over a period of not to exceed twenty-five years with interest thereon at such rate as is agreed upon by the commissioners of the District and the Federal Emergency Administration of Public Works, or its successor, for the period of amortization: *Provided,* That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the commissioners of the District of Columbia, the first reimbursement with interest to be made not later than June 30, 1944: *Provided further,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of Public Act Numbered 284, Seventy-first Congress, 46 Stat. 482, ch. 354, reimbursement under that act shall not be less than $300,000 in any one fiscal year. (July 11, 1940, 54 Stat. 757, ch. 583, § 3.)

§ 9–218. Estimates and report to Congress.

The Commissioners of the District of Columbia shall submit with their annual estimates to the Congress a report of their activities and expenditures under section 9–215. (July 11, 1940, 54 Stat. 758, ch. 583, § 4.)

Chapter 3.—SALE OF PUBLIC LANDS

Sec.
9–301. Commissioners authorized to sell real estate.
9–302. Expenses of sales of real estate.
9–303. Commissioners to execute deeds to sell real estate.
9–304. Secretary of Interior authorized to sell certain real estate in National Park Service.
9–305. Solicitation for bids.
9–306. Expenses of sales.

§ 9–301 [20: 1621]. Commissioners authorized to sell real estate.

The Commissioners of the District of Columbia, with the approval of the National Capital Park and Planning Commission, are authorized and empowered in their discretion, for the best interests of the District of Columbia, to sell and convey, in whole or in part, to the highest bidder at public or private sale, real estate now or hereafter owned in fee simple by the District of Columbia for municipal use, in the District of Columbia, which the commissioners and the National Capital Park and Planning Commission find to be no longer required for public purposes. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 1.)

Compiler's Notes

Act of April 13, 1934, 48 Stat. 574, ch. 113 (D. C. Code 1929, title 20, § 1585) authorized the commissioners to sell the old Potomac School property, known as lot 802 in square 327.

Act of June 15, 1934, 48 Stat. 967, ch. 541 (D. C. Code 1929, title 20, § 1586), authorized the commissioners to sell the Tenley School Building, known as parcels 35/130 and 131, parcel 130.

Cross References

Commissioners may loan money for purpose of carrying out terms of the District of Columbia Alley Dwelling Act, § 5–116.

Disposal of Industrial Home School, § 32–503.

Duty of Director of National Park Service to report sales of public lands so that said lands may be entered for taxation, § 47–409.

Exemption from operation of law requiring license to deal in real estate, § 45–1402.

Reimbursement of funds advanced upon disposal of real estate of charitable or reformatory institutions, § 32–1003.

Rent, sale, or exchange of lands acquired under District of Columbia Alley Dwelling Act, §§ 5–103 to 5–116.

Sale of lands and buildings under Alley Dwelling Act, §§ 5–103. 5–114.

Sale of lands not needed for public purposes, § 16–613.

Sale of lot 14 in square 263, §§ 31–805, 31–806.

§ 9–302 [20: 1622]. Expenses of sales of real estate.

The said commissioners are further authorized to pay the reasonable and necessary expenses of sale of each parcel of land sold, and shall deposit the net proceeds thereof in the treasury of the United States to the credit of the District of Columbia. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 2.)

§ 9–303 [20: 1623]. Commissioners to execute deeds to sell real estate.

The said commissioners are hereby authorized to execute proper deeds of conveyance for real estate sold under the provisions of sections 9–301 to 9–306, which shall contain a full description of the land sold, either by metes and bounds, or otherwise, according to law. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 3.)

Cross Reference

General provisions for execution of instruments by Commissioners, § 1–214.

§ 9–304 [20: 1624]. Secretary of Interior authorized to sell certain real estate in National Park Service.

The Secretary of the Interior, with the approval of the National Capital Park and Planning Commission, is hereby authorized, in his discretion, for the best interests of the United States, to sell and convey, in whole or in part, by proper deed or instrument, any real estate held by the United States in the District of Columbia and under the jurisdiction of the National Park Service, which may be no longer needed for public purposes, for cash, or on such deferred-payment plan as the Secretary of the Interior may approve, at a price not less than that paid for it by the government and not less than its present appraised value as determined by him. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 4.)

Cross Reference

Authority to sell certain lands, § 8–123.

§ 9–305 [20: 1625]. Solicitation for bids.

In selling any parcel of land under sections 9–301 to 9–306, said secretary shall cause such public or private solicitation for bids or offers to be made as he may deem appropriate, and shall sell the parcel to the party agreeing to pay the highest price therefor if such price is otherwise satisfactory: *Provided,* That in the event the price offered or bid by the owner

of any lands abutting the lands to be sold equals the highest price offered or bid by any other party, the parcel may be sold to such abutting owner. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 5.)

§ 9–306 [20: 1626]. Expenses of sales.

Said secretary is further authorized to pay the reasonable and necessary expenses of sale of each parcel of land sold, and shall deposit the net proceeds thereof in the treasury to the credit of the United States and the District of Columbia in the proportion that each paid the appropriations from which the parcels of land were acquired or were obligated to pay the same, at the time of acquisition, by reimbursement. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 6.)

COMPILER'S NOTE

Section 7 of the act of 1939, provided: "That all Acts and parts of Acts which may be inconsistent or in conflict with this Act are hereby repealed to the extent of the inconsistency or conflict."

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chap. Sec.
1. Weights, measures, and markets 10–101

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

Sec.
10–101. Department of Weights, Measures, and Markets created—Superintendent—Assistants and employees.
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§ 10–101 [28: 1]. Department of Weights, Measures, and Markets created—Superintendent—Assistants and employees.

There is hereby created an executive department in the government of the District of Columbia which shall be known as the Department of Weights, Measures, and Markets. Such department shall be in charge of a Superintendent of Weights, Measures, and Markets, who shall be appointed by and be under the direction and control of the Commissioners of the District of Columbia. He shall have the custody and control of such standard weights and measures of the United States as are now or shall hereafter be provided by the District of Columbia, which shall be the only standards for weights and measures in said District.

The commissioners are also authorized to appoint, on the recommendation of the superintendent, such assistants, inspectors, and other employees for which Congress may, from time to time, provide. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 1; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

COMPILER'S NOTE

All sections of this chapter are from the act of 1921, 41 Stat. 1217, ch. 118, except §§ 10–121, 10–135, and 10–137.

AMENDMENT

The law as originally enacted provided for a salary of $2,500 per annum. The salary is now governed by the Classification Act of 1923 (42 Stat. 1488) U. S. C., title 5, § 673.

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

CROSS REFERENCES

Annual estimate of salaries, § 47–205.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47–2344, 47–2345.

STATUTORY REFERENCES

United States Grain Standards Act, U. S. C., title 7, §§ 71–87.

United States Cotton Standards Act, U. S. C., title 7, §§ 51–65.

§ 10–101a. Director of Weights, Measures, and Markets.

After April 11, 1946, the Superintendent of Weights, Measures, and Markets shall be known as the Director of Weights, Measures, and Markets. (April 11, 1946, 60 Stat. 88, ch. 134, § 1.)

§ 10–102 [28: 2]. Superintendent to give bond and take oath.

The superintendent shall, before entering upon the performance of his duties, give bond to the District of Columbia in the penal sum of $5,000, signed by two sureties or by a bonding company, to be approved by the Commissioners, conditioned on the faithful discharge of the duties of his office, and shall take and subscribe an oath or affirmation before the Commissioners that he will faithfully and impartially discharge the duties of his office, which bond and oath shall be deposited with the Commissioners. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 2.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–103 [28: 3]. Superintendent to have exclusive powers—Weighing and measuring devices to be examined—Condemnation of devices not conforming to standards—Unapproved weighing and measuring devices not to be possessed or used—Superintendent not required to approve devices belonging to United States.

The Superintendent and, under his direction, his assistants and inspectors, shall have exclusive power to perform all the duties provided in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, and 10–138. They shall, at least every six months, and oftener when the Superintendent thinks proper, inspect, test, try, and ascertain whether or not they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measuring, and all tools, appliances, or accessories connected with any or all such instruments or mechanical devices for weighing or measuring used or employed in the District of Columbia by any owner, agent, lessee, or employee in determining the weight, size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for transportation, sale, barter, exchange, hire, or award, or the weight of persons for a charge or compensation, and shall approve and seal, stamp, or mark, in the manner prescribed by the Commissioners, such devices or appliances as conform to the standards kept in the office of the Superintendent, and shall seize and destroy or mark, stamp, or tag with the word "condemned" such as do not conform to the standards, and shall also mark the date of such condemnation upon the same. Any weight, scale, beam, measure, weighing or measuring device of any kind which shall be found to be unsuitable for the purpose for which it is intended to be used or of defective construction or material shall be condemned. No person shall use or, having the same under his control, shall permit to be used for any of the purposes enumerated in said sections any weight, scale, beam, measure, weighing or measuring device whatsoever unless the same has been approved in accordance with the provisions of said sections within six months prior to such use, or that does not conform to the standards kept in the office of the Superintendent of Weights, Measures, and Markets, or that does not bear the approval seal, stamp, or mark prescribed by the Commissioners, or which, having been condemned, has not thereafter been approved as provided in said sections.

Any person who shall acquire or have in his possession after the passage of sections 10–101 to 10–120, 10–122 to 10–134, 10–135, and 10–138 any scale, weighing instrument, or nonportable measure or measuring device, subject to inspection or test under the provisions of said sections, which has not been approved in accordance with the provisions of said sections within six months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Commissioners, shall notify the Superintendent in writing at his office, giving a general description thereof, and the street and number or other location where same may be found, and it shall be the duty of the Superintendent to cause the same to be inspected and tested within a reasonable time after receipt of such notice. Any person who shall acquire or have in his possession after the passage of said sections any portable measure or measuring device, subject to inspection or test under the provisions of said sections, which has not been approved in accordance with the provisions of said sections within six months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Commissioners shall cause the same to be taken to the office of the Superintendent for inspection and test.

Every peddler, hawker, huckster, transient merchant, or other person with no fixed or established place of business shall, before using any weight, scale, measure, weighing or measuring device for any of the purposes enumerated in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, and 10–138, cause the same to be taken to the office of the Superintendent for inspection and test semi-annually, and shall not use for the purposes herein mentioned any weight, scale, measure, weighing or measuring device which has not been approved within six months prior to the time of such use, and does not bear the approval seal, stamp, or mark prescribed by the Commissioners. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 3; Apr. 27, 1945, 59 Stat. 96, ch. 99, § 1.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

AMENDMENTS

The act of Apr. 27, 1945, cited to text, amended section by inserting in first sentence of par. (2) "after the passage of sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138" following "in his possession", omitting "unapproved" following "his possession any", inserting "which has not * * * by the Commissioners", following "said sections", by inserting in second sentence of par. (2) "after the passage of said sections" following "in his possession", omitting "unapproved" following "his possession any", inserting "under the provisions * * * by the Commissioners" following "inspection or test", by adding at end of par. (3) "and does not * * * by the Commissioners,", and by omitting par. (4).

CROSS REFERENCES

Adulteration of food and drugs, §§ 33–101 to 33–110.
Disposition of fees, § 47–126.
Enforcement of law regulating labeling of potatoes, §§ 22–3409 to 22–3413.

§ 10–103a. Advancement of moneys for investigational work.

The Disbursing Officer of the District of Columbia is authorized to advance to the Director of the Department of Weights and Measures, and Markets, upon requisition previously approved by the Auditor of the District of Columbia, sums of money, not exceeding $200 at any one time, to be used exclusively in connection with investigations and detection of short weights and measures. (July 18, 1950, 64 Stat. 347, ch. 467, § 1.)

SIMILAR PROVISIONS

1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 539.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 427.
1947—July 9, 1946, ch. 544, §1, 60 Stat. 503.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 274.
1945—June 28, 1944, ch. 300, § 1, 58 Stat. 512.
1944—July 1, 1943, ch. 184, § 1, 57 Stat. 314.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 425.

INCREASE IN AMOUNT

Act July 9, 1946, increased amount to $200.

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–104 [28: 4]. Weighing and measuring devices to be approved after alteration or repair—Condemnation tag not to be altered.

No person shall use or, having the same under his control, permit to be used, any weight, scale, measure, weighing or measuring device, or any attachment or part thereof after the same has been altered or repaired without the same having been inspected and approved as provided in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138 after such alterations or repairs have been made, and no persons shall alter, obliterate, detach, obscure, or conceal any condemnation seal, stamp, mark, tag, or label, attached or impressed by the superintendent or any of his assistants or inspectors, without written permission of the superintendent. (Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 4.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–105 [28: 5]. Superintendent or assistants not to be hindered in making inspection.

No person shall neglect, fail, or refuse to exhibit any weight, scale, beam, measure, weighing or measuring device, subject to inspection or test under the provisions of sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138, to the superintendent or any of his assistants or inspectors for the purpose of inspection and test and no persons shall in any manner obstruct, hinder, or molest the superintendent or any of his assistants, inspectors, or other employees in the performance of their duties. (Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 5.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–106 [28: 6]. Superintendent to keep record of inspections.

The superintendent shall keep in his office a record of weighing and measuring devices inspected, which record shall show the type of device, the name and address of the owner, the date of inspection, and whether the same was approved or condemned. Such record shall be open to the public during regular office hours. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 6.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–107 [28: 7]. False measure prohibited—Limitation on prices.

No person shall sell, offer for sale, keep, or expose for sale anywhere in the District of Columbia any commodity of any kind as a weight, measure, or numerical count greater than the actual or true weight, measure, or numerical count thereof, and no person shall take or attempt to take more than the actual and true weight, measure, or numerical count of any commodity, when, as buyer, he is permitted by the seller to determine the weight, measure, or numerical count thereof. No person shall charge or collect for any commodity or commodities a sum greater than the price or prices indicated or quoted at the time of sale. No person shall charge, collect, or accept any money for any commodity which he shall not have delivered or which he shall not have agreed to deliver. When a whole number or fraction, or both, are used in representing the price or quantity of any commodity, thing, or service offered or exposed for sale, such number or combination of numbers shall be of such size as to indicate clearly the price or quantity of such commodity, thing or service. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 7; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 2.)

AMENDMENTS

The act of Apr. 27, 1945, cited to text, amended section by adding the second, third, and fourth sentences.
The catchline has been reworded.

NOTES TO DECISIONS

DEFENSES

Lack of intent to cheat is no defense. *Great A. & P. Tea Co.* v. *District of Columbia* (67 App. D. C. 30, 89 Fed. (2d) 502, cert den. 301 U. S. 691, 81 L. Ed. 1347, 57 Sup. Ct. 794).

IMPLIED REPRESENTATION OF WEIGHT

In prosecution for selling under weight, there was an implied representation of weight by statement of price per pound, and total cost. *Great A. & P. Tea Co.* v. *District of Columbia* (67 App. D. C. 30, 89 Fed. (2d) 502, cert. den. 301 U. S. 691, 81 L. Ed. 1347, 57 Sup. Ct. 794).

§ 10–108 [28: 8]. Commodities sold by weight—Net weight—"Ton" defined.

When any commodity is sold by weight it shall be net weight. When any commodity is sold by the ton, it shall be understood to mean two thousand pounds avoirdupois. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 8; Mar. 31, 1945, 59 Stat. 45, ch. 46, § 1.)

AMENDMENTS

The act of Mar. 31, 1945, cited to text, amended section by omitting "except coal" following "any commodity" in second sentence, and omitted third sentence which read "Coal shall be sold by the long ton, consisting of two thousand two hundred and forty pounds avoirdupois.".

The catchline has been reworded.

EFFECTIVE DATE

Section 2 of the act of Mar. 31, 1945, cited to text, provided that this act should take effect on April 1, 1945.

§ 10–109 [28: 9]. Regulation of coin-in-slot and automatic vending devices—Responsible person—Placard—Contents.

No person, firm, or corporation shall erect, operate, or maintain, or cause to be erected, operated, or maintained within the District of Columbia any coin-in-the-slot machine or automatic vending device without placing in charge thereof some responsible person. No such machine shall be maintained for use when the same is not in perfect working order, and the person in charge as well as the owner of such machine or device shall be held responsible for operating or maintaining any such machine or device which is not in perfect working order. A sign or placard shall be placed on every such machine or device in a conspicuous place and shall contain the name and business address of the owner and of the person in charge of such machine or device, and shall state that the person in charge of such machine or device will refund to any person money deposited by him for which the commodity or service promised expressly or impliedly has not been received, and such person shall so refund such money. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 9.)

CROSS REFERENCE

Criminal penalty for using slugs, § 22–1407.

§ 10–110 [28: 10]. Sales tickets—Furnished on request—Contents.

Every person, firm, or corporation shall, when a sales ticket is given with a purchase, cause such sales ticket to show the correct name and address of such person, firm, or corporation and the weight, measure, or numerical count, as the case may be, of each commodity sold to the purchaser, and every such person, firm, or corporation is hereby required to deliver such sales ticket to such purchaser when requested to do so by such purchaser at the time of sale. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 10.)

§ 10–111 [28: 11]. Coal, charcoal, and coke—Sale by weight—Delivery ticket—Verification of weight—Sales of less than a ton—Sales in packages of 100 pounds or less—Liquid contents—Vehicles to display vendor's name.

It shall be unlawful to sell or offer for sale in the District of Columbia any coal, charcoal, or coke in any manner other than by weight. No person shall sell or deliver or attempt to deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the quantity so sold or delivered or attempted to be delivered to each purchaser shall have been weighed separately. No person shall deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the same shall have been kept separated from any other coal, charcoal, coke, or other commodity after same has been weighed as aforesaid until final delivery thereof.

No person shall deliver or attempt to deliver any coal, charcoal, or coke in a quantity of one-fourth of a ton or more without accompanying the same by a delivery ticket and a duplicate thereof, the original of which shall be in ink or indelible substance, on each of which shall be clearly and distinctly expressed the following information:

(a) The gross weight of the load, the tare weight of the delivery vehicle, and the net weight of the coal, charcoal, or coke expressed in pounds avoirdupois;

(b) The name of the owner and location of the scale on which the coal, charcoal, or coke shall have been weighed;

(c) Name and address of the seller and of the purchaser; and

(d) The name of the person who weighed said coal, charcoal, or coke.

Upon demand of the Superintendent or any of his assistants or inspectors upon the person in charge of the vehicle of delivery, the original of these tickets shall be surrendered to the official making such demand. The duplicate ticket shall be delivered to the purchaser of said coal, charcoal, or coke, or to his agent or representative, at the time of delivery of such coal, charcoal, or coke. Upon demand of the Superintendent or any of his assistants or inspectors, or of the purchaser or intended purchaser, his agent, or representative, the person delivering such coal, charcoal, or coke shall convey the same forthwith to a public scale, owned and operated as hereinafter provided, or to any legally approved private scale in the District of Columbia, the owner of which may consent to its use, and shall permit the verifying of the weight, and after the delivery of such coal, charcoal, or coke shall return forthwith with the wagon, truck, or other vehicle used to the same scale and permit to be verified the weight of the wagon, truck or other vehicle.

When coal, charcoal, or coke is sold in quantities of one-fourth ton or more, it shall be sold in quantities of one-fourth ton, one-half ton, one ton, or in multiples of a ton. When coal, charcoal, or coke is sold in quantities of less than one-fourth ton, it shall be weighed at the time of delivery or sold in packages containing one hundred pounds, fifty pounds, twenty-five pounds, fifteen pounds, or ten pounds. No package of coal, charcoal, or coke shall be made for sale, kept for sale, offered for sale, exposed for sale, or sold unless it shall have distinctly and conspicuously printed on the outside thereof in plain bold-face type, not smaller than thirty-six point, the name of the commodity, the quantity of contents in pounds, and the name and address of the maker of said package. When coal, charcoal, or coke is sold and delivered in packages, no delivery ticket shall be required.

No coal, charcoal, or coke shall be sold which contains at the time the weight is taken more water or other liquid substance than is due to the natural condition of the coal, charcoal, or coke.

Every vendor of coal, charcoal, or coke shall cause his name and address to be distinctly and

conspicuously displayed in letters and figures at least four inches high on both sides of every vehicle used by or for him for the sale or delivery of coal, charcoal, or coke. In case of an estate, the trustee, administrator, or executor, or other person in charge of the affairs of such estate shall be deemed to be the vendor. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 10; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 3.)

AMENDMENTS

The act of Apr. 27, 1945, cited to text, amended section generally.

The catchline has been rewritten.

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–112 [28: 12]. Ice—Sale by weight—Scales for weighing.

It shall be unlawful to sell, within the District of Columbia, any ice in any manner other than by weight, such weight to be ascertained at the time of delivery of such ice, and every person, or in case of a firm, copartnership, or corporation, the person in charge of its business in the District of Columbia, engaged in the sale of ice shall keep on each of his or its wagons or other vehicles used in the sale or delivery of ice, while in use, a scale suitable for weighing ice which has been tested and approved in accordance with the provisions of sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138. Every scale used for weighing ice in making sales in quantities of one hundred pounds or less shall have graduations of one pound or less. Scales used for weighing ice in making sales in quantities of more than one hundred pounds may have graduations of five pounds or less. (Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 12.)

§ 10–113 [28: 13]. Bread—Standard loaf—Label—Permissible variation in weight.

The standard loaf of bread manufactured for sale, sold, offered, or exposed for sale in the District of Columbia shall weigh one pound avoirdupois, but bread may also be manufactured for sale, sold, offered, or exposed for sale in loaves of one-half pound, one pound and a half, or multiples of one pound, but shall not be manufactured for sale, sold, offered, or exposed for sale in other than the aforesaid weights. Every loaf of bread manufactured for sale, sold, offered, or exposed for sale in the District of Columbia shall have affixed thereon in a conspicuous place, a label at least one inch square, or, if round, at least one inch in diameter, upon which label there shall be printed in plain bold-face Gothic type, not smaller than twelve point, the weight of the loaf in pound, pounds, or fractions of a pound, as the case may be, whether the loaf be a standard loaf or not, the letters and figures of which shall be printed in black ink upon white paper. The business name and address of the maker, baker, or manufacturer of the loaf shall also be plainly printed on each such label. Every seller of bread in the District of Columbia shall keep a suitable scale which shall have been inspected and approved in accordance with the provisions of sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138 in a conspicuous place in his bakery, bakeshop, or store, or other place where he is engaged in the sale of bread, and shall, whenever requested by the buyer, and in the presence of the buyer, weigh the loaf or loaves of bread sold or offered for sale. Nothing herein shall apply to crackers, pretzels, buns, rolls, scones, or to loaves of fancy bread weighing less than one-fourth of one pound avoirdupois, or to what is commonly known as stale bread, provided the seller shall, at the time the sale is made, expressly state to the buyer that the bread so sold is stale bread: *Provided,* That any loaf of bread weighing within 10 per centum in excess or within 4 per centum less than standard weight shall be deemed of legal weight. (Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 13; Aug. 24, 1921, 42 Stat. 201, ch. 92.)

AMENDMENT

The acts of March 3, 1921, and August 24, 1921, are the same, except that in the first sentence after "loaves of one-half pound" there have been inserted the words "one pound and a half" and in the same sentence the word "weight" changed to "weights."

§ 10–114 [28: 14]. Bottles or jars for sale of milk—Markings.

Bottles or jars used for the sale of milk or cream shall be of the capacity of one gallon, half gallon, three pints, one quart, one pint, half pint, or one gill. Such bottles or jars shall have clearly blown or otherwise permanently marked in the side of each such bottle or jar or printed on the cap or stopple the name and address of the person, firm, or corporation who or which shall have bottled such milk or cream. Any person who uses, for the purpose of selling milk or cream, bottles or jars which do not comply with the requirements of this section shall be deemed guilty of using false measure. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 14; Apr. 27, 1945, 59 Stat. 98, ch. 99, § 4.)

AMENDMENTS

The act of Apr. 27, 1945, cited to text, amended section by omitting "when filled to the bottom of the cap seat, stopple, or other designating mark" in the first sentence.

CROSS REFERENCES

Other provisions for the marking of milk bottles and containers, § 33–314.

Registration of trade-mark, § 48–201 et seq., § 48–301 et seq.

§ 10–115 [28: 15]. Standard containers for sale of fruits, vegetables, and other dry commodities—No sales except in standard containers or by weight or count.

Standard containers for the sale of fruits, vegetables, and other dry commodities in the District of Columbia shall be as follows:

(a) Standard barrel for fruits, vegetables, and other dry commodities other than cranberries, shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of

staves not greater than four-tenths of an inch: *Provided,* That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch. It shall be unlawful to sell, offer, or expose for sale in the District of Columbia a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in this section, or subdivisions thereof known as the third, half, and three-quarter barrel.

(b) Standards for climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket, and twelve-quart basket, respectively.

The standard two-quart climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used.

The standard four-quart climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches; width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

The standard twelve-quart climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used.

(c) The six-basket carrier crate for fruits and vegetables shall contain six four-quart baskets, each basket having a capacity of two hundred and sixty-eight and eight-tenths cubic inches.

(d) The four-basket flat crate for fruits and vegetables shall contain four three-quart baskets, each basket having a capacity of two hundred and one and six-tenths cubic inches.

(e) The standard box, basket, or other container for berries, cherries, shelled peas, shelled beans, and other fruits and vegetables of similar size shall be of the following capacities standard dry measure: One-half pint, pint, and quart. The one-half pint shall contain sixteen and eight-tenths cubic inches; the pint shall contain thirty-three and six-tenths cubic inches; the quart shall contain sixty-seven and two-tenths cubic inches.

(f) Standard lug boxes for fruits and vegetables shall be the one-half bushel box and the one-bushel box.

The one-half bushel lug box shall be of the following inside dimensions: Length, seventeen inches; width, ten and five-tenths inches; depth, six inches.

The one-bushel lug box shall be of the following inside dimensions: Length, twenty and three-fourths inches; width, thirteen inches; depth, eight inches; and no lug box of other than the foregoing dimensions shall be used in the District of Columbia.

(g) The standard hampers for fruits and vegetables shall be the one-peck hamper, one-half bushel-hamper, one-bushel hamper, and one and one-half-bushel hamper.

The one-peck hamper shall contain five hundred and thirty-seven and six-tenths cubic inches; the one-half-bushel hamper shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The one-bushel hamper shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches, and the one and one-half-bushel hamper shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches.

(h) The standard round-stave baskets for fruits and vegetables shall be the one-half-bushel basket, one-bushel basket, one and one-half-bushel basket, and two-bushel basket.

The one-half-bushel basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The one-bushel basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches. The one- and one-half-bushel basket shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches, and the two-bushel basket shall contain four thousand three hundred and eighty-four one-hundredths cubic inches.

(i) The standard apple box shall contain two thousand one hundred and seventy-three and five-tenths cubic inches and be of the following inside dimensions: Length, eighteen inches; width, eleven and one-half inches; depth, ten and one-half inches.

(j) The standard pear box shall be of the following inside dimensions: Length, eighteen inches; width, eleven and one-half inches; depth, eight and one-half inches.

(k) The standard onion crate shall be of the following inside dimensions: Length, nineteen and five-eighths inches; width, eleven and three-sixteenths inches; depth, nine and thirteen-sixteenths inches.

(*l*) No person shall sell, offer, or expose for sale in the District of Columbia any fruits, vegetables, grain, or similar commodities in any manner except in the standard containers herein prescribed or by weight or numerical count; and no person shall sell, offer, or expose for sale, except by weight or numerical count, in the District of Columbia any commodity in any container herein prescribed which does not contain, at the time of such offer, exposure,

or sale, the full capacity of such commodity compactly filled: *Provided,* That fresh beets, onions, turnips, rhubarb, and other similar vegetables, usually and customarily sold by the bunch, may be sold by the bunch.

All kale, spinach, and other similar leaf vegetables shall be sold at retail by net weight. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 15.)

STATUTORY REFERENCES

Apples shipped or delivered in interstate commerce, or which shall be sold or offered for sale within the District of Columbia, or the territories of the United States, standard grades and containers, U. S. C., title 21, §§ 20–23.

Standard barrel for fruits, vegetables, and other dry commodities other than cranberries, U. S. C., title 15, §§ 234–236.

§ 10–116 [28: 16]. Substitutes for dry measure prohibited.

Nothing in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138 contained shall be construed as permitting the use as a dry measure or substituting for a dry measure any of the following containers: Barrels, boxes, lug boxes, crates, hampers, baskets, or climax baskets; and the use of any such container as a measure is hereby expressly prohibited, and the user shall be fined or imprisoned as herein provided for other violations of said sections. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16.)

§ 10–117 [28: 17]. Packages of food to be marked with weight, measure, or count—Commissioners may authorize variation, tolerances, and exemptions as to small packages.

No person shall sell, offer, or expose for sale in the District of Columbia any food in package form unless the quantity of contents is plainly and conspicuously marked on the outside of each package in terms of weight, measure, or numerical count. The commissioners are authorized to establish and allow reasonable variation, tolerances, and exemptions as to small packages. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16½.)

§ 10–118 [28: 18]. Cord of wood—Standard—Commissioners to fix standard load of certain split wood.

A cord of wood shall contain one hundred and twenty-eight cubic feet. Wood more than eight inches in length shall be sold by the cord or fractional part thereof, and when delivered shall contain one hundred and twenty-eight cubic feet per cord when evenly and compactly stacked. Split wood, eight inches or less in length, may be sold by such standard loads as shall be fixed by the commissioners. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 17.)

§ 10–119 [28: 19]. Standard liquid gallon, quart, pint, half pint, gill, and fluid ounce—Automatic pumps—Measure for ice cream, sherbet, and similar frozen food products.

The standard liquid gallon shall contain two hundred and thirty-one cubic inches; the half gallon, one hundred and fifteen and five-tenths cubic inches; the quart, fifty-seven and seventy-five hundredths cubic inches; the pint, twenty-eight and eight hundred and seventy-five thousandths cubic inches; the half pint, fourteen and four hundred and thirty-seven thousandths cubic inches; the gill, seven and two hundred and eighteen thousandths cubic inches; the fluid ounce, one and eight-tenths cubic inches; and no liquid measure of other than the foregoing capacities, except multiples of the gallon, shall be deemed legal liquid measure in the District of Columbia: *Provided,* That any automatic pump for the measurement of gasoline shall have graduations of fractional parts of a gallon in terms of either decimal or binary-submultiple subdivisions.

The standard measure for ice cream, sherbet, and similar frozen food products shall be of the following capacities: One-half pint, pint, quart, half gallon, gallon, two gallons, two and one-half gallons, and multiples of the gallon; and no person shall use in determining the quantity of ice cream kept for sale, offered for sale, or sold in the District of Columbia any measure of other than the foregoing capacities. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 18, § 18a, as added July 7, 1932, 47 Stat. 609, ch. 442; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

AMENDMENTS

1932. The act of July 7, 1932, cited to text, added the second paragraph.

1946. The act of Apr. 11, 1946, cited to text, amended section by adding proviso to first paragraph.

The catchline has been rewritten.

§ 10–120 [28: 20]. Measure for shucked oysters, fish, meat, butter, and cheese.

Shucked oysters shall be sold only by liquid measure or numerical count, and whenever there is included in the sale by measure of shucked oysters more than 10 per centum of oyster liquid or other liquid substance, the vendor shall be deemed guilty of selling short measure. All fish, meat, poultry, meat products, lard, lard substitutes, butter, butter substitutes, and cheese shall be sold by avoirdupois weight. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 19; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 6.)

AMENDMENTS

The act of Apr. 27, 1945, cited to text, amended section by striking out last sentence and inserting in lieu thereof a new last sentence.

The catchline has been rewritten.

§ 10–121 [28: 21]. "Barrel of corn" defined.

Three hundred and fifty pounds of corn on the cob shall constitute a barrel and two hundred and eighty pounds of shelled corn shall constitute a barrel: *Provided,* That nothing in this section shall be held to prohibit the sale of corn on the cob by the barrel. (Mar. 3, 1899, 30 Stat. 1346, ch. 432, § 2.)

§ 10–122 [28: 22]. Automatic measuring pumps—"Out of use" sign—Inspection.

Every user of an automatic measuring pump or similar device, shall, when the supply of the commodity which he is measuring for sale with such pump or similar device, is insufficient to deliver correct measure of such commodity by the usual or customary method of operating such pump or device or when, for any cause whatever, such pump or device does not, by the usual or customary method of operating same, deliver correct measure, place a sign with the words, "Out of use" in a conspicuous place

on such pump or device where it may readily be seen, and shall forthwith cease to use the same until his supply of such commodity is replenished or until such pump or device is repaired, adjusted, or otherwise put in condition to deliver correct measure. All automatic measuring pumps or other similar measuring devices in use shall be subject to inspection, and approval or condemnation, whether used for measuring or not. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 20.)

§ 10–123 [28: 23]. Sale of pro rata quantity to be at pro rata price unless purchaser informed to contrary.

Whenever any commodity is offered for sale at a stated price for a stated quantity, a smaller quantity shall be sold at a pro rata price unless the purchaser is informed to the contrary at the time of sale. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 21.)

§ 10–124 [28: 24]. Superintendent shall weigh, measure, and inspect commodities.

The superintendent, or under his direction, his assistants and inspectors, shall from time to time weigh or measure and inspect packages or amounts of commodities of whatever kind kept for sale, offered or exposed for sale, sold, or in the process of delivery, in order to determine whether or not the same are kept for sale, offered for sale, or sold in accordance with the provisions of sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138, and no person shall refuse to permit such weighing, measuring, or inspection whenever demanded by the superintendent or any of his assistants or inspectors. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 22.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–124a. Investigation and detection of misrepresentation and false advertising in connection with food sales—Appropriation.

The Superintendent of Weights, Measures, and Markets is further authorized to make purchases of food in connection with the investigation and detection of sales of food by misrepresentation or false advertising in violation of sections 22–1411 to 22–1413; and there are authorized to be appropriated annually such sums as may be necessary for carrying out the purposes of this section. (Mar. 3, 1921, ch. 118, § 22½, as added Apr. 27, 1945, 59 Stat. 99, ch. 99, § 5.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–125 [28: 25]. Vending of weights and weighing or measuring devices by superintendent or his employees prohibited.

It shall be unlawful for the superintendent or any employee of his office to vend any weights, measures, weighing or measuring device, or to offer or expose the same for sale, or to be interested, directly or indirectly, in the sale of same. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 23.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

§ 10–126 [28: 26]. Superintendent and assistants to have police power—Badges—Entries with or without warrant — Vendors — Peddlers — May be stopped.

There is hereby conferred upon the superintendent, his assistants and inspectors, police power, and in the exercise of their duties they shall, upon demand, exhibit their badges to any person questioning their authority; and they are authorized and empowered to make arrests of any person violating any of the provisions of sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138. The superintendent, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this chapter and in the performance of their official duties, with or without formal warrant, enter or go into or upon any stand, place, building, or premises, except a private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 24.)

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

CROSS REFERENCE

Other provision concerning search, with or without warrant, § 23–301 and notes.

§ 10–127 [28: 27]. Commissioners may establish tolerances and specifications.

The Commissioners are hereby authorized and empowered to establish tolerances and specifications for scales, weights, measures, weighing or measuring instruments or devices, and containers used in the District of Columbia. The Commissioners shall prescribe and allow for barrels, containers, and packages, provided for in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138 the same specifications, variations, or tolerances that have been prescribed or established, or that may hereafter be prescribed or established for like barrels, containers, or packages by any officer of the United States in accordance with any requirement of an act of Congress. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 25.)

§ 10–128 [28: 28]. Weighmasters—Public scales—Fees.

The Commissioners are authorized to appoint public weighmasters and grant licenses for the location of public scales in the District of Columbia under such regulations as they may prescribe, and authorize such weighmasters to charge such fees as the Commissioners may approve and fix in advance, and they may grant permits, revocable on thirty days' notice, for the location of such public scales on public space under their control. No person other than a duly appointed and qualified public weighmaster shall do public weighing or make any charge or accept any compensation therefor. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 26.)

§ 10–129 [28: 29]. Powers and duties of superintendent conferred on assistants and inspectors.

The powers and duties granted to and imposed on the superintendent by sections 10–101 to 10–120,

10–122 to 10–134, 10–136, 10–138 are also hereby granted to and imposed on his assistants and inspectors when acting under his instructions. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 27.)

CROSS REFERENCE

See compiler's note to § 10–101.

§ 10–130 [28: 30]. Enactment and enforcement of rules and regulations—Supervision of produce and other markets—Investigations and reports.

The Commissioners are authorized and empowered to make such regulations as may be necessary for the control, regulation, and supervision of all markets owned by the District of Columbia and that the Superintendent, under the direction of the Commissioners, shall have supervision of all produce and other markets owned by the District of Columbia, shall enforce such regulations regarding the operation of the same as the Commissioners may make, shall make such investigations regarding the sale, distribution, or prices of commodities in the District of Columbia as the Commissioners may direct, and shall make reports and recommendations in connection therewith. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 28; Apr. 27, 1945. 59 Stat. 99, ch. 99, § 7.)

AMENDMENTS

The act of Apr. 27, 1945, cited to text, amended section by adding "The Commissioners are * * * Columbia and that" preceding "the Superintendent".

CHANGE OF TITLE

Title of Superintendent of Weights, Measures, and Markets, changed to Director, see § 10–101a.

CROSS REFERENCE

Rules and regulations in general, § 1–226 and notes.

§ 10–131 [28: 31]. "Commissioners" to mean Commissioners of the District of Columbia—"Superintendent" to mean superintendent of weights, measures, and markets.

Wherever the word "Commissioners" is used in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138 it shall be construed to mean the Commissioners of the District of Columbia. Whenever the word "superintendent" is used in said sections, it shall be construed to mean the superintendent of weights, measures, and markets. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 29.)

CROSS REFERENCE

See compiler's note to § 10–101.

§ 10–132 [28: 32]. "Person" — Construction — Singular words to include plural.

The word "person," as used in sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138, shall be construed to include copartnerships, companies, corporations, societies, and associations. Wherever any word in said sections is used in the singular, it shall be construed to mean either singular or plural, and wherever any word in said sections is used in the plural, it shall be construed to mean either plural or singular, as the circumstances demand. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 30.)

CROSS REFERENCE

See compiler's note to § 10–101.

§ 10–133 [28: 33]. Sections and provisions of each section independent and severable.

Sections 10–101 to 10–133, and every provision of each section, is hereby declared to be an independent section or provision, and the holding of any section or provision of any section to be void, ineffective, or unconstitutional for any cause whatever shall not be deemed to affect any other section or provision thereof. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 31.)

CROSS REFERENCE

See compiler's note to § 10–101.

§ 10–134 [28: 34]. Penalties—Conduct of prosecutions.

Any person violating any of the provisions of sections 10–101 to 10–133 shall be punished by a fine not to exceed $500, or by both such fine and imprisonment not to exceed six months. All prosecutions under sections 10–101 to 10–120, 10–122 to 10–134, 10–136, 10–138 shall be instituted by the corporation counsel or one of his assistants in the police court of the District of Columbia. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 32.)

CROSS REFERENCE

See compiler's note to § 10–101.

NOTES TO DECISIONS

INTENT

To permit a defendant charged with a violation of the statute to avoid the consequences by contending that it was a mistake on his part, without intent to cheat and defraud the customer, would measurably defeat the purpose of the statute. *Great A. & P. Tea Co.* v. *District of Columbia* (67 App. D. C. 30, 89 Fed. (2d) 502, cert. den. 301 U. S. 691, 81 L. Ed. 1347, 57 Sup. Ct. 794).

§ 10–135 [28: 35]. Jurisdiction over fish wharf and market—Leases, rentals, fees—Regulations.

The Commissioners of the District of Columbia are authorized and directed in the name of the District of Columbia to exclusively control, regulate, and operate as a municipal fish wharf and market, the water frontage on the Potomac River lying south of Water Street, between Eleventh and Twelfth Streets, including the buildings and wharves thereon, and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia; and said commissioners shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia, and to make and amend, from time to time, all such regulations as they may deem proper for the control, regulation, and operation of said municipal fish wharf and market. (Mar. 19, 1906, 34 Stat. 72, ch. 958; Mar. 4, 1913, 37 Stat. 941, ch. 150; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENTS

Act of 1906 read as follows: "That the commissioners of the District of Columbia be, and they are hereby, authorized and empowered to make such regulations as they may deem proper for the sale of the rights and privileges of the fish wharf in the District of Columbia: *Provided,*

That no letting or sale of such rights or privileges shall be for a longer term than one year."

Prior to the act of 1921, the section provided that rentals and fees should be paid into the treasury, one-half to the credit of the United States and one-half to the credit of the District of Columbia.

CROSS REFERENCES

Harbor regulations, §§ 22–1701 to 22–1703.

Other provisions concerning wharves, and rental thereof, §§ 9–101, 9–102.

Rental of municipal center, § 9–202.

Rules and regulations generally, § 1–226 and notes.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 10–136 [28: 36]. Markets—Disposition of receipts—Charges.

On and after July 1, 1906, all receipts of the Wholesale Producers' Market, including the receipts for the occupation of the south side of B street northwest, and the farmers' street markets adjacent to the Eastern, Western and Georgetown markets, respectively, shall be paid to the collector of taxes, to the credit of the revenues of the District, weekly. And the commissioners are hereby authorized to make such reasonable charges for the use of space at the above-mentioned street markets as may be deemed just, but in no case shall the collections for such space and for labor, and the sweeping, cleaning and hauling away of refuse at such space exceed the sum of twenty cents per day for each space occupied, and the market masters of the several markets herein mentioned shall make such collections daily and make a return thereof, with a sworn statement, weekly to the collector of taxes to the credit of the revenues of the District of Columbia. (June 27, 1906, 34 Stat. 485, ch. 3553; Mar. 4, 1913, 37 Stat. 940, ch. 150; Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 33.)

AMENDMENTS

The act of 1913 changed the limitation of 10 cents per day to 20 cents per day.

The act of 1921 repealed the act appointing a sealer and assistant sealer of weights and measures in the District of Columbia, so that the provision for payment of receipts to the collector of taxes through the sealer of weights and measures, which appeared in the 1906 Act, has been omitted.

CROSS REFERENCES

Disposition of fees, § 47–128.

Rental of municipal center, § 9–202.

§ 10–137 [28: 37]. Farmers' produce market—Regulations—Charges.

The area of squares 354 and 355 and the portion of F Street southwest within the adjacent curb lines of Tenth and Eleventh Streets southwest when same shall have been acquired and closed, shall be used and occupied by the District of Columbia as and for the purposes of a wholesale farmers' produce market.

And the said commissioners of the District of Columbia are hereby authorized to make, promulgate, and enforce all appropriate rules and regulations for the control and operation of such market when established, and may establish a reasonable scale of charges to be paid by farmers and others making use of the market or of any of its appurtenant facilities. (Mar. 2, 1929, 45 Stat. 1487, ch. 501.)

COMPILER'S NOTE

By the act of July 3, 1930 (46 Stat. 952, ch. 848), the following appropriation in connection with the farmers' produce market was made: "For the acquisition of squares numbered 354 and 355, including all necessary expenses for the clearing and leveling of the ground, the erection of protection sheds and suitable stands and stalls, and the installation of sanitary conveniences and heating and telephone service, in accordance with the provisions of the Act entitled 'An Act authorizing acquisition of a site for the farmers' produce market, and for other purposes,' approved March 2, 1929 (45 Stat., p. 1487), $300,000, to be immediately available."

With reference to this market, the act of August 5, 1939, 53 Stat. 1215, ch. 457, provided that, "Whereas a farm market was conducted on Louisiana Avenue between Ninth and Twelfth Streets for thirty or forty years under the supervision of the Department of Agriculture; and

"Whereas the farmers were induced to give up this market on condition that other land of equal size and value would be obtained; and

"Whereas three hundred thousand dollars was appropriated in March 1929 for this purpose; and

"Whereas two city blocks, known as 354 and 355 in southwest Washington, were obtained and deeded to the District of Columbia to be used expressly for a farmers' market; and

"Whereas part of block 355 has now been taken for a District inspection station in direct opposition to this agreement and breaking the implied contract that this project would be available for a farm market; and

"Whereas there is danger of the rest of the market also being confiscated: Therefore be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the remaining parts of these lots shall from now on be inviolate as a farmers' market and shall not be taken from them as long as needed by said farmers as a market place."

CENTER MARKET—HISTORICAL

The following law is considered obsolete but is preserved as a note for whatever historical value it may have. It appeared in the D. C. Code, 1929 edition, as follows: "Center Market; spaces for sale of produce; no penalty to be imposed for sale by farmer or producer of sound produce.—The provisions of the ordinance of the City of Washington approved May 27, 1857, requiring the clerks of the several markets to lay off and mark in convenient spaces the several pavements adjoining and bordering on the market squares, which spaces may be used for the sale or exposure for sale of vegetables or other country produce, and extending the powers of the clerks to fifteen feet of the streets, measuring from the curb line on which said squares front, shall apply to the south front of Center Market and to a clerk who may be designated by the Commissioners of the District of Columbia. The said ordinance shall be applicable to farmers and truckmen raising produce doing business on the north side of B Street north along the south front of the Center Market in said City of Washington: *Provided,* That no fine or fee be assessed or punishment shall be imposed upon any farmer or producer for selling at any time within the District during market hours any article of provision or vegetable grown or produced by him and sound and fit for use. (Feb. 20, 1897, 29 Stat. 702, Res. No. 16; June 27, 1906, 34 Stat. 485, ch. 3553; Mar. 4, 1913, 37 Stat. 940, ch. 150; Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 33.)"

The act of June 6, 1930 (46 Stat. 523, ch. 412), provided for the termination of the lease of the Washington Market Company upon notice by the Secretary of Agriculture, and that "thereafter the property known as Center Market in the District of Columbia shall no longer be used as a public market."

CROSS REFERENCE

Rental of municipal center, § 9–202.

NOTES TO DECISIONS

CENTER MARKET

Under the act of May 20, 1870, chartering the Washington Market Company and authorizing the establishment of a market in the City of Washington, and the rental of stalls therein by auction, holders of stalls are not authorized to continue in possession of such stalls indefinitely upon payment of rental. *Washington Market Co.* v. *Hoffman* (11 Otto (101 U. S.) 112, 25 L. Ed. 782).

The act of May 20, 1870, chartering the Washington Market Co. and authorizing the erection of a market building, provided for the rental of stalls to the highest bidder at auction, and that at the end of 30 years the City of Washington might take possession on paying for the buildings and improvements, and that the property should revert to the United States in 99 years. *Washington Market Co.* v. *Hoffman* (11 Otto (101 U. S.) 112, 25 L. Ed. 782); *District of Columbia* v. *Washington Market Co.* (108 U. S. 243, 27 L. Ed. 714, 2 Sup. Ct. 543).

The act incorporating the Washington Market Company (Act May 20, 1870), and fixing the terms for the use of the public property granted to it, did not establish an irrevocable trust for the poor of Washington City, nor disable itself from authorizing any subsequent changes in the conditions of the grant, nor estop the market company from becoming parties to an arrangement for additional uses of the land on an equitable apportionment of the rent. *District of Columbia* v. *Washington Market Co.* (108 U. S. 243, 27 L. Ed. 714, 2 Sup. Ct. 543).

The act of May 20, 1870, ch. 108, 16 Stat. 124, chartering the Washington Market Co., was not repealed by act of March 4, 1921, 41 Stat. 1441. *Nusbaum* v. *District of Columbia* (58 App. D. C. 47, 24 Fed. (2d) 622).

PART II

CIVIL PROCEDURE

TITLE 11.—JUDICIARY AND JURISDICTION

Chap.		Sec.
1.	General provisions	11–101
2.	United States Court of Appeals for the District of Columbia	11–201
3.	District Court of the United States for the District of Columbia	11–301
4.	Clerk of District Court	11–401
5.	Probate Court	11–501
6.	Police Court	11–601
7.	Municipal Court	11–701
8.	Small Claims and Conciliation Branch of Municipal Court	11–801
9.	Juvenile Court	11–901
10.	District Attorney	11–1001
11.	Marshal	11–1101
12.	Coroner	11–1201
13.	Attorneys	11–1301
14.	Juries and Jury Commissioners	11–1401
15.	Fees and costs	11–1501

Chapter 1.—GENERAL PROVISIONS

Sec.

11–101. Courts.
11–102. Justices may withdraw books from Library of Congress.
11–103. Courthouse construction authorized—Cost—Repayment to U. S.
11–104. Maintenance and operation of new courthouse.
11–105. Appropriation authorized.

§ 11–101 [18: 1]. Courts.

The judicial power in the District shall be vested in—

First. Inferior courts, namely, municipal court, juvenile court of the District of Columbia, and the police court; and

Second. Superior courts, namely, the District Court of the United States for the District of Columbia, the United States Court of Appeals for the District of Columbia, and the Supreme Court of the United States. (Mar. 3, 1901, 31 Stat. 1190, ch. 854, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 7, 1934, 48 Stat. 926, ch. 426; June 25, 1936, 49 Stat. 1921, ch. 804.)

AMENDMENTS

Section 2 of the act of 1901 originally provided for inferior courts, consisting of justices of the peace and police courts, and for superior courts, namely, the Supreme Court of the District of Columbia, the Court of Appeals of the District of Columbia, and the Supreme Court of the United States. Other sections of this act established courts of justices of the peace and the police court.

The act of 1906 established the juvenile court.

The act of 1909 changed the name and jurisdiction of the court of justices of the peace to the municipal court.

The act of 1934 changed the name of the Court of Appeals of the District of Columbia to the United States Court of Appeals for the District of Columbia.

The act of 1936 changed the name of the Supreme Court of the District of Columbia to the District Court of the United States for the District of Columbia.

RULES OF CIVIL PROCEDURE

In the Federal Rules of Civil Procedure, references to District Courts include the District Court of the United States for the District of Columbia and references to a Circuit Court of Appeals include United States Court of Appeals for the District of Columbia, see Rule 81 (d).

NOTES TO DECISIONS

CONSTITUTION

The District Court of the United States for the District of Columbia and the United States Court of Appeals for the District of Columbia are constitutional courts of the United States ordained and established under article 3 of the Federal Constitution. *O'Donoghue* v. *United States* (289 U. S. 516, 77 L. Ed. 1356, 53 Sup. Ct. 740).

HISTORICAL

In 1863, all the powers and jurisdiction, previously possessed by the Circuit Court of the District, including the appellate jurisdiction from justices of the peace, were transferred by Congress to the Supreme Court of the District of Columbia. *Capital Traction Co.* v. *Hof* (174 U. S. 1, 43 L. Ed. 873, 19 Sup. Ct. 580).

JUSTICES OF THE PEACE

Justices of the peace in the District were judicial officers, and held their office for five years. They were authorized to hold courts, and have cognizance of personal demands of value of $20. *Marbury* v. *Madison* (1 Cranch (5 U. S.) 137, 2 L. Ed. 60).

Historical survey of justice of the peace courts. *Capital Traction Co.* v. *Hof* (174 U. S. 1, 43 L. Ed. 873, 19 Sup. Ct. 580).

Organic Act of February 27, 1801, 2 Stat. 103, ch. 15, § 11, provided for justices of the peace and fixed the compensation which they were to have for their services in holding their courts. This compensation was given in the form of fees, payable when the services were rendered. That the justice's compensation could not be diminished during his continuance in office, seemed to follow as a necessary consequence from the provisions of the Constitution. *O'Malley* v. *Woodrough* (307 U. S. 277, 83 L. Ed. 1289, 59 Sup. Ct. 838, 122 A. L. R. 1379).

MUNICIPAL COURT

The municipal court is a part of the judicial system of the District. *W. B. Moses & Sons* v. *Hayes* (36 App. D. C. 194).

TERMS

Under the terms of the act establishing the Supreme Court of the District, the court consisted of four justices, any three of whom could hold a general term, and any one of whom could hold a Circuit Court or special term for the purposes and under the conditions therein prescribed, or could hold a District Court of the United States in the same manner and with the same powers and jurisdiction as are possessed and exercised by the Federal District Courts within the several States. *Smith* v. *Mason* (14 Wall. (81 U. S.) 419, 20 L. Ed. 748).

§ 11–102 [18: 2]. Justices may withdraw books from Library of Congress.

The chief justice and associate justices of the United States Court of Appeals for the District of

Columbia and the chief justice and associate justices of the District Court of the United States for the said District are authorized to use and take books from the Library of Congress in the same manner and subject to the same regulations as justices of the Supreme Court of the United States. (Jan. 27, 1894, 28 Stat. 577, Res. No. 9.)

§ 11–103. Courthouse construction authorized—Cost—Repayment to U. S.

The Federal Works Administrator is hereby authorized to construct, equip, and furnish the building for the use of the United States Court of Appeals for the District of Columbia and the District Court of the United States for the District of Columbia, the planning and site acquisition of which were authorized by the Act of May 29, 1947 (Public Law 80, Eightieth Congress), under a total limit of cost for the entire project of $18,665,000, including architectural, engineering, and administrative expenses (which limit of cost also includes the credit of $2,420,000 granted the District of Columbia as compensation for the site of the project by said Act of May 29, 1947, and the $370,000 for plans and specifications heretofore appropriated under Public Law 271, Eightieth Congress, approved July 30, 1947): *Provided,* That the Commissioners of the District of Columbia shall repay to the United States, over a period of twenty-five years, 50 per centum of the cost of the entire project upon completion, less the credit of $2,420,000 granted the District of Columbia as compensation for the site of the project by said Act of May 29, 1947, in equal annual installments, beginning with the July 1 next following the date of completion of the project: *Provided further,* That the cost of operation, maintenance, and repair of the completed project shall be divided equally between the United States of America and the District of Columbia. (May 14, 1948, 62 Stat. 235, ch. 290, § 1.)

§ 11–104. Maintenance and operation of new courthouse.

The operation, maintenance, and repair of the completed building shall be under the control of the Public Buildings Administration, in the Federal Works Agency, and the allocation of space therein shall be vested in the chief justice of the United States Court of Appeals for the District of Columbia and the chief justice of the District Court of the United States for the District of Columbia. (May 14, 1948, 62 Stat. 235, ch. 290, § 2.)

§ 11–105. Appropriation authorized.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 11–103 and 11–104. (May 14, 1948, 62 Stat. 235, ch. 290, § 3.)

Chapter 2.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Sec.
11–201. Repealed.
11–202. Repealed.
11–203. Repealed.
11–204. Clerk, crier, and messenger—Fees.
11–205. Repealed.
11–206. Reporter—Duties—Copies of reports to be furnished judges.
11–207. Cost of reports of opinion to be fixed by court.
11–208. Repealed.
11–209. Repealed.
11–210. Repealed.
11–211. Clerk to be custodian of building.

§ 11–201. [18:21]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to the constitution of the United States Court of Appeals of the District of Columbia was based on Act Feb. 9, 1893, 27 Stat. 434, ch. 74, § 1; Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 221; June 19, 1930, 46 Stat. 785, ch. 538; May 31, 1938, 52 Stat. 584, ch. 290, § 2, and is now covered by section 44 of title 28, U. S. C.

Compiler's Notes

The Code of 1901, which appears in 31 Stat. 1189–1436, ch. 854, §§ 1 to 1642, was the last code of the District enacted as original and independent legislation. Consequently, where a section of this code is set out and antecedent statutes are referred to in the history line, they have to do only with origins and the 1901 code is not in fact amendatory of them and no comment concerning them will ordinarily be found in the notes concerning amendments.

In this section and all sections, the words "Court of Appeals" were changed to read "United States Court of Appeals for the District of Columbia," on the authority of act of June 7, 1934, 48 Stat. 926, ch. 426.

Amendments

By act of June 19, 1930, 46 Stat. 785, ch. 538, "The President is authorized to appoint, by and with the advice and consent of the Senate, two additional justices of the United States Court of Appeals for the District of Columbia, who shall have the same tenure of office, pay and emoluments, powers, and duties as provided by law for the justices of said court."

By act of May 31, 1938, 52 Stat. 584, ch. 290, § 2, "The President is authorized to appoint, by and with the advice and consent of the Senate, one additional associate justice of the United States Court of Appeals for the District of Columbia."

Cross References

For jurisdiction and power of the United States Court of Appeals, § 17–101 et seq.

Director of traffic and commissioners, District of Columbia, act of July 3, 1926, authorizing writs of error in certain traffic cases, § 40–302.

Juvenile court, discretionary writs of error authorized, §§ 11–923, 17–105.

Municipal court, discretionary writs of error authorized, § 17–104.

Police court, discretionary writs of error authorized, § 17–102.

Statutory References

Act of abolishing writs of error, Jan. 31, 1928, 45 Stat. 54, amended Apr. 26, 1928, 45 Stat. 466, U. S. C., title 28, § 861a.

Appeals from the Federal Alcohol Administration, U. S. C., title 27, § 204 (h).

Appeals from the Secretary of the Treasury by customhouse broker, U. S. C., title 19, § 1641 (b).

Appellate jurisdiction, U. S. C., title 28, § 225.

Assignment of judges of United States Court of Customs Appeals for service in the Court of Appeals authorized by amendment to Judicial Code, U. S. C., title 28, § 22.

Bankruptcy, Court of Appeals given same appellate jurisdiction as a Circuit Court of Appeals, U. S. C., title 11, §§ 47. 48.

Board of Governors of the Federal Reserve System, enforcement of orders, U. S. C., title 15, §§ 21, 45; title 28, § 225 (e).

Board of Tax Appeals, authorizing appeals from, U. S. C., title 26 (I. R. C.), §§ 1141, 1142.

Federal Communications Commission (successor of Federal Radio Commission), appeal from, Communications Act (June 19, 1934, 48 Stat. 1064), U. S. C., title 47 § 402.

Federal Trade Commission, enforcement of orders, U. S. C., title 15, §§ 21, 45; title 28, § 225 (e).

Interstate Commerce Commission, enforcement of orders, U. S. C., title 15, § 21; title 28, § 225 (e).

Investment Advisers' Act of 1940, court review of orders, U. S. C., title 15, § 80b–13; 4 F. C. A., title 15, § 80b–14.

Investment Company Act of 1940, court review of orders, U. S. C., title 15, § 80a–42.

National Labor Relations Board, enforcement of orders, appeals, U. S. C., title 29, § 160 (e), (f).

Post office department, appeals from in certain cases, U. S. C., title 39, § 576.

Public Utility Holding Company Act of 1935, court review of orders, U. S. C., title 15, § 79x.

Review of decisions of the Processing Tax Board (§ 906 (g), Revenue Act of 1936), U. S. C., title 7, § 648 (g).

Securities Exchange Act of 1934, court review of orders, U. S. C., title 15, § 78y.

Securities Exchange Act of 1933, court review of orders, U. S. C., title 15, § 77i.

Special appeals in criminal cases prohibited, U. S. C., title 18, § 683.

Trust Indenture Act (Securities and Exchange Commission), court review of order, U. S. C., title 15, § 80u.

RULES OF CIVIL PROCEDURE

In the Federal Rules of Civil Procedure, reference to a judge of the Circuit Court of Appeals includes a justice of the United States Court of Appeals for the District of Columbia, see Rule 81 (d).

NOTES TO DECISIONS

APPEAL FROM MUNICIPAL COURT

Suit for damages for negligence triable in Municipal Court and not reviewable by Supreme Court on certiorari. *United States ex rel. Eure* v. *Borden* (65 App. D. C. 84, 80 Fed. (2d) 527).

NUMBER OF JUDGES

Under this section, the court formerly consisted of only three judges. *Childrens Hosp.* v. *Adkins* (52 App. D. C. 109, 284 Fed. 613).

ORDERS NOT APPEALABLE

Under this section establishing the Court of Appeals for the District, the Supreme Court, generally speaking, and not including cases arising under the Bankruptcy Law, cannot review judgments and decrees of the Supreme Court of the District directly by appeal or writ of error. *In re Massachusetts* (197 U. S. 482, 49 L. Ed. 845, 25 Sup. Ct. 512).

Order directing attorney to deliver certain papers to defendant client was not appealable. *Dunning* v. *Harrah* (65 App. D. C. 92, 80 Fed. (2d) 535).

PATENTS

Court of Appeals of the District decided only as between two different persons claiming patents for the same invention, and not as against the public at large. *Automatic Weighing Mach. Co.* v. *Pneumatic Scale Corp.* (C. C.–Maine), (158 Fed. 415).

WRITS OF PROHIBITION

Appellate court has no inherent jurisdiction to issue writ of prohibition to Supreme Court, but may do so in aid of its appellate jurisdiction. *In re Macfarland* (30 App. D. C. 365, dism'd. 215 U. S. 614, 54 L. Ed. 349, 30 Sup. Ct. 402).

§ 11–202. [18: 22]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to salary of justices was based on Act Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 222; Dec. 13, 1926, 44 Stat. 919, ch. 6, § 1, and is now covered by section 44 of title 28, U. S. C.

AMENDMENT

Before amendment, § 222 of the act of 1901 provided that the justices should each receive a salary of $6,000 and the Chief Justice of $6,500, which salary was payable quarterly.

§ 11–203 [18: 23]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to oath of justices was based on act Feb. 9, 1893, 27 Stat. 435, ch. 74, § 3; Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 223, and is now covered by section 453 of title 28, U. S. C.

NOTES TO DECISIONS

JUSTICES

The District Court and United States Court of Appeals for the District of Columbia are constitutional courts of the United States, ordained and established under article 3 of the Constitution; the judges of these courts hold their offices during good behavior, and their compensation can not, under the Constitution, be diminished during their continuance in office. *O'Donoghue* v. *United States* (289 U. S. 516, 77 L. Ed. 1356, 53 Sup. Ct. 740).

§ 11–204 [18: 24]. Clerk, crier, and messenger—Fees.

The deputy clerks for the United States Court of Appeals for the District of Columbia may sign the name of the clerk of such court to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate said signature by affixing the seal of the court thereto when the impress of the seal is necessary to its authentication. In such case the signature shall be—

——— ———, *Clerk*,

By ——— ———, *Deputy Clerk*.

(Feb. 9, 1893, 27 Stat. 435, ch. 74, § 4; July 30, 1894, 28 Stat. 160, ch. 172, § 1; Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 224; June 30, 1902, 32 Stat. 528, ch. 1329; Aug. 23, 1912, 37 Stat. 412, ch. 350; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; Mar. 4, 1923, 42 Stat. 1488, ch. 265; May 21, 1928, 45 Stat. 645, ch. 659; June 25, 1948, 62 Stat. 988, ch. 646, § 15; May 24, 1949, 63 Stat. 108, ch. 139, § 137.)

AMENDMENTS

Section 224 of act of 1901 was amended by act of 1902 so as to add to the caption thereof the words "crier and messenger"; also by adding at the end of the section the following: "Said court may appoint a crier at a compensation not to exceed $75 a month and a messenger at a compensation not to exceed $60 a month, both payable at the Treasury of the United States, who shall perform such duties as may be assigned by that court."

The section as enacted contained a provision providing that the clerk should "receive as compensation for his services, in the discretion of the court, an annual salary not to exceed the sum of $3,000 payable monthly at the Treasury of the United States," preceding the provision concerning his bond.

It also contained a provision that the deputy clerk should "receive as compensation for his services, in the discretion of the court, an annual salary not to exceed the sum of $2,000 payable monthly at the Treasury of the United States."

The salaries of the clerk, deputy clerk, bailiffs, crier, and messenger are now fixed by the Classification Act of 1923 (U. S. C., title 5, § 673).

Act of Aug. 23, 1912, 37 Stat. 412, ch. 350, provided that "on and after July 1, 1912, the surplus fees collected by the clerk of the Supreme Court (District Court of the United States for) of the District of Columbia shall be deposited in the Treasury, one-half to the credit of the District of Columbia."

The act of Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7, provided in effect, that on and after July 1, 1921, all fees, fines, and other miscellaneous items were to be deposited in the Treasury of the United States to the credit of the United States and the District in proportion to fiscal-year appropriations.

Act of May 21, 1928, 45 Stat. 654, ch. 659, provided: "In order to defray the expenses of the District of Columbia

for the fiscal year ending June 30, 1929, any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and, in addition, $9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, to be advanced July 1, 1928, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923."

The above paragraph has appeared, at least in substance, at the beginning of each subsequent appropriation act including that of June 12, 1940, 54 Stat. 307, ch. 333, except that the last mentioned act leaves out the words "and such advances from the Federal Treasury as authorized in the District of Columbia Appropriation Act for the fiscal year 1923."

Sec. 15 of the act June 25, 1948, cited to text, effective Sept. 1, 1948, amended section by deleting reference to "Assistant Clerk."

Sec. 137 of the act of May 24, 1949, cited to text, struck out the word "clerk" appearing after the word "deputy" in the first sentence of the section, and inserted in lieu thereof the word "clerks".

Cross Reference

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 11–205 [18: 25]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to terms and rules was based on act Feb. 9, 1893, 27 Stat. 435 ch. 74, § 6; July 30, 1894, 28 Stat. 161, ch. 172, § 2; Mar. 3, 1901, 31 Stat. 1225, ch. 854, § 225, and is now covered by sections 43, 47 and 48 of title 28, U. S. C.

NOTES TO DECISIONS

Cited

In re Bernhard (244 U. S. 646, 61 L. Ed. 1369, 37 Sup. Ct. 741).

Remedial Writs

This court must receive the interpretation which was given it by the Court of Appeals. *United States ex rel. Queen* v. *Alvey* (182 U. S. 456, 45 L. Ed. 1180, 21 Sup. Ct. 876).

Rule is still in force and has been interpreted to include the perfecting of an appeal by filing bond, and is the only rule governing the time within which appeals from the Supreme Court of the District shall be taken or perfected. *Ex parte Dante* (228 U. S. 429, 57 L. Ed. 905, 33 Sup. Ct. 579).

Mandamus was refused, to compel the Court of Appeals of the District to reinstate a bill of exceptions, which was stricken out for failure to comply with rules. *Ex parte First Nat. Bank* (228 U. S. 516, 57 L. Ed. 946, 33 Sup. Ct. 591).

The United States Court of Appeals for the District of Columbia which, on appeal from Federal Communications Commission's decision, compelled obedience to its correction of legal error, could not, on petition for a writ of mandamus, command commission to set aside its order designating application for hearing on a comparative basis with two other applications and to hear and reconsider application on basis of record as originally made and in accordance with court's opinions. *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 1940 (60 S. Ct. 437, 309 U. S. 134, 84 L. Ed. 656, reversing 105 F. 2d 36, 70 App. Div. 157, certiorari granted 60 S. Ct. 107; 308 U. S. 535, 84 L. Ed. 451).

A motion for leave to amend petition for mandamus so as to make the petition an appeal from judgment would be denied in view of rule 73 (a), 28 U. S. C. following § 723c, requiring an appeal to be taken by filing with District Court a notice of appeal. *In re De Marcos*, 1944 (139 F. 2d 841, 78 U. S. C. App. D. C. 187).

Rules—Application

Rules of court "have the force of law, and are binding upon the court and upon the suitors, and those who represent suitors." They can not be dispensed with by the court to meet the hardship of a particular case. *Murphy* v. *Gould* (39 App. D. C. 363, cert. den. 226 U. S. 613, 57 L. Ed. 382, 33 Sup. Ct. 325); citing *District of Columbia* v. *Humphries* (11 App. D. C. 68); *District of Columbia* v. *Roth* (18 App. D. C. 547); *Talty* v. *District of Columbia* (20 App. D. C. 489); *United States ex rel. Mulvihill* v. *Clabaugh* (21 App. D. C. 440).

Assignments of Error

Ordinarily, the Court of Appeals will not examine the record to ascertain whether the evidence supports a conviction, in the absence of assignments of error. *Clinton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 12, 80 U. S. App. D. C. 413).

Bill of Exceptions

Where, after hearing case on its merits, Court of Appeals struck out a bill of exceptions as not being in conformity with rules, Supreme Court of United States would not by mandamus compel its reinstatement. *Ex parte First Nat. Bank* (228 U. S. 516, 57 L. Ed. 946, 33 Sup. Ct. 591).

Conclusiveness of Findings

The Court of Appeals should be slow to substitute its own view of the facts, even if strongly to the contrary, for that of the judge who saw the parties and heard them testify. *White* v. *White* (App. D. C. 1945, 150 F. 2d 157, 80 U. S. App. D. C. 156).

In suit to quiet title, it is duty of federal appellate court to accept findings of trial court warranted in the evidence. *U. S.* v. *Belt*, 1944 (142 F. 2d 761, 79 U. S. App. D. C. 87).

The truth thereof not being denied, a finding by the District Court for the District of Columbia that claims were rejected by the Patent Office solely because the applicant for a patent failed to present a claim suggested by the Examiner would be accepted on appeal as correct. *Ethyl Gasoline Corporation* v. *Coe*, 1944 (139 F. 2d 372, 78 U. S. App. D. C. 233).

Circumstantial evidence was sufficient to sustain conviction for second-degree murder. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed. 1428; see also 179 F. 2d 957).

The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the government, to support it. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed. 1428; see also 179 F. 2d 957).

Correction of Errors

Even if federal appellate court has power to issue writ of mandamus or prohibition, where error, if any, can be corrected on appeal, the power should not be exercised except in rare and extraordinary cases. *Dilling* v. *U. S.*, 1944 (142 F. 2d 473, 79 U. S. App. D. C. 47).

Error, if any, in trial judge's rejection of affidavits of bias and prejudice because they failed to comply with statutory requirements both as to time of filing and as to manner of certification could be corrected on appeal. *Dilling* v. *U. S.*, 1944 (142 F. 2d 473, 79 U. S. App. D. C. 47).

Costs

Wife was not warranted in taking appeal from divorce judgment after having accepted alimony payments thereunder in view of ruling by Court of Appeals in prior case, and hence wife was not entitled to have husband pay costs of appeal, which was dismissed, or to counsel fees on appeal. *Stein* v. *Stein* (C. A., D. C. 1948, 170 F. 2d 162).

Death of Appellant

Where appeal was taken from judgment for plaintiff in action on a foreign judgment for arrears of alimony but defendant thereafter died, motion by plaintiff for a rule, directed to defendant's widow, to show cause why

appeal should not be dismissed would be denied without prejudice on ground that whatever persons might be interested in estate and might yet procure appointment of representatives of the estate should not be foreclosed from litigating appeal through such representatives. *Griffin* v. *Griffin* (App. D. C. 1947, 164 F. 2d 906; appeal dismissed 176 F. 2d 68, 85 U. S. App. D. C. 427).

Filing Transcript

An appeal which is not to operate as a supersedeas is within the provisions of this rule as to time for filing transcript, promulgated under authority of 27 Stat. 434, ch. 74. *United States ex rel. Queen* v. *Alvey* (182 U. S. 456, 45 L. Ed. 1180, 21 Sup. Ct. 876).

Final Order

For purposes of review of order of Civil Aeronautics Board, there was no "final order" until rehearing had been denied by the board. *Braniff Airways* v. *Civil Aeronautics Bd.*, 1945 (147 F. 2d 152, 79 U. S. App. D. C. 341).

"Final orders, judgments and decrees" which are subject to review are those which expressly or by necessary implication determine rights and liabilities of all parties with reference to matter in controversy and leave nothing of a judicial character to be done. *Stewart* v. *Roberts* (App. D. C. 1946, 154 F. 2d 697).

An order denying motion for judgment in accordance with previous motion for directed verdict and, in effect, restoring case to docket for retrial was not an appealable "final order", and appeal was required to be dismissed for lack of jurisdiction. *Stewart* v. *Roberts* (App. D. C. 1946, 154 F. 2d 697).

Judgment on the Pleadings

In reviewing judgment for plaintiff which was entered on the pleadings, case must be treated as if facts alleged in answer were established. *National Metropolitan Bank* v. *U. S.*, 1945 (65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

Judgments

Appellate courts sustain judgments which they think are right for reasons other than those which the trial courts gave. *Laughlin* v. *Eicher*, 1944 (145 F. 2d 700, 79 U. S. App. D. C. 266, certiorari denied 65 S. Ct. 1403, 325 U. S. 866, 89 L. Ed. 1985).

Jurisdiction

The Court of Appeals for the District of Columbia, like the several Circuit Courts of Appeal, is without jurisdiction over original suits conferred on District Courts. *American Federation of Labor* v. *National Labor Relations Board*, 1940 (60 S. Ct. 300, 308 U. S. 401, 84 L. Ed. 347, affirming 103 F. 2d 933, 70 App. D. C. 62, certiorari granted 60 S. Ct. 76, 308 U. S. 531, 84 L. Ed. 448).

The United States Court of Appeals, for the District of Columbia had jurisdiction of petitions to review order of Securities and Exchange Commission denying applications of corporations for declaration of their status under the Public Utility Holding Company Act of 1935, 15 U. S. C. § 79x (a). *Koppers United Co.* v. *Securities and Exchange Commission*, 1944 (138 F. 2d 577, 78 U. S. App. D. C. 151).

The United States Court of Appeals of the District of Columbia has jurisdiction to vacate National Labor Relations Board's certification of a bargaining representative, provided an affirmative showing is made that the Board has acted arbitrarily in the ordering or conducting of the election. *Reilly* v. *Millis* (D. C., D. C. 1944, 52 F. Supp. 172, affirmed 144 F. 2d 259, 79 U. S. App. D. C. 171, certiorari denied 65 S. Ct. 1566, 325 U. S. 879, 89 L. Ed.).

The United States Court of Appeals for the District of Columbia is without power to determine on appeal whether verdicts were excessive. *Behrman* v. *Sims* (App. D. C. 1946, 157 F. 2d 862).

Moot Questions

A court is not empowered to decide moot questions or abstract propositions or to declare, for the government of future cases, principles which cannot affect the result as to the thing in issue in the case before it. *Nelson* v. *B. Simon Hardware Co.*, 1944 (145 F. 2d 386; 79 U. S. App. D. C. 250).

Where motion to dismiss, filed after decision was rendered, disclosed that parties had settled case, judgment would be vacated and appeal dismissed, and cause remanded with directions to dismiss case as moot.—*Mueller Brass Co.* v. *Alexander Milburn Co.* (App. D. C. 1945, 152 F. 2d 142).

Opinion by Divided Court

Affirmance of judgment or order of trial court when appellate court is equally divided is not a "decision," and it does not affirm the decision of the trial court. *Lambros* v. *Young*, 1944 (145 F. 2d 341, 79 U. S. App. D. C. 247).

Power to Make Rules

Court of Appeals of the District was authorized by this section to make rules limiting the time of taking appeals to the court from decisions of Commissioner of Patents. *In re Hien* (166 U. S. 432, 41 L. Ed. 1066, 17 Sup. Ct. 624).

This section authorized the Court of Appeals to make rules and regulations for the transaction of its business and the taking of appeals to it, with power to prescribe what should constitute the record. *Nalle* v. *Oyster* (230 U. S. 165, 57 L. Ed. 1439, 33 Sup. Ct. 1043).

Questions Not Raised Below

The power of an appellate court on its own motion to consider grounds of error not raised below is not one which should be exercised in an ordinary case, but where it is apparent on face of record that a miscarriage of justice may occur because counsel has not properly protected his client by timely objection, error which had been waived below may be considered on review. *Shokuwan Shimabukuro* v. *Higeyoshi Nagayama*, 1944 (140 F. 2d 13, 78 U. S. App. D. C. 271, certiorari denied 64 S. Ct. 1270, 322 U. S. 755, 88 L. Ed. 1584).

In action to recover money allegedly advanced and evidenced by 384 entries on nine sheets of scrap paper, where court instructed jury, in effect, that they could choose among the 384 items, rejecting those items they believed to be false and not made contemporaneously with the loans and accepting the balance without requiring jury to consider authenticity of any of exhibits as a whole, and amount of verdict suggested that jury accepted the court's invitation to guess and compromise, instruction was erroneous and appellate court could notice the error on its own motion. *Shokuwan Shimabukuro* v. *Higeyoshi Nagayama*, 1944 (140 F. 2d 13, 78 U. S. App. D. C. 271, certiorari denied 64 S. Ct. 1270, 322 U. S. 755, 88 L. Ed. 1584).

Where employer's counsel assured trial court that he was satisfied with instructions given, it was too late on appeal from judgment for employee to complain that instructions were insufficient because they did not authorize credit for sums which employee might have earned in mitigation of damages. *Spigel* v. *Gumenick*, 1944 (141 F. 2d 19, 78 U. S. App. D. C. 361).

A ruling of the court that a question propounded by a party to his own witness should not be answered must be followed by an offer of the testimony expected or by something which would clearly indicate it, if it is desired to reserve the point for review in the appellate court. *Mas* v. *U. S.* (App. D. C. 1945, 151 F. 2d 32, 80 U. S. App. D. C. 223, certiorari denied 66 S. Ct. 267).

Questions Reviewable

On defendants' appeal from denial of motion to dismiss complaint or in alternative for summary judgment, the question before appellate court was the sufficiency of the complaint. *National War Labor Board* v. *U. S. Gypsum Co.*, 1944 (145 F. 2d 97, 79 U. S. App. D. C. 239, certiorari denied 65 S. Ct. 857, 324 U. S. 856, 89 L. Ed. 1415, rehearing denied 65 S. Ct. 1011, 324 U. S. 890, 89 L. Ed. 1437).

Report made by National War Labor Board to Director of Economic Stabilization and to the President because of employer's noncompliance with directive order of the board was merely advisory and correctness of the administrative advice could not be reviewed by court. *National War Labor Board* v. *U. S. Gypsum Co.*, 1944 (145 F. 2d 97, 79 U. S. App. D. C. 239, certiorari denied 65 S. Ct. 857, 324 U. S. 856, 89 L. Ed. 1415, rehearing denied 65 S. Ct. 1011, 324 U. S. 890, 89 L. Ed. 1437).

It is not the function of appellate courts to retry cases on intangibles involved in evidence which might have

been, but was not, introduced at the trial. *Morton* v. *U. S.*, 1945 (147 F. 2d 28, 79 U. S. App. D. C. 329, certiorari denied 65 S. Ct. 1015, 324 U. S. 875, 89 L. Ed. 1428).

The Court of Appeals for the District of Columbia has power to review decisions of Board of Tax Appeals for the District as under equity practice in which the whole case, both facts and law, are open for consideration, subject to rule that findings of fact are treated as presumptively correct and accepted unless clearly wrong. *Electric Storage Battery Co.* v. *District of Columbia* (App. D. C. 1946, 155 F. 2d 867).

RECORD

Where nature of offense does not on its face justify severity of sentence against a minor it is important that trial court insist that enough facts appear on record to indicate the basis for its action as the absence of such a showing lends at least some support to inference that minor did not intelligently waive counsel because it indicates that the assistance of counsel might have been of great benefit to him. *Williams* v. *Huff*, 1945 (146 F. 2d 867, 79 U. S. App. D. C. 326).

REMAND

Where United States Court of Appeals for the District of Columbia erroneously reversed conviction on only one ground and did not pass upon other grounds urged for reversal, the judgment would be reversed and the case remanded for further proceedings not inconsistent with opinion. *U. S.* v. *Beach*, 1945 (65 S. Ct. 602, 324 U. S. 193, 89 L. Ed. 865, opinion conformed to 149 F. 2d 837).

Although it is always desirable, on a trial to a judge without a jury, that the facts should be found to aid the court of appeals in understanding the basis of the decision, where the record as a whole did not present a genuine issue as to any material fact, case would not be sent back to the district court for special findings of fact. *Burman* v. *Lenkin Const. Co.* (App. D. C. 1945, 149 F. 2d 827, 80 U. S. App. D. C. 125).

RES JUDICATA

Where record disclosed no ground for appeal, and petitioner sought to have the appellate court determine that he was entitled to a jury trial, and that question had been decided on appeal adversely to petitioner, appellate court was without jurisdiction to take any action respecting such matter. *In re De Marcos*, 1944 (139 F. 2d 841, 78 U. S. App. D. C. 187).

TIME FOR APPEAL

Appeal was properly dismissed when not taken within the time prescribed by the rules. *Ex parte Dante* (228 U. S. 429, 57 L. Ed. 905, 33 Sup. Ct. 579).

The rules of the United States Court of Appeals for the District of Columbia, including rule 10, providing that no judgment of the District Court of the United States for the District of Columbia or any justice thereof shall be reviewed by the Court of Appeals unless the appeal shall be taken within 20 days after the judgment complained of shall have been made or pronounced, have the force of law, *Hill* v. *Hawes*, 1942 (132 F. 2d 569, 76 U. S. App. D. C. 308, certiorari granted, 1943, 63 S. Ct. 852, 318 U. S. 753, 87 L. Ed. 283, reversed on other grounds 64 S. Ct. 334, 320 U. S. 520, 149 A. L. R. 736, rehearing denied 64 S. Ct. 515, 321 U. S. 801, 88 L. Ed. 1088).

Rule 10 of the Court of Appeals for the District of Columbia, requiring appeal to be taken within 20 days after judgment complained of has been made or pronounced is valid. *Hill* v. *Hawes*, 1944 (64 S. Ct. 334, 320 U. S. 520, 88 L. Ed. 283, 149, A. L. R. 736, reversing 132 F. 2d 569, 76 U. S. App. D. C. 308, rehearing denied 64 S. Ct. 515, 321 U. S. 801, 88 L. Ed. 1088).

Where plaintiff failed to appeal to Court of Appeals for District of Columbia within 20 days allowed by rule 10, but clerk had not sent notice of entry of judgment of dismissal, court properly vacated judgment, during term, and entered new judgment, of which notice was sent, and from which appeal was taken. *Hill* v. *Hawes*, 1944 (64 S. Ct. 334, 320 U. S. 520, 88 L. Ed. 283, 149 A. L. R. 736, reversing 132 F. 2d 569, 76 U. S. App. D. C. 308, rehearing denied 64 S. Ct. 515, 321 U. S. 801, 88 L. Ed. 1088).

VACANCIES

In the event of a vacancy on account of the absence of one of the members, the remaining members are authorized to designate a justice of the Supreme Court of the District to sit in his place "while such vacancy shall exist." *Shore* v. *Splain* (49 App. D. C. 6, 258 Fed. 150).

WITHDRAWAL OF COUNSEL

In determining power of District Court to permit withdrawal of counsel who represented accused at trial, after federal appellate court had acquired jurisdiction of cause, a realistic interpretation of rules in criminal cases after verdict, rules 4, 7–9, 18 U. S. C. following § 688, required consideration of situation which prevails in all other circuits as well as the District of Columbia. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

§ 11–206 [18:31]. Reporter—Duties—Copies of reports to be furnished judges.

The United States Court of Appeals for the District of Columbia is authorized to appoint a reporter, who shall serve during the pleasure of the court and whose duty shall be to report, edit, and publish, in form to be prescribed by the court, its opinions.

Said reporter shall furnish and deliver one copy of each volume of the reports of said opinions immediately after the issue thereof to each of the justices of the United States Court of Appeals, the District Court, and the judges of the police court of said District, and the copies so received by each of them shall, in case of his death, resignation, or removal from office, be delivered to his successor. (Feb. 9, 1893, 27 Stat. 436, ch. 74, § 10; July 30, 1894, 28 Stat. 162, ch. 172, § 3; Mar. 3, 1901, 31 Stat. 1226, ch. 854, § 229; July 1, 1902, 32 Stat. 609, ch. 1352; Mar. 4, 1923, 42 Stat. 1488, ch. 265; May 24, 1949, 63 Stat. 109, ch. 139, § 138.)

AMENDMENTS

Act of 1949 amended the first paragraph of the section by omitting the following language which had previously appeared at the beginning: "The opinion of the said United States Court of Appeals for the District of Columbia in every case shall be rendered in writing, and shall be filed in such case as a part of the record thereof".

Act of 1902, provided as follows: "The permanent indefinite appropriation * * * to pay the reporter of the court of appeals for volumes of the reports of the opinions of said court, is hereby repealed. And the Commissioners of the District of Columbia shall hereafter annually submit estimates for the amounts required to pay said reporter for volumes of the reports authorized to be furnished by him under said section two hundred and twenty-nine."

The 1901 act provided for a salary of $1,000 per annum. This is now governed by the Classification Act of 1923, March 4, 1923, 42 Stat. 1488, ch. 265.

§ 11–207 [18:32]. Cost of reports of opinion to be fixed by court.

The reports of the court shall not be sold for a price exceeding that approved by the court and for not more than $6.50 per volume. (Feb. 25, 1929, 45 Stat. 1287, ch. 314.)

COMPILER'S NOTE

This section is repeated in the District of Columbia Appropriation Act for 1933 (47 Stat. 368, ch. 308) and other appropriation acts down to and including the act of August 9, 1939, 53 Stat. 1309, ch. 633, § 1. It seems to have been omitted from the act of June 12, 1940, 54 Stat. 307, ch. 333.

§ 11–208 [18: 33]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to issuance of writs by the United States Court of Appeals for the District of Columbia was based on Act Feb. 9, 1893, 27 Stat. 436, ch. 74, § 11; Mar. 3, 1901, 31 Stat. 1227, ch. 854, § 230, and is now covered by section 1651 of title 28, U. S. C.

NOTES TO DECISIONS

Bill of Exceptions

It is discretionary with the judge of the trial court to sign a proposed bill of exceptions and it will not be disturbed on appeal when there was no deliberate charge of fraudulent falsification. *Clawans* v. *District of Columbia* (67 App. D. C. 58, 89 Fed. (2d) 802).

Bond

Although Appellate Court has power to issue all necessary and proper remedial prerogative writs in aid of its appellate jurisdiction, the court may not stay orders and decisions pending appeal without bond or other security. *General Broadcasting System* v. *Bridgeport Broadcasting Station* ((D. C.-Conn.), 53 Fed. (2d) 664).

Since the stay order was made without any security whatever, its issue was necessarily not in the exercise of any power inherent in the Court of Appeals in its judicial capacity. *General Broadcasting System* v. *Bridgeport Broadcasting Station* ((D. C.-Conn.), 53 Fed. (2d) 664).

Habeas Corpus

The United States Court of Appeals for the District of Columbia cannot entertain an original petition for writ of habeas corpus, since no statute confers such jurisdiction upon the court. *In re Greene,* 1944 (140 F. 2d 175, 78 U. S. App. D. C. 320).

Function of Court

It is not function of appellate court to assume the powers of trial court. *Schilling* v. *Schwitzer-Cummins Co.,* 1944 (142 F. 2d 82, 79 U. S. App. D. C. 20).

Mandamus

Use of mandamus to compel approval of appeal bond. *Mulvihill* v. *Clabaugh* (21 App. D. C. 440).

Mandamus held proper remedy to require Board of Tax Appeals to take jurisdiction of appeal. *United States ex rel. Dascomb* v. *Board of Tax Appeals* (56 App. D. C. 392, 16 Fed. (2d) 337).

Where trial judge had rejected affidavits of bias and prejudice because they failed to comply with statutory requirements both as to time of filing and as to manner of certification and had refused to disqualify himself and trial was in progress, federal appellate court would not issue writ of mandamus or prohibition. *Dilling* v. *U. S.,* 1944 (142 F. 2d 473, 79 U. S. App. D. C. 47).

Where District Court erred in refusing to enter a declaration that federal employee was entitled to notice of hearing before discharge, District Court would be directed to enter declaratory judgment to that effect, but mandamus would not issue to restore employee to his office unless at expiration of 90 days no review by Supreme Court was asked and granted, or plaintiff had not been restored to office. *Borak* v. *Biddle* (App. D. C. 1944, 141 F. 2d 278, 78 U. S. App. D. C. 374, certiorari denied 65 S. Ct. 42, 323 U. S. 738, 89 L. Ed. 591, 78 F. Supp. 123, 112 C. Cl. 592, cert. den. 69 S. Ct. 43, 335 U. S. 821, 93 L. Ed. 375, rehearing den. 69 S. Ct. 129, 335 U. S. 821, 93 L. Ed. 410).

Courts should be slow in issuing mandamus which may result in interfering with the internal management of executive departments of government. *Borak* v. *Biddle,* 1944 (141 F. 2d 278, 78 U. S. App. D. C. 374, certiorari denied 65 S. Ct. 42, 323 U. S. 738, 89 L. Ed. 591).

A petition for mandamus to review action of trial court in treating petitioner's complaint as an application for writ of habeas corpus would be denied, since petitioner's remedy was by appeal, and mandamus may not be used as a substitute for appeal. *In re De Marcos,* 1944 (139 F. 2d 841, 78 U. S. App. D. C. 187).

Prohibition

"The writ (of prohibition) can not issue unless it is clearly made to appear that the inferior court is about to exceed its jurisdiction." Nor can such writ serve the purpose of a writ of error or of certiorari. *United States ex rel. Holmead* v. *Barnard* (29 App. D. C. 431).

Where each petitioner seeking leave to file petition for writs of prohibition alleged that respondent district judge had ordered petitioner to be represented by a lawyer in criminal trial who also represented an additional defendant and that there was a conflict of interest between the two defendants but where there was no assertion of absence of jurisdiction in sense that trial court had no power to deal with class of case before it and present issuance of writ and present determination of question whether there was conflict of interest would unduly interrupt criminal proceeding, petitions would be denied. *Noble* v. *Eicher,* 1944 (143 F. 2d 1001, 79 U. S. App. D. C. 217).

A writ of prohibition does not issue as a matter of right unless there is no other adequate remedy. *Noble* v. *Eicher,* 1944 (143 F. 2d 1001, 79 U. S. App. D. C. 217).

Where trial judge denies sufficiency of affidavit filed to disqualify judge on ground of personal prejudice, bias and interest, remedy of appeal is adequate and justifies denial of writ of prohibition. *Hurd* v. *Letts* (App. D. C. 1945, 152 F. 2d 121, 80 U. S. App. D. C. 233).

In absence of special circumstances requiring the issuance of writ of prohibition, it will not ordinarily issue where remedy of appeal exists. *Hurd* v. *Letts* (App. D. C. 1945, 152 F. 2d 121, 80 U. S. App. D. C. 233).

Petition for writ of prohibition, mandamus, or injunction requiring exclusion of certain testimony in criminal trial would be denied, since the remedy by appeal would be adequate. *Connors* v. *Pine* (App. D. C. 1946, 153 F. 2d 643).

Stay of Proceedings

A Federal court can stay enforcement of a judgment pending the outcome of an appeal. *Scripps-Howard Radio* v. *Federal Communications Commission,* 1942 (62 S. Ct. 875, 316 U. S. 4, 86 L. Ed. 1229).

Under 26 U. S. C. § 377, permitting an appeal to be taken from a decision of the Communications Commission to the Court of Appeals for the District of Columbia in certain cases, denial of power of the court to issue stay orders should not be inferred merely because Congress failed specifically to repeat the general grant of auxiliary powers to Federal courts. *Scripps-Howard Radio* v. *Federal Communications Commission,* 1942 (62 S. Ct. 875, 316 U. S. 4, 86 L. Ed. 1229).

Congress, by 47 U. S. C. § 402, authorizing appeal to be taken from decisions of the Communications Commission to the Court of Appeals for the District of Columbia in certain cases, has not deprived that court of the conventional power of an appellate court to stay the enforcement of an order pending determination of an appeal challenging its validity. *Scripps-Howard Radio* v. *Federal Communications Commission,* 1942 (62 S. Ct. 875, 316 U. S. 4, 86 L. Ed. 1229).

§ 11–209 [18:34]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to execution of orders and process of United States Court of Appeals for the District of Columbia was based on Act Feb. 9, 1893, 27 Stat. 436, ch. 74, § 13; Mar. 3, 1901, 31 Stat. 1227, ch. 854, § 231 and is now covered by section 547 of title 28, U. S. C.

§ 11–210 [18: 35]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to percentage liability of District for expenditures of United States Court of Appeals for the District of Columbia was based on Act Feb. 9, 1893, 27 Stat. 436, ch. 74, § 15; Mar. 3, 1901, 31 Stat. 1227, ch. 854, § 232; Apr. 27, 1938, 52 Stat. 265, ch. 180, § 1; June 29, 1939, 53 Stat. 903, ch. 248; May 14, 1950, 54 Stat. 181, ch. 189, § 1, and is now obsolete.

§ 11–211 [18: 36]. Clerk to be custodian of building.

The clerk of the United States Court of Appeals for the District of Columbia shall be the custodian of

the Court of Appeals building, under the direction and supervision of the justices of said court. (Mar. 4, 1913, 37 Stat. 964, ch. 150; May 21, 1928, 45 Stat. 671, ch. 659.)

COMPILER'S NOTE

This section was repeated in act of 1928.

CROSS REFERENCE

Police power of Metropolitan Police extended to all public buildings, § 4–120.

Chapter 3.—DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Sec.
11–301. Constitution—Court of general jurisdiction—Assignment of justice for condemnation cases.
11–302. Repealed.
11–303. Oath of justices.
11–304. Repealed.
11–305. Jurisdiction—Powers of District Courts conferred.
11–306. General jurisdiction.
11–307. Repealed.
11–308. Actions—Limitation upon—Inhabitants or sojourners in District of Columbia.
11–309. Repealed.
11–310. Repealed.
11–311. Repealed.
11–312. Appointment of auditor, messengers and other officers.
11–313. Repealed.
11–314. Repealed.
11–315. Repealed.
11–316. Repealed.
11–317. Repealed.
11–318. Repealed.
11–319. Special panel—Struck jury—Procedure.
11–320. Repealed.
11–321. Exceptions—Sealing by justice.
11–322. Repealed.
11–323. Repealed.
11–324. Repealed.
11–325. Repealed.
11–326. Enforcement of decrees.
11–327. Enforcement of interlocutory decrees.
11–328. Enforcement of decrees for delivery of chattels.
11–329. District Court building under control of Attorney General.
11–330. Fees and fines.
11–331. Repealed.

§ 11–301 [18: 41]. Constitution—Court of general jurisdiction—Assignment of justice for condemnation cases.

The chief judge of the United States District Court for the District of Columbia shall assign from time to time, and for such period or periods as he may determine, one of the judges of the said court to hear cases involving the condemnation of land in the District of Columbia, and it shall be the primary duty of the judge so assigned to preside at the hearing of such cases, and only when not engaged in such cases shall he be subject to assignment to the other business of the court. The chief judge may assign for service in condemnation cases any judge of said court in case of disability of the judge so serving or for any other reason. (Mar. 3, 1863, 12 Stat. 762, ch. 91, §1; Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 60; Dec. 20, 1928, 45 Stat. 1056, ch. 41; June 19, 1930, 46 Stat. 785, ch. 537; May 31, 1938, 52 Stat. 584, ch. 290, §5; June 25, 1948, 62 Stat. 990, ch. 646, § 24.)

AMENDMENTS

The second and third sentences were added by the 1928 act.

The act of June 25, 1948, effective Sept. 1, 1948, cited to text, repealed the first sentence of this section which provided for the appointment of a chief justice and eleven associate justices by the President. The second and third sentences were amended to show the "assignment" of judges rather than the "appointment" thereof.

Act June 19, 1930, 46 Stat. 785, ch. 537, provided: "The President is authorized to appoint, by and with the advice and consent of the Senate, two additional justices of the District Court of the United States for the District of Columbia, who shall have the same tenure of office, pay, and emoluments, powers, and duties as the present justices of that court."

Acts May 31, 1938, 52 Stat. 584, ch. 290, § 5, provided: "The President is authorized to appoint, by and with the advice and consent of the Senate, three additional associate justices of the District Court of the United States for the District of Columbia."

The act of June 25, 1936, 49 Stat. 1921, ch. 804, changed the name of the Supreme Court to "District Court of the United States for the District of Columbia," and provided "Nothing in this act shall affect the jurisdiction or functions of the court."

CROSS REFERENCE

Payment of expenses of maintaining court, § 47–204.

RULES OF CIVIL PROCEDURE

In the Federal Rules of Civil Procedure, reference to a district judge includes a justice of the District Court of the United States for the District of Columbia, see Rule 81 (d).

NOTES TO DECISIONS

IN GENERAL

For collation of acts of Congress relative to establishment of the courts of the District of Columbia, see *Gassenheimer* v. *District of Columbia* (6 App. D. C. 108).

CONSOLIDATION OF COURTS

What Congress intended was a merger of the Circuit Courts into the District Courts, and in transferring to the District Courts the business of the Circuit Courts, there was given to the District Courts all the machinery for disposing of its business which the Circuit Courts possessed, and a specific case must be treated precisely as it would have been treated had the trial taken place in the old Circuit Court under the practice which Congress had once approved for that court and which it has never disapproved. *Nashville Interurban R. Co.* v. *Barnum* ((C. C. A. 2), 212 Fed. 634).

LIABILITY OF JUDGES TO CIVIL ACTIONS

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. *Bradley* v. *Fisher* (13 Wall. (80 U. S.) 335, 20 L. Ed. 646).

RESIDENTIAL REQUIREMENTS

The requirement of 28 U. S. C. § 1 that judges of District Courts of the United States shall reside in the district for which they are appointed is not applicable to the District Court of the United States for the District of Columbia. The relevant statutes and congressional legislative history indicate that Congress did not intend the residential requirement to apply to such court in view of the peculiar geography of the District and in view of the unusual powers conferred. *U. S. ex rel. Laughlin* v. *Eicher* (D. C., D. C. 1944, 56 F. Supp. 972).

The fact that associate justice of District Court for District of Columbia was a resident of Maryland did not disqualify judge, since 28 U. S. C. § 1 that district judges should be residents of District does not apply to District Court for District of Columbia. *Pyle* v. *U. S.* (App. D. C. 1946, 156 F. 2d 852, 81 U. S. App. D. C. 209).

§ 11–302 [18: 42]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to salary of justices was based on Act Dec. 13, 1926, 44 Stat. 919, ch. 6 and is now covered by section 135 of title 28, U. S. C.

NOTE TO DECISIONS

DIMINUTION OF SALARY

The compensation of the judges of the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) and the Court of Appeals (United States Court of Appeals for the District of Columbia) can not be diminished during their term of office. *O'Donoghue* v. *United States* (289 U. S. 516, 77 L. Ed. 1356, 53 Sup. Ct. 740).

§ 11–303 [18: 48]. Oath of justices.

Each justice, before he enters upon the duties of his office, shall take the oath prescribed to be taken by judges of the courts of the United States. (R. S., D. C., § 752.)

§ 11–304. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to administration of oaths by justices of the District Court of the United States for the District of Columbia was based on R. S., D. C., § 771 and is now obsolete, being covered by section 459 of title 28, U. S. C.

§ 11–305 [18:43]. Jurisdiction—Powers of District Courts conferred.

The United States District Court for the District of Columbia, in addition to its jurisdiction as a United States district court, shall continue to have and exercise all the jurisdiction possessed and exercised by it on August 31, 1948. (Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 61; Mar. 3, 1911, 36 Stat. 1167, ch. 231, § 289; June 25, 1948, 62 Stat. 992, ch. 646, § 39; May 24, 1949, 63 Stat. 108, ch. 139, § 135.)

AMENDMENTS

The act of May 24, 1949, reenacted and amended the section to its present form. Said section had formerly read: "The said court shall possess the same powers and exercise the same jurisdiction as the District Courts of the United States, and shall be deemed a court of the United States" and was repealed by section 39 of the act approved June 25, 1948 (ch. 646, 62 Stat. 992). Subsection 135 (b) of said act provided:

"(b) The reenactment and amendment, by subsection (a) of this section, of section 61 of the Act approved March 3, 1901 (ch. 854, 31 Stat. 1199; D. C. Code, 1940 edition, sec. 11–305) shall be deemed to be in effect as of September 1, 1948."

Act of 1911 abolished the Circuit Courts.

NOTES PRIOR TO 1949 AMENDMENT

Section relating to jurisdiction and powers was based on Act Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 61; Mar. 3, 1911, 36 Stat. 1167, ch. 231, § 289, and is now covered by section 132 et seq. of title 28, U. S. C.

CROSS REFERENCES

Appeals to United States Court of Appeals for the District of Columbia, § 17–101 et seq.

Provisions concerning jurisdiction, § 11–306 and notes.

See note to § 11–101.

NOTES TO DECISIONS

IN GENERAL

By this section the justices of the Supreme Court of the District (District Court of the United States for the District of Columbia) were vested with the power and jurisdiction of judges of the District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (274 U. S. 145, 71 L. Ed. 972, 47 Sup. Ct. 557, rev'g. 56 App. D. C. 3, 6 Fed. (2d) 701).

The fact that District Court for District of Columbia was known as the "Supreme Court of the District of Columbia", when act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938, amending 28 U. S. C. § 345 and restricting direct review by Supreme Court of District Court judgments became law, did not exclude the District Court for District of Columbia from such restriction, since at that time the Supreme Court of District of Columbia possessed the jurisdiction of a District Court of the United States. *U. S.* v. *Belt,* 1943 (63 S. Ct. 1278, 319 U. S. 521, 87 L. Ed. 1559, vacating 47 F. Supp. 239).

ACTIONS AGAINST UNITED STATES

In suit by stockholders of steamship company against members of Maritime Commission to recover stock delivered to Commission under contract providing aid for company, on ground that Commission was unauthorized to acquire shares outright and that, in any event, contract resulted in no more than a pledge of shares, determination of whether suit was one against United States over which District Court would have no jurisdiction depended upon decision on merits, and District Court had jurisdiction to determine its jurisdiction by proceeding to a decision on the merits. *Land* v. *Dollar,* 1947 (67 S. Ct. 1009, 91 L. Ed. 1209).

ALIEN PROPERTY CUSTODIAN

50 U. S. C. App. 35 (b) providing that in time of war property of any foreign country or national thereof shall vest as directed by the President and seizure of a friendly alien's property by Alien Property Custodian, pursuant to President's directive, did not nullify 50 U. S. C. App. 9 (a) providing that any person not an enemy or ally thereof claiming any property transferred to Alien Property Custodian might institute suit in District Court to obtain possession thereof. *Uebersee Finanz-Korporation, A. G.,* v. *Markham* (App. D. C. 1947, 158 F. 2d 313, 81 U. S. App. D. C. 284, certiorari granted 67 S. Ct. 772, 330 U. S. 813, 91 L. Ed. 1268, affirmed 68 S. Ct. 174, 332 U. S. 480, 92 L. Ed. 88).

BACK PAY OF FEDERAL EMPLOYEE

The District Court was without jurisdiction to award judgment for back pay to employee in the Immigration and Naturalization Service of the Department of Justice who had been dismissed as a probationary employee without notice. *Borak* v. *Biddle,* 1944 (141 F. 2d 278, 78 U. S. App. D. C. 374, certiorari denied 65 S. Ct. 42, 323 U. S. 738, 89 L. Ed., 591, 78 F. Supp. 123, 112 C. Cl. 592, cert. den. 69 S. Ct. 43, 335 U. S. 821, 93 L. Ed. 375, rehearing den. 69 S. Ct. 129, 335 U. S. 821, 93 L. Ed. 410).

CONSPIRACY

Supreme Court has jurisdiction to try conspiracy entered into the District of Columbia, although the overt act is shown to have been committed in another jurisdiction or even in a foreign country. *Hyde* v. *Shine* (199 U. S. 62, 50 L. Ed. 90, 25 Sup. Ct. 760).

Conspiracy to commit offense against the United States is triable in the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), sitting as a criminal court. *Pitts* v. *Peak* (60 App. D. C. 195, 50 Fed. (2d) 485).

COSTS, LAWS RELATING TO

Section 815 of title 28, U. S. C., disallowing costs to plaintiff recovering less than $500 in action brought in District Court of United States where jurisdictional amount exceeds such sum is applicable to District Court of the United States for the District of Columbia. *Silverman* v. *Central Amusement Co.* (D. C., D. C. 1943, 49 F. Supp. 364).

"COURT OF THE UNITED STATES"

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) is a "court of the United States." *Benson* v. *Henkel* (198 U. S. 1, 49 L. Ed. 919, 25 Sup. Ct. 569); *O'Donoghue* v. *United States* (289 U. S. 516, 77 L. Ed. 1356, 53 Sup. Ct. 740); and as such has power to punish for contempt of court. *Moss* v. *United States* (23 App. D. C. 475).

CRIMINAL APPEALS ACT

This section does not constitute the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) a District Court for the purposes of the Criminal Appeals Act. *United States* v. *Burroughs* (289 U. S. 159, 77 L. Ed. 1096, 53 Sup. Ct. 574).

DISCRETION

The Court of Appeals has jurisdiction to review matters resting in the discretion of the trial justices. *Billings* v. *Field* (36 App. D. C. 16), citing with approval *Degge* v. *Hitchcock* (35 App. D. C. 218, aff'd. 229 U. S. 162, 57 L. Ed. 1135, 33 Sup. Ct. 639).

DISMISSAL

Suit will be dismissed where an indispensable party is not joined. *Mine Safety Appliances Co.* v. *Knox* (D. C., D. C. 1945, 59 F. Supp. 733, affirmed 66 S. Ct. 219, 326 U. S. 371, 90 L. Ed. 694).

ENFORCEMENT OF SHERMAN LAW

This section is plain and unambiguous, and transfers to the District Courts all the jurisdiction and power that the Circuit Courts had with regard to the enforcement of the Sherman Law. *Wogan Bros., Inc.* v. *American Sugar Ref. Co.* ((D. C.-La.). 215 Fed. 273).

ENJOINING ORDERS OF SECRETARY OF AGRICULTURE

The general equity jurisdiction of the District Court for the District of Columbia authorized it to hear suit to enjoin the Secretary of Agriculture from enforcing allegedly illegal provisions of order dealing with marketing of milk in Greater Boston, Mass., area. *Stark* v. *Wickard,* 1944 (64 S. Ct. 559, 321 U. S. 288, 88 L. Ed. 733, reversing 136 F. 2d 786).

EMERGENCY PRICE CONTROL ACT

50 U. S. C. App. 924 (d), The Emergency Price Control Act confers exclusive jurisdiction on Emergency Court of Appeals to determine validity of any regulation or order issued under said sections and District Court of United States for District of Columbia was without jurisdiction of action for declaratory judgment that regulation of Price Administrator was invalid and to enjoin enforcement of regulation notwithstanding contention that Secretary of Agriculture, Price Administrator, and Director of Economic Stabilization conspired to avoid statutory standards for promulgation of orders affecting agricultural commodities. *Cooper* v. *Anderson* (App. D. C. 1946, 156 F. 2d 564, 81 U. S. App. D. C. 166).

HABEAS CORPUS

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), is without jurisdiction to inquire into the grounds of the detention of persons unlawfully restrained of their liberty beyond the District of Columbia. *McGowan* v. *Moody* (22 App. D. C. 148).

HISTORICAL

When Maryland railroad extended limits into District of Columbia, as the unity of the road was unchanged in name and locality, it was proper and allowed by act of Congress, and under 2 Stat. 103, ch. 15, § 6, the District court had jurisdiction for injuries done on said road although outside of the District. *Baltimore & O. R. Co.* v. *Harris* (12 Wall. (79 U. S.) 65, 20 L. Ed. 354).

The Supreme Court of the District of Columbia had the same powers and jurisdiction that had previously belonged to the Circuit Court which it superseded; and the appellate power of this court was declared to be the same as that which it had, by law, over the Circuit Court. *Baltimore & P. R. Co.* v. *Trustees of the Sixth Presbyterian Church* (19 Wall. (86 U. S.) 64, 22 L. Ed. 97).

Authority to issue writs of mandamus in cases in which the parties are by common law entitled to them was vested in the Supreme Court of the District of Columbia. *United States ex rel. McBride* v. *Schurz* (12 Otto (102 U. S.) 378, 26 L. Ed. 167).

Circuit Court of Appeals did not have jurisdiction of criminal cases in District of Columbia. *In re Heath* (144 U. S. 92, 36 L. Ed. 358, 12 Sup. Ct. 615).

Act of February 6, 1889, did not authorize a writ of error from Circuit Court to the Supreme Court of the District to review a judgment in general term affirming a judgment of the trial court which convicted a person of a capital offense. *Cross* v. *United States* (145 U. S. 571, 36 L. Ed. 821, 12 Sup. Ct. 842).

16 Stat. 160, ch. 141, § 4, provided that the several general terms and special terms of the various courts, Circuit, District, and Criminal, should be considered terms of the Supreme Court of the District and that their judgments should be the judgments of the Supreme Court, but that this should not affect the right of appeal as provided by law. *Cross* v. *United States* (145 U. S. 571, 36 L. Ed. 821, 12 Sup. Ct. 842).

The Supreme Court had no jurisdiction to review on writ of error, a judgment of the Court of Appeals to the District in a criminal matter under § 8 of the act of February 9, 1893, ch. 74, 27 Stat. 434. *Chapman* v. *United States* (164 U. S. 436, 41 L. Ed. 504, 17 Sup. Ct. 76).

JUDICIAL NOTICE

Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) must take judicial notice of the laws of the States. *Moore* v. *Pywell* (29 App. D. C. 312).

United States District Court for District of Columbia could not take judicial notice of municipal ordinance of the District of Columbia establishing speed limits. *Gardner* v. *Capital Transit Co.* (App. D. C. 1946, 152 F. 2d 288).

The district court of the United States for the District of Columbia will take judicial notice of the public statutes to a state. *Hicks* v. *Hicks* (D. C., D. C. 1948, 80 F. Supp. 219).

JURISDICTION—LIMITATION

Where the actual damages recoverable are within the exclusive jurisdiction of the Municipal Court, the District Court of the United States has no jurisdiction, and a mere ad damnum clause will not confer it. *Minick* v. *Associates Inv. Co.* (71 App. D. C. 367, 110 Fed. (2d) 267).

Where maker, who had given deed of trust on automobile as security for note, alleged that transaction was fraudulent and usurious and that defendant had seized automobile on maker's default and maker demanded damages in an aggregate amount of $2,000, an order that defendants disclose the state of the account between the parties, and an injunction against the sale of the automobile, District Court for District of Columbia did not have jurisdiction of the action. *Rowe* v. *Nolan Finance Co.,* 1944 (142 F. 2d 93, 79 U. S. App. D. C. 35).

JURISDICTION SAME AS DISTRICT COURTS OF THE UNITED STATES

By this section the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) was given the same powers and the same jurisdiction as District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (274 U. S. 145, 71 L. Ed. 972, 47 Sup. Ct. 557, rev'g. 56 App. D. C. 3, 6 Fed. (2d) 701).

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) is a District Court within this section. *Claiborne-Annapolis Ferry Co.* v. *United States* (285 U. S. 382, 76 L. Ed. 808, 52 Sup. Ct. 440); *In re Macfarland* (30 App. D. C. 365, App. dism. 215 U. S. 614, 54 L. Ed. 349, 30 Sup. Ct. 402); *Moder* v. *United States* (62 App. D. C. 65, 64 Fed. (2d) 703); *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

The District Court of United States for District of Columbia has all the ordinary and usual jurisdiction of a state court in respect to matters which in a state would be exercised by a state court, and it has all jurisdiction and powers of United States District Court elsewhere. *King* v. *Wall & Beaver Street Corporation,* 1944 (145 F. 2d 377, 79 U. S. App. D. C. 234).

LAW GOVERNING

The District Court of United States for District of Columbia is both a federal district court governed by national legislation respecting venue, jurisdiction, and procedure, and a local trial court of general jurisdiction governed by local legislation embodied in this Code. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (App. D. C. 1946, 155 F. 2d 864, 81 U. S. App. D. C. 124).

NEGLIGENCE

Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) has jurisdiction of action for negligence causing death

where the act complained of was committed in the District, notwithstanding the fact that death occurred elsewhere. *Moore* v. *Pywell* (29 App. D. C. 312).

PERSONAL LIABILITY FOR ACTS

Chief Justice and Associate Justice when affixing their signature to an order for disbarment act within scope of their official authority and within jurisdiction of the court and they are not liable for damages therefrom. *Fletcher* v. *Wheat* (69 App. D. C. 259, 100 Fed. (2d) 432).

PUNISH FOR CONTEMPT

An attorney while as a witness need not disclose the name of party for reason that he promised not to divulge his name, and he is not guilty of contempt of court, for this would require him to divulge a privileged communication. *Elliott* v. *United States* (23 App. D. C. 456).

REMOVAL OF PRISONER TO DISTRICT

One properly indicted in the District of Columbia may be removed from a district in which he is found to the District of Columbia to await trial. *Benson* v. *Henkel* (198 U. S. 1, 49 L. Ed. 919, 25 Sup. Ct. 569).

SAFETY APPLIANCE ACT

Circuit branch of Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) has jurisdiction to entertain suit for violation of safety appliance act. *United States* v. *Baltimore & O. R. Co.* (26 App. D. C. 581).

SEAMAN'S ACTION FOR INJURIES

Under this section, abolishing the Circuit Court, concurrent jurisdiction of seamen's action for personal injuries rested in the United States District Court and the state court. *Pitts* v. *Peak* (60 App. D. C. 195, 50 Fed. (2d) 485); *Cook* v. *Alaska S. S. Co.* ((D. C.-Wash.), 8 Fed. (2d) 207).

WRITS TESTED BY CHIEF JUSTICE

Since the transfer of the Circuit Courts to the District Courts, writs from them may be properly tested by the Chief Justice. *Union Tool Co.* v. *Wilson* (259 U. S. 107, 66 L. Ed. 848, 42 Sup. Ct. 427).

CITED

Referred to but not construed in *United States* v. *Baltimore & O. R. Co.* (26 App. D. C. 581).

§ 11–306 [18: 44]. General jurisdiction.

Said court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States. (R. S., D. C., § 763; Feb. 27, 1877, 19 Stat. 253, ch. 69, § 2.)

AMENDMENT

The act of February 27, 1877, 19 Stat. 253, amended R. S., D. C., § 763, by striking out said section and inserting the above in lieu thereof. The section as amended had a semicolon following the words "United States" followed by a clause reading as follows: "and any one of the justices may hold a criminal court for the trial of crimes and offenses arising within the District." This last clause is superseded by §§ 11–311, 11–322.

CROSS REFERENCES

Appeal from action of Board of Education in revoking license of institution of learning, § 29–417.

Appointment of Board of Education, § 31–101.

Appointment of jury commissioners, § 11–1401.

Appointment of trustee for benefit of creditors, § 28–2604.

Cases heard, determined and disposed of in special term, § 11–313.

Certification of cases from one justice to another, § 11–314.

Common-law civil cases tried and determined in Circuit Court, §§ 11–316 to 11–320.

Condemnation of land for minor streets and alleys, § 7–313.

Condemnation of land for permanent highways, § 7–202.

Condemnation of land for public parks and playgrounds, § 8–102.

Copyright and patent cases, jurisdiction and venue, § 11–307.

Designation of officer to take bonds and collateral, § 23–610.

Determination of terms and conditions of joint use of certain railroad facilities, § 7–1213.

Enforcement of lien for cost of constructing Benning Bridge, § 7–514.

Enforcement of lien for cost of constructing Michigan Avenue Viaduct, § 7–520.

Enforcement of lien for cost of subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, § 7–523.

Enforcement of lien to recover part of cost of construction of viaducts and subways, § 7–1215.

Enjoining unlawful operation of medical and dental colleges, § 31–904.

Equity court, §§ 11–325 to 11–328.

General and special terms; special terms known as Circuit Court, Equity Court, Criminal Court, Probate Court, and District Court of the United States, §§ 11–310, 11–311.

Judges same power as judges of District Courts of the United States, § 11–309.

Jurisdiction as other District Courts of the United States and of proceedings in eminent domain, § 11–324.

Jurisdiction in criminal cases, §§ 11–322, 11–602 to 11–607, 11–907, 11–913, 11–914.

Jurisdiction of Municipal Court, exclusive in certain cases, §§ 11–703, 11–704, 11–804.

Jurisdiction over trust for burial grounds, § 27–113.

Juvenile Court, §§ 11–907, 11–913, 11–914.

Powers of general term, § 11–312.

Probate Court, § 11–501 et seq.

Probation system, § 24–101 et seq.

Proceedings to close public highways under Street Adjustment Act, § 7–405.

Review of action of Commission in refusing to grant physician's license, § 2–129.

Review of action of Nurses' Examining Board in refusing to register or reregister nurse, § 2–407.

Review of condemnation of insanitary buildings, § 5–614.

Review of decision of barber board refusing to issue or revoking a license, § 2–1110.

Revocation or suspension of dental licenses, §§ 2–311, 2–312.

Revocation or suspension of license of dental hygienists, § 2–325.

Revocation or suspension of license of podiatrist, §§ 2–707, 2–708.

Revocation or suspension of nurse's registration, § 2–407.

Revocation or suspension of physician's license, § 2–123.

Rules of court, § 11–312 and notes.

Same jurisdiction as District Courts of the United States, § 11–305.

Venue, § 11–308.

Violations of laws concerning Capitol building, grounds, and terraces, § 9–112.

See notes to § 11–305.

STATUTORY REFERENCE

Jurisdiction of District Court of person claiming right or privilege as national of United States, U. S. C., title 8, § 903.

NOTES TO DECISIONS

AMOUNT IN CONTROVERSY

District Court for District of Columbia did not have jurisdiction of action to have trust impressed on funds amounting to $1,980 or, in alternative, for money judgment, regardless of whether complaint would have for-

merly been denoted a suit at law or a bill in equity, in view of § 11–755 giving Municipal Court exclusive jurisdiction of "civil actions" involving "personal property" having value less than $3,000. *Klepinger* v. *Rhodes,* 1944 (140 F. 2d 697, 78 U. S. App. D. C. 340, certiorari denied 64 S. Ct. 1047, 322 U. S. 734, 88 L. Ed. 1568).

CONSPIRACY

Charge of conspiracy against the United States is triable before Supreme Court of District sitting as a criminal court. *Pitts* v. *Peak* (60 App. D. C. 195, 50 Fed. (2d) 485).

EXCLUSIVE JURISDICTION

This section giving District Court of United States for District of Columbia jurisdiction of all civil actions brought by the United States, confers a privilege and does not impose a restriction on the United States, and, therefore, the District Court does not have exclusive jurisdiction of actions brought by the United States in the District of Columbia. *Ridgley* v. *U. S.* (D. C. Mun. App. 1945, 45 A. 2d 475).

JURISDICTION, GENERALLY

In a civil action brought by the United States to recover less than $3,000.00, the district court acquired jurisdiction and should have entertained the suit, since by this and previous statutes the United States has expressly conferred upon its district courts jurisdiction of its suits and the statutes have not limited this jurisdiction. *United States v. Kloman* (C. A. D. C. 1949, 176 F. 2d 27).

JURISDICTION, WITHHOLDING OF

The federal District Courts may in their discretion properly withhold the exercise of the jurisdiction conferred upon them where there is no lack of another suitable form. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

Where action by plaintiff against defendant was instituted in District Court for District of Columbia before defendant instituted action against plaintiff on same cause of action in federal District Court for Maryland, even though plaintiff filed counterclaim in Maryland action, when trial in Maryland resulted in hung jury, plaintiff had right to insist on trial of his case in District of Columbia. *Brooks Transp. Co.* v. *McCutcheon* (App. D. C. 1946, 154 F. 2d 841, 80 U. S. App. D. C. 406).

LAW GOVERNING

The District Court of United States for District of Columbia is both a federal district court governed by national legislation respecting venue, jurisdiction, and procedure, and a local trial court of general jurisdiction governed by local legislation embodied in this Code. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (App. D. C. 1946, 155 F. 2d 864, 81 U. S. App. D. C. 124).

MAINTENANCE ACTIONS

The "public policy" of the District of Columbia does not require its courts to take jurisdiction of a matrimonial dispute between two persons who are neither domiciled in the District nor even residents thereof, especially where there is no showing that the welfare of children, rights of property, or other public interests in the District are affected. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

Under the doctrine "forum non conveniens" the District Court's jurisdiction of actions for separate maintenance between nonresidents domiciled elsewhere should not be exercised unless unusual circumstances justify trial in the District of Columbia. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

The District Court properly accepted jurisdiction of a wife's action for separate maintenance, even though husband and wife were nonresidents domiciled outside the District of Columbia, where husband's work when not traveling was in the District and husband's domicile was uncertain, both parties lived a few miles away, and husband at one time lived in the District. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

REDEMPTION OF REAL PROPERTY

The right to redeem Maryland land foreclosed in Maryland or to set aside or modify foreclosure decree could only be granted by Maryland court, and not by District of Columbia court. *Smith* v. *Schlein* (App. D. C. 1944, 144 F. 2d 257, 79 U. S. App. D. C. 166).

SUIT TO RESTRAIN FEDERAL TRADE COMMISSION

Court held to have jurisdiction of suit to restrain and set aside order of Federal Trade Commission, not proceeding under § 5, of the Federal Trade Commission Act (U. S. C., title 15, § 45), seeking to compel the officers of an unincorporated association to produce documents, where refusal to comply with the order will subject such officers to a criminal penalty under § 10 of the Federal Trade Commission Act (U. S. C., title 15, § 50), and will thus deprive them of their constitutional rights. *Federal Trade Comm.* v. *Millers Nat. Federation* (57 App. D. C. 360, 23 Fed. (2d) 968).

§ 11–307 [18: 45]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to jurisdiction of District Court of the United States for the District of Columbia under the copyright and patent laws was based on R. S., D. C., § 764; Act Mar. 4, 1909, 35 Stat. 1084, ch. 320, § 34; Mar. 3, 1927, 44 Stat. 1394, ch. 364, and is now obsolete, being covered by section 1338 of title 28, U. S. C.

NOTES TO DECISIONS

ADVERSE PARTIES

Where parties, awarded priority on one count in interference proceeding, brought suit to obtain patent against party awarded priority on six counts and his assignee and against party awarded priority on another count and his assignee, and defendants resided in plurality of districts not embraced within same state, District Court for District of Columbia had jurisdiction as against contention that count awarded to the third party was for subject matter separable from subject matter of remaining counts and that the third party and his assignee should not have been joined in the same suit with the party awarded the six counts. *Vietti* v. *Wayne,* 1943 (136 F. 2d 769, 78 U. S. App. D. C. 17).

The present owner of title to one of applications for patent which was joined in interference proceeding is an "adverse party" within 35 U. S. C. § 72a, giving District Court for District of Columbia jurisdiction of suit to obtain patent, where adverse parties reside in plurality of districts not embraced within same State. *Robinson* v. *Wayne,* 1943 (136 F. 2d 767, 78 U. S. App. D. C. 15, certiorari denied 64 S. Ct. 63, 320 U. S. 764, 88 L. Ed. 456, rehearing denied 64 S. Ct. 156, 320 U. S. 812, 88 L. Ed. 491).

Title 35 U. S. C. § 72a giving District Court for District of Columbia jurisdiction of certain suits involving right to patent applied where there was a single adverse party residing in a foreign country, and was not restricted to cases involving a plurality of adverse parties. *Autogiro Co. of America* v. *Kay Gyroplanes* (D. C., D. C. 1944, 55 F. Supp. 919).

In absence of an indispensable party to the proceedings, Commissioner of Patents was not an "adverse party" within 35 U. S. C. § 72a relating to jurisdiction of District Court of United States for District of Columbia where adverse parties reside in plurality of districts or foreign countries, and hence action against commissioner was not maintainable in District Court of United States for District of Columbia. *Thorne, Neale & Co.* v. *Coe* (D. C., D. C. 1944, 3 F. R. D. 259).

COLLATERAL ATTACK

Where Commissioner of Patents, pursuant to erroneous practice then prevailing, recognized defeated applicants' purported withdrawal of appeal to Court of Customs and Patent Appeals, and applicants then brought equity suit under 35 U. S. C. § 63 and commissioner admitted jurisdictional allegations and did not raise question of election of remedies, court in District of Columbia had jurisdiction of subject matter and parties, and hence its decree that patent should issue was not a nullity and infringer could not attack it collaterally, or claim illegality in issuance of patent in compliance with decree. *General Elec. Co.* v. *Hygrade Sylvania Corp.* (D. C., N. Y. 1945, 61 F. Supp. 476).

COUNTERCLAIM

Where, in an action for a patent, the jurisdiction of the District Court of the United States for the District of Columbia was invoked because defendants and adverse parties resided in a plurality of districts not embraced in any one State, said court had jurisdiction to hear and determine an infringement counterclaim filed in said action and under Rules 13 (e) and 13 (f) the court did not have discretion to strike said counterclaim. *Michigan Tool Co.* v. *Drummond* ((D. C.–D. C.), 33 Fed. Supp. 540).

DEFAULT, EFFECT OF

Under 35 U. S. C. § 72a, giving District Court for District of Columbia jurisdiction of suit to obtain patent where adverse parties reside in plurality of districts not embraced within same State, if party on whom court's jurisdiction depends was, at that time, actually an adverse party, that is sufficient, and if he chooses, thereafter, to default, that does not deprive court of jurisdiction. *Robinson* v. *Wayne,* 1943 (136 F. 2d 767, 78 U. S. App. D. C. 15, certiorari denied 64 S. Ct. 63, 320 U. S. 764, 88 L. Ed. 456, rehearing denied 64 S. Ct. 156, 320 U. S. 812, 88 L. Ed. 491).

In suit to obtain patent, by one applicant in interference proceeding against second and third applicants who were Texas residents and against company which was alleged present owner of third applicant's application and which was incorporated in Delaware and had place of business in New York, District Court for District of Columbia had jurisdiction under 35 U. S. C. § 72a giving it jurisdiction of suit where there are "adverse parties" residing in plurality of districts not embraced within same State, notwithstanding the third applicant and owner of his application did not appear. *Robinson* v. *Wayne,* 1943 (136 F. 2d 767, 78 U. S. App. D. C. 15, certiorari denied 64 S. Ct. 63, 320 U. S. 764, 88 L. Ed. 456, rehearing denied 64 S. Ct. 156, 320 U. S. 812, 88 L. Ed. 491).

DETERMINATION

In suit to obtain patent, the important consideration in determining whether District Court for District of Columbia has jurisdiction under 35 U. S. C. § 72a, giving it jurisdiction, in suit where there are adverse parties residing in plurality of districts not embraced within same State, is not what Patent Office awarded at conclusion of interference proceeding, but is what the parties to the interference claimed. *Vietti* v. *Wayne,* 1943 (136 F. 2d 769, 78 U. S. App. D. C. 17).

The court formerly known as Supreme Court of the District of Columbia was a court of United States, and its justices had the power and jurisdiction of federal district judges, and it had jurisdiction over equity suits under 35 U. S. C. § 63 to obtain patents. *General Elec. Co.* v. *Hygrade Sylvania Corp.* (D. C., N. Y. 1945, 61 F. Supp. 476).

PERSONS SUBJECT TO JURISDICTION

Where defendant, which was a British company with place of business in Scotland, accepted letters patent, it thereby became subject to 35 U. S. C. § 72a providing for determination of right to patent, and could not question jurisdiction of District Court for District of Columbia in suit for determination of validity of patent. *Autogiro Co. of America* v. *Kay Gyroplanes* (D. C., D. C. 1944, 55 F. Supp. 919).

PURPOSE OF FEDERAL LAW

The purpose of 35 U. S. C. § 72a giving District Court for District of Columbia jurisdiction of suit to obtain patent where adverse parties reside in plurality of districts not embraced within same State is to permit the bringing together, in one proceeding, of all parties whose interests are adverse, whether their adversity arises out of interfering patents, or because they were adverse parties in an interference proceeding, in order that all interests may be determined, and for such purpose there is not "separable controversy". *Vietti* v. *Wayne,* 1943 (136 F. 2d 769, 78 U. S. App. D. C. 17).

The purpose of 35 U. S. C. § 72a, giving District Court for District of Columbia jurisdiction of suit to obtain patent where adverse parties reside in plurality of districts not embraced within same State is to make possible adjudication of all issues involved, between all adverse parties, in one proceeding and in one forum. *Robinson* v. *Wayne,* 1943 (136 F. 2d 767, 78 U. S. App. D. C. 15, certiorari denied 64 S. Ct. 63, 320 U. S. 764, 88 L. Ed. 456, rehearing denied 64 S. Ct. 156, 320 U. S. 812, 88 L. Ed. 491).

Section 72a of title 35, U. S. C., giving District Court for District of Columbia jurisdiction of suit to obtain patent where adverse parties reside in plurality of districts not embraced within same State does not make jurisdiction depend on appearance but purpose of said section is to make jurisdiction depend on situation revealed by complaint. *Robinson* v. *Wayne,* 1943 (136 F. 2d 767, 78 U. S. App. D. C. 15, certiorari denied 64 S. Ct. 63, 320 U. S. 764, 88 L. Ed. 456, rehearing denied 64 S. Ct. 156, 320 U. S. 812, 88 L. Ed. 491).

§ 11–308 [18: 46]. Actions—Limitation upon—Inhabitants or sojourners in District of Columbia.

No action or suit shall be brought in the District Court of the United States for the District of Columbia by original process against any person who shall not be an inhabitant of, or found within, the District, except as otherwise specially provided. (R. S., D. C., § 767.)

CROSS REFERENCES

Copyright and patent cases, venue, § 11–307.

Provisions concerning jurisdiction and venue, § 11–306 and notes.

See section 1–804 as to publication in suits on bonds of contractors with District of Columbia; section 13–103 as to service of process on foreign corporations; section 13–108 authorizing service of publication on nonresidents in certain cases: section 16–301 as to attachment before judgment of property of nonresidents; section 16–1501 as to publication in suits to perfect title by adverse possession; section 19–301 as to publication in connection with probate of will; section 19–312 as to publication in will contest cases; section 45–706 as to service of process in landlord and tenant proceedings.

See section 16–1501 as to publication in suits to perfect title by adverse possession.

See note to section 11–306.

RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure do not affect jurisdiction and venue, see Rule 82.

NOTES TO DECISIONS

PROCESS, ISSUANCE OF

Under this chapter covering jurisdiction of courts in District of Columbia, District Court of United States for District of Columbia may exercise jurisdiction if defendants are found within the District, but process from District Court may not issue or be served on any person not an inhabitant of or found within the District. *King* v. *Wall & Beaver Street Corporation,* 1944 (145 F. 2d 377, 79 U. S. App. D. C. 234).

In derivative action by New York stockholders against Connecticut citizens who were temporarily living in District of Columbia, and Maryland corporation which had not transacted business in District of Columbia, jurisdiction of District Court of United States for District of Columbia could not be sustained by applying this chapter to jurisdictional question involving the Connecticut citizens and ignoring the restrictive provision precluding service of process on person not an inhabitant of or found within District, and by applying exception to 28 U. S. C. § 112, with relation to service of process on corporation and ignoring the restrictive provisions of 28 U. S. C. § 112, in relation to jurisdiction as to the individual defendants. *King* v. *Wall & Beaver Street Corporation,* 1944 (145 F. 2d 377, 79 U. S. App. D. C. 234).

RESIDENTS

Where, at time of filing of action and service of process defendants were actually but temporarily residing in District of Columbia and had actual citizenship in Connecticut where they maintained permanent home, the defend-

ants were not "residents" of District of Columbia, within 28 U. S. C. § 112. *King* v. *Wall & Beaver Street Corporation,* 1944 (145 F. 2d 377. 79 U. S. App. D. C. 234).

VENUE

District Court of District of Columbia has jurisdiction to entertain a suit for injunctive relief brought against the Brotherhood of Locomotive Firemen and Enginemen when service of process is legally perfected to enforce petitioners' rights to nondiscriminatory representation by their statutory representatives in collective bargaining negotiations. *Graham v. Brotherhood of Locomotive Firemen and Enginemen,* 1949 (70 S. Ct. 14, 338 U. S. 232, 94 L. Ed. 1).

§ 11–309 [18: 47]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to powers of justices was based on Act Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 62; June 30, 1902, 32 Stat. 522, ch. 1329, and is no longer necessary since District Court for the District of Columbia made a district court of the United States by sections 88 and 132 of title 28, U. S. C.

AMENDMENT

The act of June 30, 1902, added the words "under said act of March 3, 1863, and at the date of the adoption of this code." The act of 1863, 12 Stat. 762, ch. 91, is the act which created the Supreme Court of the District of Columbia.

The section as enacted also contained the words "Circuit and" preceding the words "District Courts" but Circuit Courts were abolished by the act of March 3, 1911, 36 Stat. 1167, ch. 231, § 289.

CROSS REFERENCE

Decisions construing the 1863 act, see Notes to Decisions under § 11–310.

§ 11–310 [18: 50]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to terms of District Court of the United States for the District of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 63 and is now inconsistent with sections 137–141 of title 28, U. S. C.

NOTES TO DECISIONS

IN GENERAL

The act of June 21, 1870 (16 Stat. 160, ch. 141), relating to the jurisdiction of the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) declared that the general and special terms authorized by the act of March 3, 1863, should be terms of the Supreme Court and the judgments, decrees, and orders of said terms should be the judgments, decrees, and orders of the Supreme Court. *Ormsby* v. *Webb* (134 U. S. 47, 33 L. Ed. 805, 10 Sup. Ct. 478); *Cross* v. *United States* (145 U. S. 571, 36 L. Ed. 821, 12 Sup. Ct. 842); *Campbell* v. *Porter* (162 U. S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

GENERAL CONSTRUCTION

The provisions of the act of March 3, 1863, establishing the Supreme Court of the District of Columbia, with its special and general terms, which was taken from the legislation of New York in substantially the same language, are to be construed in the sense in which they were then understood in the system from which they were taken. *Metropolitan R. Co.* v. *Moore* (121 U. S. 558, 30 L. Ed. 1022, 7 Sup. Ct. 1334).

§ 11–311 [18:56]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to special terms of District Court of the United States for the District of Columbia was based on act Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 64 and is now inconsistent with sections 137–141 of title 28, U. S. C.

§ 11–312 [18:51]. Appointment of auditor, messengers and other officers.

The United States District Court for the District of Columbia may appoint an auditor and also a messenger for each judge and all other officers of the court necessary for the due administration of justice. (Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, (Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 65; June 30, 1902, 32 Stat. 522, ch. 1329; Apr. 19, 1920, 41 Stat. 555, ch. 153; Apr. 3, 1926, 44 Stat. 234, ch. 103; May 24, 1949, 63 Stat. 108).

AMENDMENT

The 1949 act amended the section generally.

NOTES PRIOR TO 1949 AMENDMENT

COMPILER'S NOTE

The act of February 24, 1933, 47 Stat. 904, ch. 119 (U. S. C., title 28, § 723a), provided:

"The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict in criminal cases in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, in the Supreme Courts of the District of Columbia, Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, and in the Court of Appeals of the District of Columbia.

"SEC. 2. The right of appeal shall continue in those cases in which appeals are now authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and of preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.

"SEC. 3. The Supreme Court may fix the dates when such rules shall take effect and the extent to which they shall apply to proceedings then pending, and after they become effective all laws in conflict therewith shall be of no further force."

AMENDMENTS

Act of 1901 provided as follows: "The general term of said court shall be open at all times for the transaction of business; and said court, by orders passed in general term, may regulate the periods of holding the special terms, fix the number of said terms, and alter the same from time to time, as public convenience may require; may direct as many terms of any of the special terms to be held at the same time as the public business may make necessary; may assign the several justices, from time to time, to the respective special terms; may provide by rule of court for the transfer from time to time, as the occasion shall require, of a jury summoned to any one special term to any other special term having cognizance of jury trials, and for the filling of vacancies arising in such transferred jury; may establish rules of practice in special terms not inconsistent with the laws of the United States; may appoint a clerk, an auditor, a crier, and a messenger for each court in special term, and all other officers of court necessary for the due administration of justice, with the exception of all officers and employees in any manner connected with the probate term, and also United States commissioners; may hear charges of misconduct against any justice of the peace, and remove them from office for cause shown; may admit persons to the bar of said court and dismiss them from the same, and may pass all other orders not inconsistent with existing laws which may be necessary to the effective administration of justice in said court, but said court shall not hear any cause in general term."

Act of 1902 amended act of 1901 by inserting after the word "auditor" the words "and also," and by striking out the comma after the word "crier."

Act of 1920 amends prior section to read as above except that the provision as to appointment to fill a vacancy in the office of clerk was inserted by act of 1926.

CROSS REFERENCES

Provisions concerning jurisdiction, § 11–306 and notes.

Rules of practice and procedure for proceedings to revoke or suspend dental license, § 2–312.

Rules of practice and procedure for proceedings to revoke or suspend podiatrist's license, § 2–708.

Rules of practice and procedure in equity court, § 11-325.

Rules of practice and procedure in revocation or suspension of nurse's license, § 2–407.

Rules of practice and procedure in revocation or suspension of physician's license, § 2–123.

Rule of procedure in determining terms and conditions of joint use of certain railroad facilities, § 7–1213.

UNITED STATES COMMISSIONERS

Arrest under Uniform Act on Fresh Pursuit; commitment or discharge, § 23–502.

Fees of commissioner, § 11–1511.

Issuance of search warrant, § 23–301.

Issuance of search warrant under Alcoholic Beverage Control Act, § 25–129.

Issuance of search warrant under Uniform Narcotic Drug Act, § 33–414.

RULES OF CIVIL PROCEDURE

Court required to establish a regular motion day, unless local conditions make such practice impractical, see Rule 78.

District Court deemed to be always open for certain specified purposes, see Rule 77 (a).

District Courts may make rules of practice and procedure not inconsistent with the Federal Rules of Civil Procedure, see Rule 83.

Federal Rules of Civil Procedure apply to the District Court of the United States for the District of Columbia, see Rules 1, 81 (a) (1), (d), (e).

Federal Rules of Civil Procedure do not apply to proceedings in the probate court, see Rule 81 (a) (1). However, the Probate Court has adopted these rules or similar rules wherever the same could be made applicable. See note to § 11–504, *Ecker* v. *Potts* (72 App. D. C. 174, 112 Fed. (2d) 581).

Proceedings generally to which Federal Rules of Civil Procedure do not apply, see Rule 81.

Trials on merit required to be in open court, all other acts or proceedings may be done or conducted in chambers, see Rule 77 (b).

NOTES TO DECISIONS

ANNUAL ACCOUNT OF FIDUCIARIES

Where will creating trust and naming trustee did not require trustee to account to court, mere appointment of substitute trustee and his choosing to ask court's instruction in regard to a particular matter did not bring trustee within court rule requiring fiduciary administering estate under "supervision" of court to file annual account and report. *Smithson* v. *Callahan,* 1944 (141 F. 2d 13, 78 U. S. App. D. C. 355).

Under rule requiring fiduciary administering an estate under "supervision" of court to file annual account and report, quoted word implies more than power in court to intervene, in its discretion, in order to prevent or redress improper action by trustee and implies a duty in trustee to consult court before taking action. *Smithson* v. *Callahan,* 1944 (141 F. 2d 13, 78 U. S. App. D. C. 355).

APPOINTMENTS

Appointment of elisor unauthorized, without showing disqualification of marshal or coroner. *Doherty* v. *Kalmbach* (66 App. D. C. 322, 87 Fed. (2d) 539).

COMPUTATION OF TIME

Rule 10, requiring that appeals be filed within 20 days after judgment, and Rule 36, providing that in computing time Sundays and legal holidays shall be excluded, are not superseded by Rule 6 (a), relating to "any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute," providing that Sundays and holidays are excluded only when the period of time prescribed is less than 7 days. *Atlantic Greyhound Lines, Inc.* v. *Keesee* (72 App. D. C. 45, 111 Fed. (2d) 657).

EQUITY RULES

Equity Rule 15 of the Supreme Court of the District provided, among other things, that "anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention." This rule, though somewhat broader than Equity Rule 37, was not in conflict therewith, and responded to the power of the Court to establish rules regulating pleading, practice, and procedure. *California Co-op. Canneries* v. *United States* (55 App. D. C. 36, 299 Fed. 908).

District of Columbia was bound by the provisions of the Federal Equity Rules, notwithstanding any local rule to the contrary. *Saul* v. *Saul* (70 App. D. C. 112, 104 Fed. (2d) 245).

REFERENCE, RULES OF

District Court rule providing for domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child or question of amount of temporary maintenance for a wife or child and providing that when no objections are filed to report, court shall have authority to act on report without hearing, provides a convenient method by which facts may be secured and presented in interlocutory matters when both parties consent to its use, and rule is not invalid or beyond court's power to adopt. *Brown* v. *Brown,* 1942 (134 F. 2d 505, 77 U. S. App. D. C. 73).

Where under District Court rule providing for domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child, father who had instituted suit for custody of child had full power to prevent application of rule to him by objecting to commissioner's report, the father was not entitled to an order that his motion for amendment of pendente lite custody order be not referred to the commissioner for investigation and report. *Brown* v. *Brown,* 1942 (134 F. 2d 505, 77 U. S. App. D. C. 73).

The purpose of the District Court rule providing for a domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child or question of amount of temporary maintenance for wife or child and to make report and recommendation in such matters is not to deprive party of opportunity to present such evidence as he wishes to offer in the usual manner and the rule does not make the report evidence or admissible in evidence. *Brown* v. *Brown,* 1942 (134 F. 2d 505, 77 U. S. App. D. C. 73).

Any party to a divorce action is entitled to have a motion for custody of a child or for temporary maintenance for wife or child heard on its merits by the trial judge, regardless of fact that he has not appeared and declines to appear before the Domestic Relations Commissioner. *Kernan* v. *Kernan* (App. D. C. 1948, 165 F. 2d 232, 82 U. S. App. D. C. 382).

RULES OF PRACTICE

This section authorized the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) to establish rules of practice for the trial terms, not inconsistent with the laws of the United States. *Nalle* v. *Oyster* (230 U. S. 165, 57 L. Ed. 1439, 33 Sup. Ct. 1043).

SERVICE OF PROCESS

Where return showed that service of rule and order to show cause why a person should not be adjudged in contempt for failure to comply with order requiring turning over of assets of deceased's estate was made on the wife of the person to whom the order was addressed, the service was sufficient, since it complied with Federal Rule of Civil Procedure adopted for the probate court for the District of Columbia. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

TRIAL BY JURY

As to right of trial by jury in police court, see *Callan* v. *Wilson* (127 U. S. 540, 32 L. Ed. 223, 8 Sup. Ct. 1301).

§ 11–313 [18: 58]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to causes to be heard in special terms of the District Court of the United States for the District of Columbia was based on Act Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 66 and is now inconsistent with sections 137–141 of title 28, U. S. C.

NOTES TO DECISIONS

APPEAL TO GENERAL TERM

Parties aggrieved by any order, judgment or decree made or pronounced at a special term could, if the same involve the merits of the action or proceeding, appeal therefrom to the general term. *Baltimore & P. R. Co.* v. *Trustees of the Sixth Presbyterian Church* (1 Otto (91 U. S.) 127, 23 L. Ed. 260.)

§ 11–314 [18: 59]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relating to certification of cases from one justice to another—criminal cases—exceptions—was based on Act Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 67; Apr. 19, 1920, 41 Stat. 556, ch. 153, and is no longer necessary. To be regulated by rule of court rather than statute.

AMENDMENT

Act of 1901 originally provided that "by mutual consent and arrangement between justices, civil causes may be certified by any justice holding a circuit court to any justice holding a criminal court for trial in the latter; and, by similar arrangement, any cause may be certified by any justice to another justice, to be heard or tried by the latter."

CROSS REFERENCE

Transfer of actions erroneously brought in law or equity term, § 13–215.

§ 11–315 [18: 57]. Repealed. May 24, 1949; 63 Stat. 110, ch. 139, § 142.

Section relating to the issuance of writs by the District Court of the United States for the District of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 68 and is now covered by section 1651 of title 28, U. S. C.

NOTES TO DECISIONS

ENJOINING BREACH OF LABOR CONTRACT

In an action by a labor union designated by the National Labor Relations Board as bargaining representative, the District Court had jurisdiction to enjoin breach of its contract by a telegraph company's undertaking to observe seniority rights of the employees of another company as party to a proposed merger. *Commercial Telegraphers' Union, A. F. L.* v. *Western Union Telegraph Co.* (D. C., D. C. 1944, 53 F. Supp. 90).

HABEAS CORPUS AD PROSEQUENDUM

Justices of United States District Court for the District of Columbia have the power to issue writs of habeas corpus ad prosequendum. *Downey* v. *United States* (67 App. D. C. 192, 91 Fed. (2d) 223).

The District Court of the United States for the District of Columbia has the power to issue writ of habeas corpus ad prosequendum for a person confined outside the limits of the District. *Noble* v. *Botkin* (App. D. C. 1946, 153 F. 2d 228, 80 U. S. App. D. C. 354).

INJUNCTION

The federal district court does not have the power by injunctive relief to control conduct of hearings in investigatory proceedings by Securities and Exchange Commission. *Securities and Exchange Commission* v. *Harrison* (D. C., D. C. 1948, 80 F. Supp. 226).

MANDAMUS

Under the code of the District of Columbia, as on general principle, mandamus is an extraordinary remedial process, which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. *U. S. ex rel. Stowell* v. *Deming* (57 App. D. C. 223, 19 Fed. (2d) 697).

NE EXEAT

It was within the jurisdiction of the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), in equity, to issue a writ of ne exeat to defendant in suit for limited divorce, and upon his departure from the District without payment of alimony as required, the court had jurisdiction to declare the bond forfeited and to direct the money to be paid into the registry of the court. *Murphy* v. *Paris* (57 App. D. C. 19, 16 Fed. (2d) 515).

Expiration of former husband's sentence for contempt for failure to pay alimony under limited divorce decree did not oblige the district court to quash a writ of ne exeat issued at divorced wife's request, where arrears of alimony apparently remained unpaid, but because writ deprived husband of his liberty, he was entitled to a prompt disposition of his motion to quash. *Jacobsen* v. *Jacobsen,* 1942 (126 F. 2d 13, 75 U. S. App. D. C. 223).

Where former husband denied allegations of divorced wife's complaint alleging that he had defaulted in alimony and that he was about to leave the jurisdiction of the court and asking that he be adjudged in contempt and that a writ of ne exeat be issued to prevent him from leaving, husband was entitled to a full hearing including a full opportunity to introduce oral testimony, and if he was given no such opportunity, continuing in force writ of ne exeat issued on wife's complaint deprived him of his liberty without "due process of law" in violation of the U. S. Const. Amend. 5. *Jacobsen* v. *Jacobsen,* 1942 (126 F. 2d 13, 75 U. S. App. D. C. 223).

If, at a hearing on former husband's motion to quash writ of ne exeat issued on complaint of divorced wife who alleged that husband was about to leave the jurisdiction of the court, husband had offered no testimony, it would have been necessary to quash the writ unless wife introduced substantial evidence in its support. *Jacobsen* v. *Jacobsen,* 1942 (126 F. 2d 13, 75 U. S. App. D. C. 223).

Where divorced wife's sworn complaint asking for the issuance of a writ of ne exeat contained necessary averment that former husband intended to leave the District of Columbia to avoid the court's jurisdiction and alleged that husband had previously stayed away from the District, but husband denied that averment and alleged facts showing that he had been available for service of process in the District, that he had made no effort to avoid it, and that his absences were due to efforts to earn a living, though complaint would have been sufficient to warrant ex parte issuance of temporary writ with an order to show cause why it should not be extended, complaint was insufficient without supporting proof to sustain any writ in face of husband's answer and motion to quash. *Jacobsen* v. *Jacobsen,* 1942 (126 F. 2d 13, 75 U. S. App. D. C. 223).

Under this section, the writ of ne exeat may be used in a proper case to thwart an intention to leave the District of Columbia for the purpose of defeating the court's jurisdiction in a pending action. *Jacobsen* v. *Jacobsen,* 1942 (126 F. 2d 13, 75 U. S. App. D. C. 223).

Although 28 U. S. C. § 1651 provides that no writ of ne exeat shall be granted unless defendant designs quickly to depart from the United States District Court for the District of Columbia in a divorce proceeding, is exercising its local and not federal jurisdiction, and the authority upon which, in such a case, it may issue the writ of ne exeat is found in this section. *Judson* v. *Judson* (D. C., D. C. 1948, 8 F. R. D. 336).

Writ of ne exeat is no longer a prerogative writ, but is an ordinary or mesne process of equity, and no writ of ne exeat shall be granted unless a suit in equity be commenced. *Judson* v. *Judson* (D. C., D. C. 1948, 8 F. R. D. 336).

In divorce proceeding, where service of original process was not valid, the defendant by giving bond did not enter a general appearance and bring himself within court's jurisdiction, so as to preclude him from seeking to have writ of ne exeat quashed. *Judson* v. *Judson* (D. C., D. C. 1948, 8 F. R. D. 336).

POWER TO EMPLOY

Nature and function of writ discussed. Power to employ it inheres in the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) as possessing a general common-law jurisdiction and supervisory control over inferior tribunals. *Hartranft* v. *Mullowney* (247 U. S. 295, 62 L. Ed. 1123, 38 Sup. Ct. 518).

TESTED BY CHIEF JUSTICE

Since the transfer of the Circuit Courts to the District courts, writs from them may be properly tested by the Chief Justice. *Union Tool Co.* v. *Wilson* (259 U. S. 107, 66 L. Ed. 848, 42 Sup. Ct. 427).

§ 11–316 [18: 71]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to the trial of common-law civil causes was based on Act Feb. 27, 1801, 2 Stat. 103, ch. 15; Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1200, ch. 854, § 69 and is now inconsistent with sections 137–141 of title 28, U. S. C.

NOTES TO DECISIONS

CIRCUIT COURT—HISTORICAL

The Organic Act of 1801 provided for the government of the District of Columbia, and erected a Circuit Court for the District, to which it transferred all the causes then pending in the court of hustings; and enacted, that the Circuit Court should hold four sessions a year, in Alexandria, viz, on the second Mondays of January, April and July, and the first Monday of October. *Resler* v. *Shehee* (1 Cranch. (5 U. S.) 110, 2 L. Ed. 51).

The Circuit Court had cognizance of all crimes and offences committed within said District, and of all cases in law and equity. *Garnett* v. *United States* (11 Wall. (78 U. S.) 256, 20 L. Ed. 79); *Ormsby* v. *Webb* (134 U. S. 47, 33 L. Ed. 805, 10 Sup. Ct. 478).

By reason of the adoption of the laws of Maryland for the government of this part of the District, the circuit court, under this act which defined its jurisdiction, could, as incident to its common-law powers, issue the writ to an executive officer of the United States, if at that time having general jurisdiction at common law, and being the highest court of original jurisdiction in the District. *United States* v. *Schurz* (12 Otto (102 U. S.) 378, 26 L. Ed. 167).

Under the Organic Act of 1801 equity jurisdiction was vested in the Circuit Court of the United States. *Thaw* v. *Ritchie* (136 U. S. 519, 34 L. Ed. 531, 10 Sup. Ct. 1037); *In re Heath* (144 U. S. 92, 36 L. Ed. 358, 12 Sup. Ct. 615).

Appellate jurisdiction, granted by § 8 of the Organic Act of 1801, was confined to civil cases. *Sinclair* v. *District of Columbia* (192 U. S. 16, 48 L. Ed. 322, 24 Sup. Ct. 212).

JURISDICTION

The Circuit Court had no other powers than those which had been given generally, to the Circuit Courts of the United States. *Young* v. *Bank of Alexandria* (5 Cranch (9 U. S.) 45, 3 L. Ed. 32); *O'Donoghue* v. *United States* (289 U. S. 516, 77 L. Ed. 1356, 53 Sup. Ct. 740); *Munoz* v. *Porto Rico R. Light & Power Co.* ((C. C. A. 1), 83 Fed. (2d) 262).

MANDAMUS

Circuit Court in the district was the highest court of original jurisdiction; and if the power to issue a mandamus directing Postmaster General to do a ministerial act, existed in any court, it was vested in that court. *Kendall* v. *United States* (37 U. S. 524, 9 L. Ed. 1180).

Power of the Circuit Court of the District of Columbia to exercise jurisdiction to issue a writ of mandamus to a public officer to do an act required of him by law, resulted from the third section of the Act of 1801 (2 Stat. 103, ch. 15) which declared that the court and judges should have the power by law vested in Circuit Courts of United States. *Kendall* v. *United States* (37 U. S. 524, 9 L. Ed. 1181).

There is no authority for a review of an appealable judgment by a writ of mandamus. *Ex parte Bradley* (74 U. S. 364, 19 L. Ed. 214).

MARYLAND LAWS APPLICABLE

Except as modified by statute, the practice of the courts of the District of Columbia is modeled upon that which obtained in the courts of Maryland at the time of the cession. (*Nalle* v. *Oyster* (230 U. S. 165, 57 L. Ed. 1439, 33 Sup. Ct. 1043).

This section and R. S., § 92 carry the Maryland laws to the District of Columbia and make them as applicable to the District as if such laws had been expressly enacted by congress. *In re Wolf* ((D. C.-Ark.), 27 Fed. 606).

When by this act Congress accepted the cession from Maryland and assumed jurisdiction over the ceded territory, it was specifically provided that the laws of Maryland as they then existed should continue in force. *Harrison* v. *Moyer* ((D. C.-Ga.), 224 Fed. 224); *Tyner* v. *United States* (23 App. D. C. 324). See *United States* v. *Watkins* (Fed. Cas. 16649, 3 Cranch C. C. 441).

REVIEW

Any final judgment, order or decree wherein the matter exclusive of costs exceeded $100 was under § 8, subject to review in the United States Supreme Court, by writ of error or appeal. *Nicholls* v. *Hodges* (1 Pet. (26 U. S.) 562, 7 L. Ed. 263).

Section 8 of the Organic Act of 1801 authorized a writ of error to the Circuit Court in those cases only in which there had been a final judgment. *Van Ness* v. *Van Ness* (6 How. (47 U. S.) 62, 12 L. Ed. 344).

§ 11–317 [18: 72]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to trial of civil causes by District Court of the United States for the District of Columbia was based on Act Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1200, ch. 851, § 70 and is now superseded by rule 38 of Federal Rules of Civil Procedure.

NOTES TO DECISIONS

IN GENERAL

Sections which provide that the trial of issues of fact in the Circuit Courts shall be by jury unless the parties or their attorneys file with the clerk a stipulation in writing waiving a jury, in which case they may be tried and determined by the court, are not repealed by the Judicial Code and they are clearly applicable to the District courts. *Lillie* v. *Dennert* ((C. C. A. 6), 232 Fed. 104).

Unless the act charged be a crime, there is no possible ground for a contention that a jury trial is provided for by the Clayton Act. *United States* v. *Taliaferro* (290 Fed. 214).

APPEAL

Judgment in case tried by court without jury even though erroneous, should be upheld when there is neither bill of exceptions, nor motion for judgment. *Darby* v. *Montgomery County Nat. Bank* (63 App. D. C. 313, 72 Fed. (2d) 181); *International Finance Corp.* v. *General Motors Acceptance Corp.* (63 App. D. C. 325, 72 Fed. (2d) 376).

FINDINGS OF THE COURT

Court finding in favor of plaintiff, which finding was entered by the clerk, had the same effect as a verdict of the jury. *Goode* v. *United States* (44 App. D. C. 162); *Operative Plasterers and Cement Finishers International Assn.* v. *Case* (68 App. D. C. 43, 93 Fed. (2d) 56).

Where District Court for District of Columbia properly dismissed complaint for lack of jurisdiction, its findings on the merits were without effect. *Rowe* v. *Nolan Finance Co.*, 1944 (142 F. 2d 93, 79 U. S. App. D. C. 35).

FUNCTION OF JUDGE

In the trial of a cause by a court on a waiver of jury, the trial judge assumes, in addition to his judicial duties, the function of a jury, and passes on both the law and the facts. *Darby* v. *Montgomery County Nat. Bank* (63 App. D. C. 313, 72 Fed. (2d) 181); *Central of Georgia R. Co.* v. *W. Va. Pulp & Paper Co.* (67 App. D. C. 309, 92 Fed. (2d) 292).

STIPULATION

The filing of a motion to quash service of process, and of affidavits in opposition to the motion, does not confer jurisdiction on the courts to determine the facts in issue without the filing of a written stipulation as required by this section. *Fischer* v. *Munsey Trust Co.* (44 App. D. C. 212).

§ 11–318 [18: 73]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to exceptions in trials of civil causes by the District Court of the United States for the District

of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1201, ch. 854, § 71 and is now superseded by rule 46 of Federal Rules of Civil Procedure.

NOTES TO DECISIONS

In General

This section is intended to provide the requisites and manner of review in the appellate court. It insures re-examination of trial judge in every case in which an exception is taken and afterwards embraced in a bill of exceptions, and it further provides the mode of challenging the sufficiency of the evidence and obtaining a review if the decision is adverse. This benefit may be secured by motion for judgment and an exception to its refusal. *Darby* v. *Montgomery County Nat. Bank* (63 App. D. C. 313, 72 Fed. (2d) 181).

Exceptions Not Taken

An appeal without bill of exceptions can not be entertained even though there was presented an agreement as to the facts by the parties by their respective attorneys. *Frizell* v. *Murphy* (19 App. D. C. 440).

Judgment entered by court without jury should be affirmed when no exception was taken by appellant either during the progress of the trial or at its conclusion, nor was any motion made for judgment. *International Finance Corp.* v. *General Motors Acceptance Corp.* (63 App. D. C. 325, 72 Fed. (2d) 376).

Exceptions to Rulings Not Made in the Trial

"We find nothing in the code, or in the rules of practice established under it to require an exception in order that an error apparent upon the record may be reviewed. Sections 71, 73 (§§ 11–318, 11–320) pertain to the taking of exceptions to rulings made during trial in the Supreme Court. There seems to be no section that in terms recognizes a right to take exceptions on rulings other than such as are made in the trial, unless this right follows from the adoption of the statute of Westminster as being among the 'British statutes in force in Maryland.'" *Nalle* v. *Oyster* (230 U. S. 165, 57 L. Ed. 1439, 33 Sup. Ct. 1043).

Sufficiency of Evidence

Authority of Court of Appeals is limited on appeal to the inquiry as to whether or not there was some substantial evidence to support the finding of the trial court on the subject, and must be determined by not considering and weighing conflicting testimony. *Operative Plasterers and Cement Finishers International Assn.* v. *Case* (68 App. D. C. 43, 93 Fed. (2d) 56).

§ 11–319 [18: 74]. Special panel—Struck jury—Procedure.

In all cases called for trial in said court in which either party shall desire a struck jury the clerk shall prepare a list of twenty jurors from the jurors in attendance and furnish the same to each of the parties, and it shall be lawful for each party or his counsel to strike off four persons from said list, and the remaining persons shall thereupon be impaneled and sworn as the petit jury in said cause; and if either party or his counsel shall neglect or refuse to strike off from said list the number of persons hereby directed, the clerk may strike off such names, and the remaining twelve jurors shall be sworn and impaneled as aforesaid. Or, instead of the proceeding aforesaid, if it shall not be insisted upon by either party, it shall be lawful for either party to furnish to the clerk a list of the jurors, not exceeding four in number, whom he wishes to be omitted from the panel sworn in the cause, and the clerk in making up said panel shall omit the jurors objected to as aforesaid: *Provided,* That nothing herein contained shall be construed to take away the right of any person to challenge the array or polls of any panel returned: *And provided further,* That nothing herein contained shall affect the right of the parties to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in the particular case. (Mar. 3, 1901, 31 Stat. 1201, ch. 854, § 72; June 30, 1902, 32 Stat. 523, ch. 1329.)

Amendment

Act of 1901 was amended by striking out at the end thereof the words "according to existing law" and inserting in lieu thereof the words *"And provided further,* That nothing herein contained shall affect the right of the parties to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in the particular case."

NOTES TO DECISIONS

Examination of Jurors

Where, on voir dire examination, questions concerning claims for personal injuries previously suffered by jurors were propounded to panel and in response two jurors remained silent, there was no sufficient inquiry by counsel, on voir dire, to support a motion for new trial, or contention on appeal based on ground that some jurors gave false answers or concealed information by silence, and a denial of new trial was not an abuse of discretion. *Orenberg* v. *Thecker,* 1944 (143 F. 2d 375, 79 U. S. App. D. C. 149).

§ 11–320 [18: 75]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to exceptions taken upon a trial before a jury in the District Court of the United States was based on Act Mar. 3, 1901, 31 Stat. 1201, ch. 854, § 73; June 30, 1902, 32 Stat. 523, ch. 1329; Mar. 3, 1921, 41 Stat. 1311, ch. 125, § 4 and is now superseded by rule 46 of Federal Rules of Civil Procedure.

NOTES TO DECISIONS

Exceptions, Corrections

"There is no power in this court, by certiorari or otherwise, to correct the imperfections or misstatements that are alleged to exist in the bill of exceptions taken and certified to this court." *Kelly* v. *Moore* (22 App. D. C. 1).

Exceptions Not Filed

A motion to dismiss an appeal for failure to file a bill of exceptions will be denied where "the right of appeal is not dependent upon the appearance of a regular bill of exceptions in the transcript of the record." *Raymond* v. *United States* (26 App. D. C. 250).

In the absence of a bill of exceptions it will be presumed on appeal "that the proceedings had in the court below were in all respects regular." *Raymond* v. *United States* (26 App. D. C. 250).

Exceptions, When Entertained

"Every reasonable presumption will be indulged in favor of the regularity of a bill of exceptions that the record will permit. But it seems to be the settled practice * * * not to entertain a bill of exceptions which clearly appears from the record to have been settled, etc., after the expiration of the term of the court or of any period beyond which it could not be legally postponed." *Talty* v. *District of Columbia* (20 App. D. C. 489).

Exceptions, When Not Required

"The purpose of a bill of exceptions * * * is to make that a matter of record which otherwise would not appear on the record. But when the questions raised already sufficiently appear from the pleadings and proceedings of record, no such bill of exceptions is necessary." *Evans* v. *Humphreys* (9 App. D. C. 392).

As to the consideration of stipulations of counsel in lieu of bill of exception, see *Frizell* v. *Murphy* (19 App. D. C. 440).

Necessary Inclusions

"A general exception to a charge, which does not direct the attention of the court to the particular portions of it

to which objection is made raises no question for review by an appellate court." *Thomas* v. *Presbrey* (5 App. D. C. 217).

On a plea of nul tiel record to a scire facias on judgment the record inspected is no part of the proceedings, and a bill of exceptions setting forth the record offered and the ruling thereon to which exception is taken is necessary on appeal. *Lyon* v. *Ford* (7 App. D. C. 314), citing *Otterback* v. *Patch* (5 App. D. C. 69).

"In order to warrant an Appellate Court in determining whether there was error in giving or refusing an instruction to return a verdict, the bill of exceptions must show that all of the evidence has been set forth." *Rockwell* v. *Capital Trac. Co.* (25 App. D. C. 98).

An objection not appearing in the bill of exceptions comes too late. *Fields* v. *United States* (27 App. D. C. 433, 446), dism. 205 U. S. 292, 51 L. Ed. 807, 27 Sup. Ct. 543).

PERMITTED EXCLUSIONS

A stipulation setting forth an agreed statement of facts on which the case is tried need not be included in a formal bill of exceptions. *American Security & Trust Co.* v. *Walker* (23 App. D. C. 583).

§ 11–321 [18: 76]. Exceptions—Sealing by justice.

When one that is impleaded before any of the justices doth alledge an exception, praying that the justices will allow it, which if they will not allow, if he that alledged the exception, do write the same exception, and require that the justices will put to their seals for a witness, the justices shall so do; and if one will not, another of the company shall. (2) And if the King, upon complaint made of the justices, cause the record to come before him, and the same exception be not found in the roll, and the plaintiff shew the exception written, with the seal of a justice put to, the justice shall be commanded that he appear at a certain day, either to confess or deny his seal. (3) And if the justice can not deny his seal, they shall proceed to judgment according to the same exception, as it ought to be allowed or disallowed. (13 Edw. 1, ch. 31 (1285); Alex. Br. Stat. 126; Comp. Stat. D. C., p. 442, § 5.)

§ 11–322 [18:81]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to criminal court term of District Court of the United States for the District of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 83; June 30, 1902, 32 Stat. 523, ch. 1329; Mar. 19, 1906, 34 Stat. 73, ch. 960 and is now inconsistent with sections 137–141 of title 28, U. S. C.

NOTES TO DECISIONS

APPEALS

The Criminal Appeals Act does not impliedly repeal the appellate system created by the District of Columbia Code. *United States* v. *Burroughs* (289 U. S. 159, 77 L. Ed. 1096, 53 Sup. Ct. 574).

The Criminal Appeals Act is inapplicable to criminal cases tried in the District Court of the District. *United States* v. *Burroughs* (289 U. S. 159, 77 L. Ed. 1096, 53 Sup. St. 574).

BILL OF EXCEPTIONS

Charge of conspiracy against United States is triable before Supreme Court (now District Court) of District sitting as a criminal court. *Pitts* v. *Peak* (60 App. D. C. 195, 50 Fed. (2d) 485).

A bill of exceptions which, under a local rule of the United States District Court for the District of Columbia, was required to be filed within a specified time, cannot after such time has expired be settled and signed nunc pro tunc by the District Court and made a part of the record, and the Court of Appeals may, on motion of appellee, or on its own motion, strike the same. *Joerns* v. *Irvin* (72 App. D. C. 170, 114 Fed. (2d) 458).

Any act done within the District of Columbia by any defendant in furtherance of objectives of alleged conspiracy to cause insubordination and refusal of duty by members of United States military forces would establish venue in the District of Columbia as to all parties to conspiracy, regardless of where conspiracy was entered into. *U. S.* v. *McWilliams* (D. C., D. C. 1944, 54 F. Supp. 791).

CRIMINAL RULES, APPLICATION OF

The rules in criminal cases after verdict, rules 4, 7–9, 18 U. S. C. following § 688, are intended to be of general operation throughout the United States. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

HISTORICAL

Historical development of criminal court traced. *Ex parte Bradley* (7 Wall. (74 U. S.) 364, 19 L. Ed. 214).

Under the act of 1863, reorganizing the courts of the District, the Supreme Court (now District Court) not only possessed no jurisdiction in criminal cases, except in an appellate form, but established a separate and independent court, invested with all the criminal jurisdiction, to hear and punish crimes and offenses within the district. *Ex parte Bradley* (7 Wall. (74 U. S.) 364, 19 L. Ed. 214).

Under the act of March 3, 1863, 12 Stat. 762, ch. 91, by which the courts of the District were reorganized, the criminal court still remained a separate and independent court, although held by a justice of the Supreme Court (now District Court) of the District created by the act, and the only jurisdiction of the Supreme Court (now District Court) in criminal cases was appellate. *Cross* v. *United States* (145 U. S. 571, 36 L. Ed. 821, 12 Sup. Ct. 842).

IMPAIRMENT OF JURISDICTION

Jurisdiction in a criminal case is not impaired by fact that accused was brought before court in an unlawful manner. *Sheehan* v. *Huff*, 1944 (142 F. 2d 81, 78 U. S. App. D. C. 391, certiorari denied 64 S. Ct. 1287, 322 U. S. 764, 88 L. Ed. 1591).

WITHDRAWAL AND APPOINTMENT OF COUNSEL

The judge of District Court, so far, at least, as he has power to control the activities of lawyers practicing before him, had power to permit withdrawal of assigned counsel who represented accused at trial, as well as to appoint new counsel, after federal appellate court had acquired jurisdiction of the cause. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

§ 11–323 [18:82]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to attendance of the clerk, marshal and district attorney upon the criminal court of the District Court of the United States for the District of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1220, ch. 854, § 185; June 30, 1902, 32 Stat. 527, ch. 1329 and is now covered by sections 507, 547, 956 of title 28, U. S. C.

§ 11–324 [18:91]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to jurisdiction of District Court of the United States for the District of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 84 and is now inconsistent with sections 137–141 of title 28, U. S. C.

NOTES TO DECISIONS

IN GENERAL

The District Court and Court of Appeals of the District are constitutional courts of the United States, ordained and established under article 3 of the Constitution; the judges of these courts hold their offices during good behavior, and their compensation cannot, under the Constitution, be diminished during their continuance in office. *O'Donoghue* v. *United States* (289 U. S. 516, 77 L. Ed. 1356, 53 Sup. Ct. 740).

The fact that District Court for District of Columbia was known as the "Supreme Court of the District of Columbia," when act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938, amending 28 U. S. C. § 345 and restricting direct review by Supreme Court of District Court judgments became law, did not exclude the District Court for District of Columbia from such restriction, since at that time the Supreme Court of District of Columbia possessed the jurisdiction of a District Court of the United States. *U. S.* v. *Belt,* 1943 (63 S. Ct. 1278, 319 U. S. 521, 87 L. Ed. 1559, vacating 47 F. Supp. 239).

POWER OF JUSTICES

By §§ 62, 84 of the 1901 Code (§§ 11–309, 11–324), justices of the District Court of the United States for the District of Columbia were vested with the power and jurisdiction of judges of the District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (274 U. S. 145, 71 L. Ed. 972, 47 Sup. Ct. 557, rev'g 56 App. D. C. 3, 6 Fed. (2d) 701).

§ 11–325 [18: 101]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to equity court term of District Court of the United States for the District of Columbia was based on Act Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 85 and is now inconsistent with sections 137–141 of title 28, U. S. C.

NOTES TO DECISIONS

DIVORCE

Divorce proceeding is equitable in character. *Moncure* v. *Moncure* (51 App. D. C. 292, 278 Fed. 1005).

A divorce proceeding in the District of Columbia is "equitable" in character so that in such proceeding district court had continuing jurisdiction to grant full and complete relief concerning custody and maintenance of child of the parties. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

The District Court of the United States for the District of Columbia acquired jurisdiction over maintenance and custody of minor child upon filing of suit for divorce. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

The Court had jurisdiction under its general equity powers to adjudicate and settle a dispute between the parties concerning their respective rights in funds and property which had been acquired during marriage. *Reilly* v. *Reilly* (C. A. D. C. 1950, 182 F. 2d 108, appeal pending).

EQUITY RULES

Equity Rule providing for the transfer of an action in law erroneously begun as a suit in equity cannot be invoked for the first time on appeal to the United States Supreme Court. *Curriden* v. *Middleton* (232 U. S. 633, 58 L. Ed. 765, 34 Sup. Ct. 458).

Provisions of the Judicial Code are superior to any rule of procedure inconsistent therewith formulated under authority of this section. *Tuckerman* v. *Mearns* (49 App. D. C. 153, 262 Fed. 607).

JURY TRIAL

When an issue was sent by a court of equity to be tried by a jury in a court of law, and exceptions were taken during the progress of the trial at law, these exceptions had to be brought before the court of equity and there decided, in order to give United States Supreme Court cognizance of them when the case was brought up for appeal. *McLaughlin* v. *Bank of Potomac* (7 How. (48 U. S.) 220, 12 L. Ed. 675).

Where ownership of house, proceeds from its occupancy under lease executed by defendant, and disposition of furniture were put in issue by complaint for divorce, but defendant averred that she was not plaintiff's wife because she had been granted a foreign divorce decree, if defendant desired pretrial and jury trial on property issues she should have made demand therefor. *Scholl* v. *Scholl* (App. D. C. 1945, 152 F. 2d 672, 80 U. S. App. D. C. 292).

LOST WILLS

The equity branch of the District Court is without jurisdiction to set up a lost will. *Gracie* v. *American Secur. & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

PERSONAL RIGHTS

District Court had jurisdiction to grant injunction against exclusion of plaintiff and similarly situated members of the National Woman's Party from the party's headquarters. *Berrien* v. *Pollitzer* (App. D. C. 1948, 165 F. 2d 21).

POWER OF COURT

The District Court of the United States for the District of Columbia has power to grant full and complete relief in an equity case. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

§ 11–326 [18: 102]. Enforcement of decrees.

The said court may, for the purpose of executing a decree, or to compel obedience to the same, issue an attachment against the person of the defendant, and may order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree, or may issue a fieri facias and attachment by way of execution against his lands, tenements, chattels, and credits, or other incorporeal property, to satisfy the decree; or the court may, by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case may require; and in case of sequestration may order payment and satisfaction to be made out of the estate and effects so sequestrated, according to the true intent and meaning of the decree; and in case any defendant shall be arrested and brought into court upon any process of contempt issued to compel the performance of any decree, the court may, upon motion, order such defendant to stand committed, or may order his estate and effects to be sequestrated and payment made, as above directed, or possession of his estate and effects to be delivered by order and injunction as above directed, until such decree or order shall be fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared; but where the decree only directs the payment of money no defendant shall be imprisoned except in those cases especially provided for. (Mar. 3, 1901. 31 Stat. 1208. ch. 854, § 113.)

NOTES TO DECISIONS

DECREE AWARDING CUSTODY

A divorce decree awarding custody of children to wife and directing payment by husband of a specified sum monthly for their maintenance does not only direct payment of money within this section, and husband who failed to make the required monthly payments could be imprisoned for contempt, notwithstanding that the divorce was granted to husband on his application. *Evans* v. *Evans* (D. C., D. C. 1941, 36 F. Supp. 12).

FINAL ORDERS

An order requiring the payment of maintenance, even pendente lite, is a "final order" and not an "interlocutory order", for purpose of determining court's jurisdiction to imprison for contempt for noncompliance with the order. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

IMPRISONMENT FOR DEBT

Order directing government employee, whose salary was not subject to attachment or garnishment, to pay

over a certain amount of his salary each month to a receiver in satisfaction of a judgment was a violation of the provisions of this section forbidding imprisonment for debt, for necessarily it threatened defendant with punishment as for contempt of court if he failed to pay. *McGrew* v. *McGrew* (59 App. D. C. 230, 38 Fed. (2d) 541, cert. den. 281 U. S. 739, 74 L. Ed. 1153, 50 Sup. Ct. 349).

The provision that no defendant shall be imprisoned, where decree is for fine, is a limitation on the fundamental power of the court. *Rapeer* v. *Colpoys* (66 App. D. C. 216, 85 Fed. (2d) 715).

Under this section providing that where a decree directs only payment of money no defendant shall be imprisoned except in those cases especially provided for, court has no power to overstep that limitation. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

After final decree was entered dismissing divorce suit but containing no reference to unpaid installments of alimony which had accrued under pendente order, this section for bidding imprisonment for violation of decree ordering only payment of money came into play. *Cole* v. *Cole* (App. D. C. 1947, 161 F. 2d 883).

MANDATORY INJUNCTIONS

Where plaintiffs sought injunction requiring defendants to restore to plaintiffs possession of an apartment, mandatory injunction was properly denied on ground that plaintiffs had an adequate remedy at law. *Leonardo* v. *Leonardo,* 1944 (145 F. 2d 849, 79 U. S. App. D. C. 258).

A mandatory injunction should be denied when its issuance will cause injury to defendant and no benefit or very little benefit to plaintiff, especially when money damages will afford compensation. *Leonardo* v. *Leonardo,* 1944 (145 F. 2d 849, 79 U. S. App. D. C. 258).

§ 11–327 [18: 103]. Enforcement of interlocutory decrees.

All interlocutory orders may be enforced by such process as might be had upon a final judgment or decree to the like effect, and the payment of costs adjudged to any party may be enforced in like manner. (Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 114.)

NOTES TO DECISIONS

IN GENERAL

This section provided that interlocutory orders might be enforced by the same process that might be had upon a final judgment or decree to the like effect, and payment of costs adjudged to any party might be enforced in like manner. *Karrick* v. *Edes* (57 App. D. C. 219, 19 Fed. (2d) 693).

NONPAYMENT OF MAINTENANCE PENDENTE LITE

Under § 16–415 authorizing imprisonment for enforcement of permanent maintenance and §§ 16–410, 16–411, for enforcement of alimony during pendency of divorce suit and this section, permitting enforcement of interlocutory orders by same process as final decrees, court had no power to imprison husband for failure to pay awards of maintenance pendente lite and suit money, in wife's suit for maintenance. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

§ 11–328 [18: 104]. Enforcement of decrees for delivery of chattels.

An order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law, as well as those heretofore used for its enforcement in equity practice. (Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 115.)

§ 11–329 [18: 60]. District Court building under control of Attorney General.

The District Court building in the city of Washington shall be under the supervision and control of the Attorney General. (Mar. 3, 1875, 18 Stat. 374, ch. 130.)

§ 11–330 [18: 62]. Fees and fines.

There shall be credited to the District of Columbia that proportion of the fees and fines collected by the United States District Court for the District of Columbia, including fees and fines collected by the offices of the clerk of that court, of the Register of Wills of the District of Columbia, and of the United States marshal for the District of Columbia, as the amount paid by the District of Columbia toward salaries and expenses of such court and of the offices of the United States district attorney for the District of Columbia and of the United States marshal for the District of Columbia bears to the total amount of such salaries and expenses; and such proportion of the fees and fines, if any, collected by the United States Court of Appeals for the Distract of Columbia Circuit, including fees and fines, if any, collected by the office of the clerk of that court, as the amount paid by the District of Columbia toward the salaries and expenses of such court bears to the total amount of such salaries and expenses. (July 26, 1939, 53 Stat. 1107, ch. 367, title III; Aug. 2, 1949, 63 Stat. 491, ch. 383, § 7.)

AMENDMENTS

The act of Aug. 2, 1949, cited to text, inserted the words "of the Register of Wills of the District of Columbia" after the words "including fees and fines collected by the offices of the clerk of that court," and deleted the words "On and after July 1, 1939," at the beginning of the section. Sec. 10 of said act provided: "This Act shall take effect on July 1, 1949."

CROSS REFERENCE

See notes to § 19–401, § 19–404a.

§ 11–331. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to percentage liability of the District for expenditures for the District Court of the United States for the District of Columbia was based on Act Feb. 9, 1893, 27 Stat. 436, ch. 74, § 15; Mar. 3, 1901, 31 Stat. 1227, ch. 854, § 232; Apr. 27, 1938, 52 Stat. 265, ch. 180, § 1; June 29, 1939, 53 Stat. 903, ch. 248; May 14, 1940, 54 Stat. 181, ch. 189, § 1 and is now obsolete.

Chapter 4.—CLERK OF DISTRICT COURT

Sec.
11–401. Deputy clerks.
11–402. Repealed.

§ 11–401 [18: 111]. Deputy clerks.

The clerk of the United States District Court for the District of Columbia may assign any of the deputy clerks in his office to duty in the general or special terms of the court, except in the probate term. Any of the duties of the clerk may be performed in his name by any of the deputy clerks, and such deputies may sign the name of the clerk to any process, certificate, and other official act required by law or by the practice of the court to be performed by the clerk, and may authenticate said signature by affixing the seal of the court thereto when the seal is necessary to its authentication. In such cases the signature shall be—

_____, Clerk.

By _____, Deputy Clerk.

(Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1218, ch. 854, § 174; June 30, 1902, 32 Stat. 527,

ch. 1329; Dec. 15, 1941, 55 Stat. 801, ch. 574, § 1; June 25, 1948, 62 Stat. 988, ch. 646, § 14.)

COMPILER'S NOTES

The code of 1901, which appears in 31 Stat. 1189–1436, ch. 854, was the last code of the District enacted as original and independent legislation. Consequently, where a section of this code is set out and antecedent statutes are referred to in the history line, they have to do only with origins and the 1901 code is not in fact amendatory of them and no comment concerning them will ordinarily be found in the notes concerning amendments.

It is not clear that the words "at such compensation as may be authorized by the District Court of the United States for the District of Columbia in general term" (which follow the word "employees") are entirely superseded by the Classification Act (U. S. C., title 5, § 673).

AMENDMENTS

The act of Dec. 15, 1941, cited to text, substituted "deputy clerks" for "assistant clerks". It also deleted the words "at such compensation as may be authorized by the District Court of the United States in general term" after the words "other necessary employees".

Act June 25, 1948, cited to text, amended the catchline, struck out the first sentence and amended the second sentence by striking out provision re appointing deputy clerks and other necessary employees.

The catchline has been rewritten.

§ 11–402 [18: 112]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section relative to clerk administering oaths was based on Act Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1219, ch. 854, § 178; June 30, 1902, 32 Stat. 527, ch. 1329, and is now covered by section 953 of title 28, U. S. C.

AMENDMENT

Act of 1901 was amended by striking out the ending which stated "and shall receive the same fees for the latter service as other officers authorized to take such acknowledgments."

§ 11–403 [18: 113]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section which related to salaries, expenses and appointment of clerk was based on Act Mar. 4, 1921, 41 Stat. 1412, ch. 161, and is now covered by sections 604 and 751 of title 28, U. S. C.

COMPILER'S NOTE

The act of Mar. 4, 1921, 41 Stat. 1412, ch. 161, § 1, insofar as applicable, reads: "*Provided,* That provisions of the act entitled 'An Act to fix the salaries of the clerks of the United States district courts and to provide for their office expenses, and for other purposes,' approved February 26, 1919, shall be applicable on and after July 1, 1921, to the clerk of the Supreme Court of the District of Columbia, excepting that said clerk shall be appointed as heretofore by said Court in General Term, and to the clerks of the district courts of the United States for Hawaii and Porto Rico: *Provided further,* That no clerk or deputy clerk or assistant in the office of the clerk of a United States district court shall receive any compensation or emoluments through any office or position to which he may be appointed by the court, other than that received as such clerk, deputy clerk, or assistant, whether from the United States or from private litigants."

CROSS REFERENCES

Attachment docket to be kept, § 16–334.
Docket for lien of hospitals upon moneys paid for personal injuries, §§ 38–302, 38–305.
Docket of adoption proceedings, § 16–206.
Dockets and papers of proceedings in feeble-mindedness, § 32–623.
Duties in criminal court, § 11–323.
Fees of court officer, witnesses, jurors; court costs, § 11–1501 et seq.
Judgment docket kept by clerk, § 15–105.
Marriage records, § 30–114.
Record of partnerships, § 41–106.

RULES OF CIVIL PROCEDURE

Records, dockets, order books, indices and calendars required to be kept by the clerk, see Rule 79.

Chapter 5.—PROBATE COURT

Sec.
11–501. Special term to be designated as probate court.
11–502. Sessions.
11–503. Plenary jurisdiction.
11–504. Powers—Not exclusive of equity jurisdiction in certain cases.
11–505. Seal.
11–506. Power to issue summons—Failure to appear—Penalty.
11–507. Process or summons to be served by marshal—Liability.
11–508. Sequestration where party fails to appear—Bond required.
11–509.—Plenary proceedings—How regulated.
11–510. Plenary proceedings—Issues to be made up—Jury trial.
11–511. When appeal shall not stay proceedings.
11–512. Limitation on jurisdiction—Enforcement of decrees and orders.
11–513. Power to order investment of funds—Penalty—Revocation of letters.
11–514. Power to compel performance of duty—Summons, revocation of letters.
11–515. Revocation of letters—Accounting, power to compel performance.
11–516. Enforcement of judgments, orders, and decrees as in equity court.
11–517. Trial of other issues—Time—Notice.
11–518. Costs—Judgment—Execution.
11–519. Depositions—Exceptions—Granting new trial—Decree admitting will to probate—As evidence.
11–520. Arbitration—Exceptions may be taken.

§ 11–501 [18: 121]. Special term to be designated as probate court.

The special term of said District Court of the United States for the District of Columbia, known prior to March 3, 1901, as the orphans' court, shall be designated the probate court, and the justice holding said court shall have and exercise all the power and jurisdiction by law held and exercised by the orphans' court of Washington County, District of Columbia, prior to June 21, 1870. (Feb. 27, 1801, 2 Stat. 107, ch. 15, § 12; June 21, 1870, 16 Stat. 160, ch. 141, § 4; June 8, 1898, 30 Stat. 434, ch. 394; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

COMPILER'S NOTE

The probate court is a special term of the District Court of the United States for the District of Columbia (see § 11–311) and has plenary jurisdiction over probate matters, § 11–503.

CROSS REFERENCES

Fees and costs, § 11–1501 et seq.
Probate code, titles 18–21.
Register of Wills, clerk of probate court, § 19–409.

CITED

Leach v. *Burr* (188 U. S. 510, 47 L. Ed. 567, 23 Sup. Ct. 393); *Utermehle* v. *Norment* (197 U. S. 40, 49 L. Ed. 655, 25 Sup. Ct. 291).

NOTES TO DECISIONS

HISTORICAL

An appeal lay to the United States Supreme Court from the judgment of the Circuit Court of the District of Columbia affirming a judgment of the Orphan's Court of Alexandria County, dismissing a petition to revoke the probate of a will. *Carter* v. *Cutting* (8 Cranch (12 U. S.)

251, 3 L. Ed. 553); *West* v. *Smith* (8 How. (49 U. S.) 402, 12 L. Ed. 1130)).

The 1870 act (16 Stat. 160, ch. 141, § 4) abolished the orphans' court and invested the justice holding the special term of the Supreme Court for that purpose with the powers and jurisdiction then held and exercised by the former court, subject to the provisions giving an appeal to the general term from any order involving the merits, which is expressed in § 5, act of March 3, 1863. *Ormsby* v. *Webb* (134 U. S. 47, 33 L. Ed. 805, 10 Sup. Ct. 478).

Supreme Court of the District, in special and general term respectively, has, by virtue of successive acts of Congress, the probate jurisdiction formerly exercised by the Orphans' Court and the Court of Chancery of the State of Maryland and by the Orphans' Court and Circuit Court of the United States for the District; with authority also, at a special term, to order any matter to be heard in the first instance at a general term. *Campbell* v. *Porter* (162 U. S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

APPEAL TO GENERAL TERM

An appeal to the general term from the final order of probate made in the special term, which was not based upon a judicial determination of facts, but merely upon the finding of a jury of necessity, brought into review before the general term all the questions of law that are properly presented by the bill of exceptions taken at the trial. *Ormsby* v. *Webb* (134 U. S. 47, 33 L. Ed. 805, 10 Sup. Ct. 478).

JURISDICTION

If probate court invested only with authority over wills and the settlement of estates should proceed to try parties for public offenses, jurisdiction over the subject of offenses being entirely wanting in the court, and this being known to the judge, his commission would afford no protection to him in the exercise of usurped authority. *Bradley* v. *Fisher* (13 Wall. (80 U. S.) 335, 20 L. Ed. 646).

The question of the jurisdiction of the court below can be raised by either party or by the court on its own motion. *Campbell* v. *Porter* (162 U. S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

The probate court of the District of Columbia has limited jurisdiction. *Perkins* v. *Berger,* 1944 (145 F. 2d 856, 79 U. S. App. D. C. 286).

ORDER AS FINAL JUDGMENT

An order at special term, admitting a will to probate and record, is a final judgment reviewable by the general term; and such review, in this case a proceeding involving the validity of a will, is a "case," the final judgment of which can be reviewed by the Supreme Court of the United States. *Ormsby* v. *Webb* (134 U. S. 47, 33 L. Ed. 805, 10 Sup. Ct. 478).

A judgment admitting a will to probate may be reviewed by the United States Supreme Court. *Campbell* v. *Porter* (162 U. S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

§ 11–502 [18: 122]. Sessions.

The said court shall hold weekly session on such days as it may appoint and on as many days as may be necessary for the dispatch of its business. (Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 118.)

§ 11–503 [18: 123]. Plenary jurisdiction.

In addition to the jurisdiction conferred in section 11–501, plenary jurisdiction is hereby given to the said court holding the said special term to hear and determine all questions relating to the execution and to the validity of any and all wills devising any real estate within the District of Columbia, and of any and all wills and testaments properly presented for probate therein, and to admit the same to probate and record in said special term; and neither the execution nor the validity of any such will or testament so admitted to probate and record shall be impeached or examined collaterally, but the same shall be in all respects and as to all persons res judicata, subject, nevertheless, to the provisions hereinafter contained. (Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 117.)

CROSS REFERENCES

Probate Code, titles 18 to 21.
See notes to § 11–504.

NOTES TO DECISIONS

IN GENERAL

"It is not the province of a probate court to become a court of construction; that function belongs to the ordinary courts of law or equity." *Vestry* v. *Bostwick* (8 App. D. C. 452). Compare *McIntire* v. *McIntire* (14 App. D. C. 337, aff'd 192 U. S. 116, 48 L. Ed. 369, 24 Sup. Ct. 196).

Jurisdiction and powers of probate court are substantially the same as those of its predecessor under the former laws. *Richardson* v. *Daggett* (24 App. D. C. 440). Cited *Miniggio* v. *Hutchins* (43 App. D. C. 117).

Although the probate court is one of limited jurisdiction, it has all the authority necessarily implied in the act of its creation. *Guthrie* v. *Welch* (24 App. D. C. 562).

Court, in its sound discretion, may remove collector. *Guthrie* v. *Welch* (24 App. D. C. 562).

The provisions of 1901 code, § 141 (§ 19–313) are permissive and not mandatory. *Young* v. *Norris Peters Co.* (27 App. D. C. 140).

The probate court of the District of Columbia is one of limited powers and jurisdiction. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

BILL OF EXCEPTIONS ON APPEAL

"A proceeding in a probate court is not a proceeding in equity, and final orders therein are reviewable only in accordance with the practice at common law. * * * And the evidence in such cases must be brought up in bill of exceptions." *Craighead* v. *Alexander* (38 App. D. C. 229).

PROOF OF WILLS

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie* v. *American Secur. & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

TITLE TO REAL ESTATE

Determination of title to real estate devised by will held to be within general jurisdiction of a court of equity. *Beyer* v. *Le Fevre* (186 U. S. 114, 46 L. Ed. 1080, 22 Sup. Ct. 765, rev'g 17 App. D. C. 238).

Prior to act of June 8, 1898 (30 Stat. 434) (§ 11–501). "the probate of a will was evidence of its validity only so far as it affected personal property. As showing the passage of title to real estate the instrument itself must have been produced, with the proof of subscribing witnesses." *Young* v. *Norris Peters Co.* (27 App. D. C. 140).

UNPROBATED WILL AS EVIDENCE

Where plaintiff sought to enjoin obstruction of right of way easement on theory that plaintiff and her predecessors in title continuously, openly, notoriously, and adversely used right of way for more than 20 years, unprobated will of plaintiff's predecessor which had been filed in probate court was properly received to prove privity, a transfer of possession, and continuity of interest. *Bonds* v. *Smith,* 1944 (143 F. 2d 369, 79 U. S. App. D. C. 118).

WILL LOST OR DESTROYED

The will must be shown to have been irretrievably lost or destroyed, and that it had been duly and properly executed and attested; and that its destruction, if in the lifetime of the testator, was wholly without his knowledge or consent, at the time, or his subsequent ratification. *Fitzgerald* v. *Wynne* (1 App. D. C. 107).

§ 11–504 [18: 124]. Powers—Not exclusive of equity jurisdiction in certain cases.

It shall have full power and authority to take the proof of wills of either personal or real estate and admit the same to probate and record, and for cause to revoke the probate thereof; to grant and, for any

of the causes hereinafter mentioned, to revoke letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship, and to appoint a successor in the place of anyone whose letters have been revoked; to hear, examine, and decree upon all accounts, claims, and demands existing between executors and administrators and legatees, or persons entitled to a distributive share of an intestate estate, or between wards and their guardians; to enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to said court; to enforce the distribution of estates by executors and administrators, and the payment or delivery by guardians of money or property belonging to their wards: *Provided,* That the jurisdiction of said probate court shall not be exclusive of the jurisdiction of the said equity court to entertain suits by legatees or next of kin against executors or administrators, or by wards against their guardians for an accounting; and, except in cases provided for in section 11–520, any settlement of accounts in said probate court shall only be prima facie evidence as to the correctness of said accounts in any such suits, or in suits by creditors against executors or administrators, or against heirs or devisees, to subject the real estate of decedents to the payments of their debts. (Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 119; June 30, 1902, 32 Stat. 525, ch. 1329.)

COMPILER'S NOTE

The Rules of Civil Procedure, by their own terms, do not apply to probate proceedings in the District Court of the United States for the District of Columbia, but said court, under its rule-making power, has made the above-mentioned rules applicable to the trial of issues in probate proceedings. See *Ecker* v. *Potts* (72 App. D. C. 174, 112 Fed. (2d) 581).

AMENDMENT

Act of 1901 was amended by inserting after the word "guardians" the words "to enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to said court"; and by striking out the words "and concurrently with the equity court to direct the sale of real estate of decedents for the payment of their debts and the application of the proceeds thereof" which immediately preceded the proviso; also by changing the internal cross reference from § 144 of the Code of 1901 to § 145 (§ 11–520) thereof.

CROSS REFERENCES

Approval of binding minors as apprentices, § 36–101 to 36–103.

Authority to prescribe note to be given upon application for letter of administration, § 20–217.

Jurisdiction to bind out minors as apprentices, determination of mutual rights and liabilities, § 36–101 et seq.

Probate Code, titles 18 to 21.

Provisions concerning jurisdiction, § 11–306 and notes.

See note to § 11–503. *Vestry* v. *Bostwick* (8 App. D. C. 452); *Guthrie* v. *Welch* (24 App. D. C. 562); *Gracie* v. *American Secur. & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

NOTES TO DECISIONS

APPOINTING NEW ADMINISTRATOR

"Once letters have been granted to a party upon a misstatement or misconception of the facts, the same may be revoked and the party really entitled thereto appointed." *Emery* v. *Emery* (45 App. D. C. 576).

Probate court has power, over objection of surviving administrator, to appoint an administrator to fill a vacancy caused by the death of one of two administrators. *Dennis* v. *Hamilton* (48 App. D. C. 160), distinguishing *Williams* v. *Williams* (24 App. D. C. 214).

CAVEAT

Upon reversal of judgment sustaining caveat, and its remand, the case is reinstated in the court below upon the issue as originally framed. If caveator insists on new trial, he is entitled to it. Until the case is disposed of, the probate court is without jurisdiction to probate the will. *Hutchins* v. *Hutchins* (49 App. D. C. 118, 261 Fed. 460).

Where will was admitted to probate July 5, 1938 and letters testamentary issued, a caveat filed June 30, 1939 will be dismissed insofar as it is a caveat to a will of personal property. *Hengesbach* v. *Hengesbach* (— App. D. C. —, 114 Fed. (2d) 845).

CLAIMS AGAINST ESTATE

"The probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio* v. *Hutchins* (43 App. D. C. 117). See *Dante* v. *Miniggio* (46 App. D. C. 162).

Claims of son in the amount of $318.30 as against sister involving rents from deceased father's property held not against an administratrix within meaning of this section, but were within jurisdiction of the municipal court. *Shields* v. *Shields* (69 App. D. C. 331, 101 Fed. (2d) 255).

CONTEMPT

Where probate court of District of Columbia had personal jurisdiction in main cause, that jurisdiction continued in that cause for purpose of making court's decree effective and in civil contempt proceeding for purpose of enforcing the original decree. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

Where status of petitioner as an executor was fixed by will which he offered for probate, and, under the will and without necessity for ratification of his appointment by letters testamentary, he was authorized to perform certain acts in relation to the estate, and, instead of renouncing the appointment, petitioner acted upon his testamentary authority, he thereby voluntarily submitted himself to the jurisdiction of the probate court of the District of Columbia, so that the probate court had jurisdiction to commit petitioner for contempt where he failed to comply with a turn-over order following determination of invalidity of the will. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

CONTRACTS OF EXECUTORS

"In view of its supervisory power over their accounts a court of probate, of course, has a check upon the contracts of executors and administrators, and yet it has neither power to make contracts for them nor to direct or authorize them to make any." *MacKie* v. *Howland* (3 App. D. C. 461).

COSTS AND COUNSEL FEES

Counsel fee paid upon petition of certain legatees, said petition stating that counsel "had been managing their interests" and not reserving any right to have it finally charged against the estate, was properly charged against said legatees' interest. *McIntire* v. *McIntire* (14 App. D. C. 337, 20 App. D. C. 134, aff'd 192 U. S. 116, 48 L. Ed. 369, 24 Sup. Ct. 196).

An executor who has unsuccessfully defended a will may obtain counsel fees and costs incurred by him even though after term has expired at which judgment was rendered, for the costs and expenses chargeable in the probate court are costs of administration, payable out of the estate and is in control of the court during the whole period of administration. *Tuohy* v. *Hanlon* (18 App. D. C. 225).

In contest between next of kin of a testator and his legatees as to validity of will, the orphans' court has no power to allow counsel fees for defending the will so far as it will affect claims of creditors who have nothing to do with the contest. *Hamilton* v. *Shillington* (19 App. D. C. 268).

If upon the trial of the issues the executor sustains the validity of the will, or if he shows that he acted in good faith throughout, although the will may be overthrown for the want of testamentary capacity in the

deceased, he may, in the discretion of the court, have an allowance for costs and counsel fees; but if will is not sustained, undue influence and bad faith decided against him, he should not be entitled to an allowance. *Kengla* v. *Randall* (22 App. D. C. 463).

There was no error in the allowance made for attorneys' fees to the administratrix. She was entitled to the services of an attorney in winding up the estate, and there is no evidence that the services were not worth the sum allowed, or that they were exclusively for the personal benefit of the administratrix. *Howard* v. *Howard* (38 App. D. C. 575).

Supreme Court, as a probate court, has power to grant an allowance to executors for counsel fees and costs from the estate, when they had unsuccessfully defended the validity of the will. *Hutchins* v. *Hutchins* (48 App. D. C. 286).

DISTRIBUTION

The court has jurisdiction to order partial distribution. *McLane* v. *Cropper* (5 App. D. C. 276).

Probate Court has jurisdiction over residuum of estate of which testator died intestate. *Sinnott* v. *Kenaday* (12 App. D. C. 115). See also *Sinnott* v. *Kenaday* (14 App.). D. C. 1, rev'd on other grounds 179 U. S. 606, 45 L. Ed. 339, 21 Sup. Ct. 233).

ESCHEAT

The probate court has power, in absence of next of kin, to order in a proper case the payment of residuum of intestate's estate to an escheatee, as § 18–717 provides. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

The probate court, upon a finding that there are no heirs of deceased intestate, has power to decree distribution to District of Columbia as escheatee. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

The probate court's jurisdiction to hear, determine and decree upon all claims between executors and administrators and legatees or persons entitled to a distributive share of an intestate estate includes duty of finding that there are or that there are not statutory heirs, and upon the finding to make distribution as § 18–717 requires. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

NEW TRIAL

In granting a new trial, the court may limit the scope thereof. *Ecker* v. *Potts* (72 App. D. C. 174, 112 Fed. (2d) 581).

The action of a trial court in granting or refusing a new trial is not reviewable unless there is a clear case of abuse of discretion. *Ecker* v. *Potts* (72 App. D. C. 174, 112 Fed. (2d) 581).

PURPOSE

The object of this section creating the probate court was to provide a tribunal in which it might be judicially determined who takes property left by a deceased intestate. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

POWERS

The Probate Court of the District of Columbia has only the powers expressly conferred on it by law, and is a court of limited jurisdiction. *Fidelity & Deposit Co. of Maryland* v. *McQuade,* 1941 (123 F. 2d 337, 74 App. D. C. 383).

SALE OF REAL ESTATE

Although in Maryland before 1798, the orphans' court had no authority to order a sale of a ward's real estate, the orphans' court of the District of Columbia, with the approval of the Circuit Court of the United States of that District sitting in chancery, had such power. *Thaw* v. *Ritchie* (136 U. S. 519, 34 L. Ed. 531, 10 Sup. Ct. 1037).

Under this section, jurisdiction of the probate court over suits of creditors to subject real estate of decedents to payment of their debts was not exclusive of the jurisdiction of the equity court. *West* v. *McLaughlin* (57 App. D. C. 163, 18 Fed. (2d) 813).

TITLE TO PROPERTY

Holzbeierlein v. *Grant,* 1941 (117 F. 2d 26, 73 App. D. C. 154).

Where party allegedly holding money as trustee for a minor under an active executory trust created by written instrument never admitted and in fact denied right of minor or minor's guardian to possession of money, the probate court had no jurisdiction to determine who was entitled to possession, since that court has no jurisdiction to decide a dispute regarding the title or the right of possession of personalty. *Jones* v. *Dunlap,* 1940 (115 F. 2d 689, 73 App. D. C. 59).

TRIAL BY JURY

A proceeding for the probate of a will is not a suit in equity, but one in which the parties have the right to trial by jury. *Campbell* v. *Porter* (162 U. S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

§ 11–505 [18: 125]. Seal.

The probate court shall keep a seal for the said court, and for the office of register of wills; and the said seal shall be fixed to all certificates of the court, or of the register, and to every process and writ of every kind issued from the court. (Act of Maryland, 1798, ch. 101, subch. 15, § 12; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

COMPILER'S NOTE

Sections 11–505 to 11–512, are from the Maryland statutes indicated in the history line and are inserted on authority of § 11–501, which is § 116 of the 1901 Code.

§ 11–506 [18: 126]. Power to issue summons—Failure to appear—Penalty.

The probate court shall, in all cases, have power to issue a summons for any person concerned in the affairs of a deceased person, or for any witness or other person whose appearance in the said court, for any purpose, shall be deemed necessary or proper, and the said summons shall be returnable, at the discretion of the court; and if it be necessary or proper to enforce the appearance of the party, the court, on the return of the "summoned," and failure to appear, may issue an attachment; and when the party shall appear, or be brought in thereon, may fine him or her, not exceeding $30; and if a witness before the court shall refuse to give evidence, the court may commit him or her to the custody of the marshal or coroner (if the case may require), there to remain until he give evidence, or be discharged according to law; or the court may attach and sequester the party's estate, or a part thereof, as directed by sections 11–508 to 11–512, inclusive. (Act of Maryland, 1798, ch. 101, subch. 15, § 13; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

§ 11–507 [18: 127]. Process or summons to be served by marshal—Liability.

The marshal or coroner, (as the case may require,) shall serve any summons or process to him directed by the probate court and shall make return thereof according to its tenor, and on failure, he shall be liable to be proceeded against by attachment and fine as aforesaid, or otherwise, as any other person may be proceeded against. (Act of Maryland, 1798, ch. 101, subch. 15, § 14; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

RULES OF CIVIL PROCEDURE

Service of process, see Rule 4.

§ 11–508 [18: 128]. Sequestration where party fails to appear—Bond required.

In any case where two summonses shall be regularly returned non est by the marshal and it shall be

necessary to proceed further to compel the party's attendance, the court may order and issue an attachment against his or her lands, tenements, goods, and chattels, and on return of such attachment, to which a schedule of the property (if any) attached shall be annexed, the court, by order, or commission under seal, may authorize some person or persons to take into his care and custody the lands, tenements, goods and chattels, return in the schedule, or any part thereof, and receive the profits thereof, to be accounted for, until the party shall appear and obey the order of the court, or until further order, and the marshal or other officer, shall deliver the property accordingly, or be liable to be proceeded against as aforesaid; *Provided,* That the person or persons so authorized shall first give bond to the United States with such security, and in such penalty, as the court shall direct, to be recorded, sued, and to be on a footing with an administration bond, conditioned for rendering a true account of the said estate or property, and of the profits thereof, and to deliver the same according to the court's order, deducting such allowance for loss, and such commission, not exceeding 5 per cent. on the whole, as the court shall think proper to grant; and whenever the purpose for which the said property was sequestered shall have been answered, the court shall direct the said estate or property, and profits (deducting as aforesaid) to be restored to the party; and on the death of the party, the court shall order the same to be delivered to his or her heirs, devisees or legal representatives, as soon as the said purpose shall be answered, or immediately, on application, and satisfying the court of the party's right, in case the said purpose, after the death of the original party, can not be answered. (Act of Maryland, 1798, ch. 101, subch. 15, § 15; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

§ 11–509 [18: 129]. Plenary proceedings—How regulated.

Whenever either of the parties having a contest in the probate court shall require, the said court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath (or affirmation) and if the party refuse to answer on oath (or affirmation, as the case may require) to any matter alleged in the bill or petition, and proper for the court to decide upon, the said party may be attached, fined, and committed, or his property may be attached and sequestered as aforesaid. (Act of Maryland, 1798, ch. 101, subch. 15, § 16; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

§ 11–510 [18: 130]. Plenary proceedings—Issues to be made up—Jury trial.

And on such plenary proceeding the probate court shall give judgment, or decree upon the bill and answer, or upon bill, answer, depositions, or finding of the jury; and in all cases of contest, the probate court may award costs to the party in their opinion entitled thereto, and may compel payment, by attachment of the body, and fine, or attachment and sequestration, as aforesaid, of the property. (Act of Maryland, 1798, ch. 101, subch. 15, § 17; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

§ 11–511 [18: 131]. When appeal shall not stay proceedings.

An appeal from the probate court shall not stay any proceedings therein which may with propriety be carried on before the appeal is decided, provided the said probate court can provide for conforming to the decision of the court above, whether the said decision may eventually be for or against the appellant. (Act of Maryland, 1798, ch. 101, subch. 15, § 19; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

§ 11–512 [18: 132]. Limitation on jurisdiction — Enforcement of decrees and orders.

The said probate court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this code; but every judgment, decree, decision, or order, of the said court, may be enforced by attachment and sequestration as aforesaid; and if the said judgment, decree, decision, or order, be for paying money, the property sequestrated may, at the discretion of the court, be applied to the purpose for which such judgment, decree, decision, or order, was given. (Act of Maryland, 1798, ch. 101, subch. 15, § 20; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

NOTES TO DECISIONS

APPLICATION OF STATUTES

As the powers of the probate court are strictly limited, the statutes are equally applicable, at least so far as they are pertinent to the administration of all estates in the District, whether domiciliary or ancillary. *Duehay* v. *Acacia Mut. Life Ins. Co.* (70 App. D. C. 245, 105 Fed. (2d) 768).

POWER TO REMOVE ADMINISTRATOR

Like its predecessor, the orphan's court of Maryland, the Probate Court is a court of special jurisdiction with limited powers, and consequently, unless power to remove an executor for a particular cause can be found in the statute, or by necessary inference therefrom, it does not exist. *Hawley* v. *Hawley* (72 App. D. C. 357, 114 Fed. (2d) 505).

Unless power of probate court to remove an administratrix for a particular cause can be found in this chapter or by necessary inference therefrom, it does not exist. D C. Code. *Perkins* v. *Berger,* 1944 (145 F. 2d 856, 79 U. S. App. D. C. 286).

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. *Perkins* v. *Berger,* 1944 (145 F. 2d 856, 79 U. S. App. D. C. 286).

§ 11–513 [18: 133]. Power to order investment of funds—Penalty—Revocation of letters.

The said court may, in its discretion, order an executor, administrator, collector, or guardian, whom it may have appointed, to bring into court or invest in securities, to be approved by the court, any money or funds received by such executor, administrator, collector, or guardian and if said party shall not, within a reasonable time, to be fixed by the court, comply with the order, his letters may be revoked. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 123.)

CROSS REFERENCE

Investments of funds held by direction of will, § 20–115.

CITED

Referred to but not construed in *Guthrie* v. *Welch* (24 App. D. C. 562).

NOTES TO DECISIONS

COMMINGLING OF FUNDS BY EXECUTOR

Where money was deposited in bank by executor, mingled with his own and subject to his check at all times, it renders both him and his coexecutor, who acquiesced in this disposition, liable for legal interest on the fund during the whole time of his possession. *Mades* v. *Miller* (2 App. D. C. 455).

§ 11–514 [18: 134]. Power to compel performance of duty—Summons, revocation of letters.

The court shall have power to order any executor, administrator, collector, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of any inventory or account or the fulfillment of any duty in said court to be summoned to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act; and on his appearing the court may pass such order as may be just; and upon his failure to appear, after having been duly summoned, may revoke his power to act and make such further order and other appointment as justice may require. In case the summons to appear is returned by the marshal "not to be found," an alias summons shall be mailed to the last-known post-office address of such fiduciary or served upon his attorney of record, if he be within the jurisdiction of the court; and on the failure of such fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice may require. (Mar. 3, 1901, 31 Stat. 1210, ch. 854, § 126; Apr. 19, 1920, 41 Stat. 557, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or testamentary trustee" in the first sentence; deleted the words "his letters testamentary or of administration or collection or of guardianship" and inserted in lieu thereof the words "his power to act" as such words appear for the first time in the first sentence; deleted the word "letters" and inserted in lieu thereof the words "power to act" the second time such words appear in the first sentence; and added the second sentence.

NOTES TO DECISIONS

REMOVAL OF ADMINISTRATOR

An executor or administrator can be removed only for legal causes specified in the statute, which confers power upon the probate court. *Hawley* v. *Hawley* (72 App. D. C. 357, 114 Fed. (2d) 505).

§ 11–515 [18: 135]. Revocation of letters—Accounting, power to compel performance.

Whenever said court shall revoke letters testamentary or of administration or of collection or of guardianship, it shall be the duty of the party whose letters may be revoked to render forthwith an account of his administration or guardianship up to the period of the rendition of said account and to deliver and turn over to the person appointed in his place all the estate, money, and effects remaining in his hands that were received and held by him by virtue of his appointment so revoked; and all moneys in the hands of an executor, administrator, or collector realized by him by the sale of the specific property shall be considered unadministered assets and be turned over in like manner; and the court may compel the performance of said duty in the manner hereinafter mentioned, and may direct the bond of said executor, administrator, or collector whose letters may be revoked to be put in suit for the use of the new administrator or collector appointed in his place. (Mar. 3, 1901, 31 Stat. 1210, ch. 854, § 127.)

CROSS REFERENCE

Distribution before discovery of will or before will is declared invalid, § 20–106.

NOTES TO DECISIONS

REMOVAL WITHOUT NOTICE AND TRIAL

When executors and administrators are once regularly appointed and qualified they can not be removed without notice and a trial. *Brosnan* v. *Brosnan* (53 App. D. C. 149, 289 Fed. 547).

§ 11–516 [18: 136]. Enforcement of judgments, orders, and decrees as in equity court.

The said court, in addition to the powers herein specially conferred, shall have power to enforce its judgments, orders, and decrees in like manner as orders and decrees may be enforced in the equity court. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 129; June 30, 1902, 32 Stat. 526, ch. 1329.)

AMENDMENT

Act of 1901 was amended by striking out the word "hereinafter" where it appeared following the word "powers" and inserting in lieu thereof the word "herein."

RULES OF CIVIL PROCEDURE

Forms of actions have been abolished in the District Court of the United States for the District of Columbia, see Rule 2.

NOTES TO DECISIONS

CONTEMPT

Where petitioner seeking writ of habeas corpus offered for probate a will in which he was named as executor and he acted upon testamentary authority, but after determination of invalidity of will he failed to comply with order directing him to turn over assets of deceased's estate, the probate court of the District of Columbia properly exercised its power by adjudging petitioner guilty of contempt for his refusal to comply with the turn-over order. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

POWER OF COURT

The probate court of the District of Columbia is empowered to enforce its decrees with those powers which may be exercised by courts of equity. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

§ 11–517 [18: 137]. Trial of other issues—Time—Notice.

The trial of other issues pending in said court than such as relate to the execution or validity of wills shall also be had in said court. For the trial of issues not relating to wills the justice holding said court shall have authority to fix the time of trial and determine the notice thereof to be given. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 142; June 30, 1902, 32 Stat. 526, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the following words: "and no person shall be required to serve as a juror more than twenty secular days in any one term in any one year, except in a trial pending and not determined when said twenty days expire."

NOTES TO DECISIONS

OUSTING JURISDICTION

Administration proceedings for property within the District, in a court of the District having proper jurisdiction, need not be dismissed because one of the parties asks for letters of administration in another jurisdiction on the

claim that deceased had been domiciled in such State. *Overby* v. *Gordon* (177 U. S. 214, 44 L. Ed. 741, 20 Sup. Ct. 603, aff'g 13 App. D. C. 392).

§ 11–518 [18: 138]. Costs—Judgment—Execution.

The said court shall have authority to render judgment for costs against the unsuccessful party in any proceeding conducted in said court and to issue execution therefor. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 143; June 30, 1902, 32 Stat. 526, ch. 1329).

AMENDMENT

Act of 1901 was amended by striking out the word "trial" and inserting in lieu thereof the word "proceeding."

CROSS REFERENCES

Fees and costs, § 11–1501 et seq.
See notes to § 11–504.

RULES OF CIVIL PROCEDURE

Judgment for costs, see Rule 54 (d).

NOTES TO DECISIONS

DISCRETION

Court has discretionary power, notwithstanding this section, to award costs to the party in their opinion entitled thereto. *Hutchins* v. *Hutchins* (48 App. D. C. 286). Followed in *Manning* v. *Childress* (48 App. D. C. 256).

§ 11–519 [18: 139]. Depositions — Exceptions — Granting new trial—Decree admitting will to probate—As evidence.

The said court shall have authority to issue commissions to take the testimony of nonresident witnesses, and such depositions, as well as depositions de bene esse, taken according to law, may be read at the trial of any issue in said court. On the trial of any such issue exceptions may be taken to the rulings of the court, and the said court may set aside the verdict and grant a new trial for the same causes and in the same manner as in case of a trial in the Circuit Court. Unless and until the same be reversed, any final order or decree admitting a will to probate shall be conclusive evidence of the validity of such will in any collateral proceeding in which such will may be brought into question, and a transcript of the record of such will, and of the decree admitting the same to probate, shall be sufficient proof thereof. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 144; June 30, 1902, 32 Stat. 526, ch. 1329.)

AMENDMENT

Act of 1901 was amended by inserting, after the word "unless," the words "and until" in the third sentence.

RULES TO CIVIL PROCEDURE

Judgment for costs, see Rule 54 (d).

NOTES TO DECISIONS

UNPROBATED WILL AS EVIDENCE

Where plaintiff sought to enjoin obstruction of right of way easement on theory that plaintiff and her predecessors in title continuously, openly, notoriously, and adversely used right of way for more than 20 years, unprobated will of plaintiff's predecessor which had been filed in probate court was properly received to prove privity, a transfer of possession, and continuity of interest. *Bonds* v. *Smith*, 1944 (143 F. 2d 369, 79 U. S. App. D. C. 118).

§ 11–520 [18: 140]. Arbitration—Exceptions may be taken.

The said court shall have power, with the consent in writing of both parties, to arbitrate between a complainant and an executor or administrator, or between an executor or administrator and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of such arbitrator, and the court may confirm or overrule the award, and said award, when confirmed, shall be conclusive between the parties. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 145.)

Chapter 6.—POLICE COURT

Sec.

11–601. Constitution—Number of judges—Qualifications, tenure, salary, sessions—Hours, rules—Quarters and equipment.
11–602. Jurisdiction—Crimes and offenses—Exceptions, limitations.
11–603. Jurisdiction—Cruelty to children—Witness fees—Humane Society.
11–604. Affrays and bawdy-houses—Concurrent jurisdiction.
11–605. Threats to do bodily harm—Concurrent jurisdiction.
11–606. Powers—To issue process, punish for contempt—Limitation, allow bond or bail—Fines and forfeitures—Embezzlement thereof—Penalty.
11–607. Power to issue executions on forfeited recognizances.
11–608. Seal—Judges may take acknowledgments, oaths, affirmations.
11–609. Terms of court.
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11–617. Jury—Qualifications, compensation, tenure—Trial not concluded with term—Jury to hold over.
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11–627. Accounts, how audited.

CROSS REFERENCES

Provisions relating to jurisdiction and powers made applicable to Municipal Court for District of Columbia, see § 11–755 (a).

§ 11–601 [18: 151]. Constitution—Number of judges—Qualifications, tenure, salary, sessions—Hours, rules—Quarters and equipment.

The police court of the District shall consist of four judges learned in the law, appointed by the President, by and with the advice and consent of the Senate. No person shall be so appointed unless he has been an actual resident of the District for a period of at least five years immediately preceding his appointment and has been in the actual practice of law before the District Court of the United States for the District of Columbia for a period of five years prior to his original appointment. The term of

office of each judge shall be six years, except that any judge in office at the expiration of the term for which he was appointed may continue in office until his successor takes office. Each judge shall be subject to removal by the President for cause. The salary of each judge shall be fixed in accordance with the Classification Act of 1923 (U. S. C., title 5, ch. 13). The judges shall hold separate sessions and may carry on the business of the court separately and simultaneously, but the holding of such sessions shall be so arranged that the court shall be open continuously from nine o'clock antemeridian until eleven o'clock postmeridian each day, Sundays excepted, for the trial of cases involving violations of traffic laws and regulations. The judges shall have power to make rules for the apportionment of business between them and the act of each judge respecting the business of the court shall be deemed and taken to be the act of the court. Each judge when appointed shall take the oath prescribed for judges of courts of the United States.

(b) The commissioners shall provide for the use of the police court such quarters, furniture, books, stationery, and office equipment as may, in their opinion, be necessary for the efficient execution of the functions of the court, and as may be appropriated for by the Congress from time to time. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 42; June 30, 1902, 32 Stat. 522, ch. 1329; Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 3.)

COMPILER'S NOTES

The Code of 1901, which appears in 31 Stat. 1189–1436, ch. 854, was the last code actually enacted by Congress and it was original and independent legislation. Consequently, where a section of this code is set out and antecedent statutes are referred to in the history line, they have to do only with origins and the 1901 code is not in fact amendatory of them and no comment concerning them will ordinarily be found in the notes concerning amendments.

Provision was made in this section for the holding of police court sessions from 9 a. m. to 11 p. m. each day in traffic cases. Limitations on appropriations have provided that no portion of the appropriations shall be expended "for the holding of court on any day after 6 o'clock postmeridian for the trial of cases involving violations of traffic laws and regulations." (See act of May 21, 1928, 45 Stat. 669.)

The basic law is that set forth in this section.

AMENDMENTS

The 1902 amendment added the provision for serving until the successors are appointed.

The 1925 amendment added the second sentence, the exception in the third sentence, the fourth and fifth sentences, that part of the sixth sentence following the word "but," and paragraph (b); and, deleted the word "two" in the first sentence and inserted in lieu thereof the word "four" and deleted the provision for the salaries of the judges of $3,000 each per year.

CROSS REFERENCES

Present provisions covering this subject matter are contained in §§ 11–752 to 11–754.

NOTES TO DECISIONS

HISTORICAL

Accused could, under 16 Stat. 153, ch. 133, be tried in the court of original jurisdiction, upon the issue of guilt or innocence; and by its judgment, unless he gave security for his appearance in another court, he could be deprived of his liberty. The police court was not, in such cases, an examining court merely, but a trial court. *Callan* v. *Wilson* (127 U. S. 540, 32 L. Ed. 223, 8 Sup. Ct. 1301).

While other courts of the United States could, under 16 Stat. 153, ch. 133, commit for an indefinite period a defendant in default of payment of a fine, the Police Court of the District was limited to one year. *Dodd* v. *Peak* (60 App. D. C. 68, 47 Fed. (2d) 430).

INFERIOR COURT

Police court is an "inferior court" of "limited jurisdiction." *Mullen* v. *Canfield* (70 App. D. C. 168, 105 Fed. (2d) 47).

JURISDICTION

Constitution gives to inferior courts the capacity to take jurisdiction but it requires an act of Congress to confer it. *Myers* v. *United States* (272 U. S. 52, 71 L. Ed. 160, 47 Sup. Ct. 21).

§ 11–602 [18: 152]. Jurisdiction—Crimes and offenses—Exceptions, limitations.

The said court shall have original jurisdiction concurrently with the District Court of the United States for the District of Columbia, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post-office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the District Court of the United States for the District of Columbia. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43.)

CROSS REFERENCES

Abandonment of prosecution and discharge of bail, § 23–104.

Appeals to Court of Appeals, § 17–103.

Arrest under Uniform Act on Fresh Pursuit, commitment on discharge, §§ 23–501, 23–502.

Bail forfeiture as a lien, § 15–103.

Bail in cases triable in police court, § 11–606.

Bail in habeas corpus proceedings, § 16–806.

Bail of fugitives from justice, forfeiture, §§ 23–404, 23–405.

Cash bail and forfeiture thereof, § 23–106.

Designation of officer to take bonds and collateral, § 23–610.

Forfeiture of bail in police court, execution, § 11–607.

Fugitives from justice, arrest, commitment, bail, discharge, § 23–401 et seq.

General provision concerning jurisdiction of police court, § 23–103.

Issuance of search warrant, § 23–301.

Jurisdiction of District Court, §§ 11–306, 11–322.

Probation system, § 24–101 et seq.

Professional bondsmen, rules and regulations, § 23–601 et seq.

NOTES TO DECISIONS

ATTORNEYS

The police court has no power to admit attorneys nor suspend an attorney on charge of solicitation. *Mullen* v. *Canfield* (70 App. D. C. 168, 105 Fed. (2d) 47).

COURT OF THE UNITED STATES

The police court is not a "court of the United States" within the meaning of R. S., § 1042 of the United States. *United States* v. *Mills* (11 App. D. C. 500).

The police court is a "proper court of the United States" within the meaning of the Food and Drug Act (34 Stat. 768). *Huyler's* v. *Houston* (41 App. D. C. 452).

HOUSE BREAKING

Although the police court and the juvenile court of the District have no trial jurisdiction whatever of a charge of housebreaking, the police court has power to examine and commit or hold to bail for trial or further examination all persons, and the juvenile court all minors under 17 years of age, charged with such offense. *Peak* v. *Reed* (58 App. D. C. 44, 24 Fed. (2d) 619).

LIMITATION OF JURISDICTION

Police court may try criminal cases upon information but it has no jurisdiction of capital or otherwise infamous crimes and can not sentence to a penitentiary. It may direct that a convicted person sentenced to a term of imprisonment not exceeding six months be confined in either the workhouse or jail, but it will not be presumed that appellant will be imprisoned at hard labor. *Cleveland* v. *Mattingly* (52 App. D. C. 374, 287 Fed. 948).

Police court had no jurisdiction over crimes punishable by death or by imprisonment in the penitentiary. *Peak* v. *Reed* (58 App. D. C. 44, 24 Fed. (2d) 619).

Police court may, in default of payment of fine, commit to jail for period not exceeding one year. *Palmer* v. *Lenovitz* (35 App. D. C. 303); *Dodd* v. *Peak* (60 App. D. C. 68, 47 Fed. (2d) 430).

SALE OF LIQUOR

Jurisdiction was exclusively in the police court, for the violation of act of Congress of March 3, 1893 (27 Stat. 563) which regulated the sale of liquors, and the then Supreme Court of the District of Columbia had no jurisdiction. *Gassenheimer* v. *District of Columbia* (6 App. D. C. 108).

Prosecution for first offense under National Prohibition Act may be in the police court by way of information. *Cleveland* v. *Mattingly* (52 App. D. C. 374, 287 Fed. 948).

§ 11–603 [18: 152a]. Jurisdiction—Cruelty to children—Witness fees—Humane Society.

Except as provided in sections 11–906, 11–907, the police court of the District of Columbia shall have jurisdiction in all cases arising under section 32–209, and the same witness fees shall be allowed in the prosecution of all cases of cruelty to children or animals in the District of Columbia as are allowed in other cases by law; but no officer or member of the Humane Society shall be entitled to any fee as a witness in any such case. (June 25, 1892, 27 Stat. 60, ch. 135, § 1.)

COMPILER'S NOTES

As enacted the police court was given jurisdiction in all cases arising under the act of Feb. 13, 1885, 23 Stat. 302, ch. 58, the pertinent section of which appears herein as § 32–209.

This jurisdiction given the police court was subject to appeal to the Supreme (now District) Court of the District, according to the provisions of § 4 of chapter 536, 26 Stat. 849, entitled "An act to define the jurisdiction of the police court of the District of Columbia." This section, as amended by the act of March 2, 1897, 29 Stat. 607, ch. 360, § 1, has been superseded by § 17–103.

The jurisdiction given herein has probably been made subject to that of the juvenile court as defined in the act of June 1, 1938, 52 Stat. 596, ch. 309, as amended by the act of July 2, 1940, 54 Stat. 735, ch. 525, which is contained in this code as § 11–901 et seq., particularly § 11–907.

NOTES TO DECISIONS

IN GENERAL

Lower court was invested by Congress with original jurisdiction "of all offenses against municipal ordinances and regulations in force in the District." *Tipp* v. *District of Columbia* (69 App. D. C. 400, 102 Fed. (2d) 264).

ENTRY OF DWELLING

The trial of information charging accused with violation of section 3102 of Title 22 prohibiting unlawfully entering and unlawfully declining to leave a dwelling house in District of Columbia would not present question of fact "involving title to real property" so as to deprive police court of District of Columbia of jurisdiction of the prosecution. *Fletcher* v. *McMahon*, 1941 (121 F. 2d 729, 73 App. D. C. 263, certiorari denied, 1942, 62 S. Ct. 131, 314 U. S. 662, 86 L. Ed. 531).

§ 11–604 [18: 153]. Affrays and bawdy-houses—Concurrent jurisdiction.

The police court shall have jurisdiction, concurrently with the District Court of the United States for the District of Columbia, of affrays and the keeping of a bawdy or disorderly house. (July 16, 1912, 37 Stat. 192, ch. 235, § 1.)

§ 11–605 [18: 154]. Threats to do bodily harm—Concurrent jurisdiction.

Said police court shall also have concurrent jurisdiction with said District Court of the United States for the District of Columbia of threats to do bodily harm. (July 16, 1912, 37 Stat. 193, ch. 235, § 2.)

§ 11–606 [18: 155]. Powers—To issue process, punish for contempt—Limitation, allow bond or bail—Fines and forfeitures—Embezzlement thereof—Penalty.

The police court shall have power to issue process for the arrest of persons against whom information may be filed or complaint under oath made and to compel the attendance of witnesses; to punish contempts by fine not exceeding twenty dollars and imprisonment for not more than forty-eight hours, or either, and to enforce any of its judgments by fine or imprisonment, or both, and to make such rules and regulations as may be deemed necessary and proper for conducting business in said court. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year.

Every person charged with an offense triable in the police court may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the said police court or the station keeper of the police precinct within which such person may be apprehended. And whenever any sum of money shall be deposited as collateral security as hereby provided it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court; and when forfeited it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the said United States or of the said District; and every person receiving any sum of money deposited as hereby provided shall be deemed in law the agent of the person depositing the same or of the said United States or the said District, as the case may be, for all purposes of properly preserving and accounting for such money. And all fines payable and paid under judgment of the said police court shall upon their payment, immediately become, in contemplation of law, the property of the said United States or the said District, according to the charge upon

which such fine may be adjudged; and the person receiving any such fine shall be deemed in law the agent of the said United States or the said District as aforesaid, as the case may be; and any person, being an agent as hereinbefore contemplated and defined, who shall wrongfully convert to his own use any money received by him as hereinbefore provided shall be deemed guilty of embezzlement, and upon conviction thereof be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding five years, or both: *Provided,* That nothing herein contained shall affect the ultimate rights under existing law of the Washington Humane Society, of the District of Columbia, in or to any fines or forfeitures paid and collected in the said police court. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1197, ch. 854, § 48.)

CROSS REFERENCES

Jurisdiction, § 11–602 and notes.
Other provisions concerning bail, § 11–602 and notes.
See note to § 11–616. *Bowles* v. *District of Columbia* (22 App. D. C. 321).

NOTES TO DECISIONS

FINES AND IMPRISONMENT

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by § 11–606 and § 11–616 is limited by the later § 25–128, is without merit, since the general statute existed before the special one and Congress must have been aware of the older ones. Had the Congress intended later to modify the earlier, it would have done so. Accordingly, judgment of conviction affirmed. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

A note of warning should be addressed to the trial court that the alternative sentence is a mode of compelling payment of a fine and its use should be confined to such and should not be used for the purpose of imposing a longer term of imprisonment than is permitted by law. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

The alternative sentence of imprisonment in default of payment of fine is not imposed as a part of the penalty but as a means of compelling payment of the fine. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

Where the statute provides a fine but no imprisonment, an alternative prison sentence may be imposed, and where a fine or imprisonment or both may be imposed, and both are imposed, the weight of authority is that in default of payment of fine, the defendant may be committed for an additional term after expiration of the term for which sentenced. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

IMPRISONMENT FOR NONPAYMENT

A defendant convicted for violation of Female Eight Hour Law, § 36–301 et seq., could be sentenced to prison in event of default in payment of fines, notwithstanding that § 36–309 provided for fines only, in view of this section authorizing commitment of defendant in default of payment of fine imposed. *Anderson* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

Sentences imposing fines or term in jail in default of paying fines were not illegal as jail sentences. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 63 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

LIMITATION OF JURISDICTION

Police court is an "inferior court" of "limited jurisdiction." It has original jurisdiction concurrently with the District Court, except as otherwise provided, of all crimes in the District not capital or infamous, and all offenses against municipal ordinances. It has the power to examine, commit, or hold to bail, but has no power to admit attorneys nor suspend an attorney on charge of solicitation. *Mullen* v. *Canfield* (70 App. D. C. 168, 105 Fed. (2d) 47).

PAYMENT OF FINE PRECLUDING APPEAL

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without attempting to stay judgment and without making protest or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 189).

§ 11–607 [18: 156]. Power to issue executions on forfeited recognizances.

The said court shall have power to issue execution on all forfeited recognizances, upon motion of the proper prosecuting officer, and all writs of fieri facias or other writs of execution on judgments issued by said court shall be directed to and executed by the marshal of the District. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 57.)

CROSS REFERENCES

Judgment on forfeiture of recognizance, § 15–103.
Other provisions concerning bail, § 11–602 and notes.

NOTES TO DECISIONS

REMISSION OF PENALTY

R. S., § 1020 (U. S. C., title 18, § 601), conferred authority on court to remit penalty of forfeited recognizance in certain cases. *United States* v. *Von Jenny* (39 App. D. C. 377).

§ 11–608 [18: 157]. Seal—Judges may take acknowledgments, oaths, affirmations.

The said court shall have a seal, and each of the judges shall have power to take the acknowledgment of deeds and to administer oaths and affirmations to public officers. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 49.)

CROSS REFERENCES

Present provisions relating to seal, see § 11–752.

§ 11–609 [18: 158]. Terms of court.

The said court shall hold a term on the first Monday of every month, and continue the same from day to day as long as it may be necessary for the transaction of its business. (June 17, 1870, 16 Stat. 153, ch. 133, § 4; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 50.)

CROSS REFERENCE

See note to § 11–616 of this title. *Harris* v. *Nixon* (27 App. D. C. 94, cert. den. 201 U. S. 645, 50 L. Ed. 903, 26 Sup. Ct. 761).

Present provisions covering this subject matter are contained in § 11–754 (a).

§ 11–610 [18: 159]. Disability of judge—Filling vacancy.

In cases of sickness, absence, disability, expiration of the term of service of or death of any of the judges of said court, any one of the justices of the District Court of the United States for the District of Columbia may designate one of the judges of the municipal court to discharge the duties of said police judge until such disability be removed or vacancy

filled. The justice so designated shall take the same oath prescribed for the judge of the police court. (Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 51; June 30, 1902, 32 Stat. 522, ch. 1329; Feb. 17, 1909, 35 Stat. 624, ch. 134.)

COMPILER'S NOTE

Act of July 1, 1902, 32 Stat. 609, ch. 1352, § 1, provides that "hereafter any justice of the peace (judge of the municipal court) designated to serve as judge of the police court, as provided in section 51 of the act to establish a code of law for the District of Columbia shall receive no additional compensation while so serving."

AMENDMENTS

The 1901 act originally provided for designation of a justice of the peace to take the place of a police judge.

The 1902 act repeated the provision.

The 1909 act changed this provision to refer to judges of the municipal court.

CROSS REFERENCE

See §§ 11–601, 11–707, 11–904.

Disability of chief judge, see § 11–754 (c).

NOTES TO DECISIONS

JUDGE PRO TEM

Judge pro tem is not disqualified from passing sentence because regular judge returns between time of trial and date set for sentencing. *Shore* v. *Splain* (49 App. D. C. 6, 258 Fed. 150).

§ 11–611 [18: 160]. Process—Service.

In cases arising out of violations of any of the ordinances or laws of the District in force therein, process shall be directed to the major and superintendent of police, who shall execute the same and make return thereof in like manner as in other cases. (R. S., D. C., § 1065.)

CROSS REFERENCES

Provisions of §§ 11–611 to 11–614 made applicable to Municipal Court for District of Columbia, see § 11–755 (b).

§ 11–612 [18: 161]. Process—Service—Cases cognizable in District Court of the United States for the District of Columbia.

In cases cognizable in the District Court of the United States for the District of Columbia the process shall be directed to the marshal, except in cases of emergency, when it may be directed to the major and superintendent of police. (R. S., D. C., § 1066.)

§ 11–613 [18: 162]. Process—Seal—How attested.

Such process shall be under the seal of the police court, and shall bear teste in the name of a judge, and be signed by the clerk. (R. S., D. C., § 1067.)

§ 11–614 [18: 163]. Process—Fees for service.

For such services the marshal shall receive the same fees as prescribed for like service in the District Court of the United States for the District of Columbia. (R. S., D. C., § 1068.)

§ 11–615 [18: 164]. Witness fees.

There shall be paid to witnesses in cases in the police court of the District of Columbia, not exceeding seventy-five cents per diem for each day of attendance, to be allowed only in the discretion of the court. (July 1, 1902, 32 Stat. 561, ch. 1351.)

CROSS REFERENCES

Power to compel attendance of witnesses, see § 11–756 (c).

§ 11–616 [18: 165]. Prosecutions—Jury trials—Default of fines—Penalty.

Prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury.

In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 44; Mar. 3, 1925, 43 Stat. 1120, ch. 443, § 4.)

AMENDMENT

The act of 1925, amended the second paragraph by changing the words "fifty dollars or more" to "more than three hundred dollars" and the words "thirty days or more" to "more than ninety days."

CROSS REFERENCES

Jury trials in vagrancy proceedings, § 22–3301.

See notes to § 11–602.

Procedure, see § 11–756 (b).

NOTES TO DECISIONS

IN GENERAL

Although police court may try criminal cases on information, there is no presumption that it will sentence one to hard labor so as to deprive it of jurisdiction. *Cleveland* v. *Mattingly* (52 App. D. C. 374, 287 Fed. 948).

One guilty of changing the name of a licensee appearing on a motor vehicle operator's permit, whereupon he was sentenced to pay a fine of $275, and in default to be committed to the Washington Asylum and Jail for 60 days; it was proper and within the jurisdiction of the court. *Dorsey* v. *Peak* (58 App. D. C. 54, 24 Fed. (2d) 892, 57 A. L. R. 865).

While other courts of the United States may commit for an indefinite period, a defendant in default of payment of a fine, the police court of the District is limited to one year. *Dodd* v. *Peak* (60 App. D. C. 68, 47 Fed. (2d) 430).

The alternative sentence of imprisonment in default of payment of fine is not imposed as a part of the penalty but as a means of compelling payment of the fine. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

Where the statute provides a fine but no imprisonment, an alternative prison sentence may be imposed, and where a fine or imprisonment or both may be imposed, and both are imposed, the weight of authority is that in default of payment of fine, the defendant may be committed for an additional term after expiration of the term for which sentenced. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

CONSTITUTIONALITY

A person charged with having committed the crime of conspiracy in the District of Columbia is entitled to a jury trial; and to accord the accused a right to be tried by jury in an appellate court, after he has been once fully tried, otherwise than by a jury, in the court of original jurisdiction and sentenced to pay a fine or be imprisoned, does not satisfy the requirements of the Constitution. *Callan* v. *Wilson* (127 U. S. 540, 32 L. Ed. 223, 8 Sup. Ct. 1301).

Constitutional requirement that trial of all crimes shall be by jury is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury. *District of Columbia* v. *Colts* (282 U. S. 63, 75 L. Ed. 177, 51 Sup. Ct. 52, aff'g 59 App. D. C. 224, 38 Fed. (2d) 535).

This act does not violate either the Fifth or Sixth Amendments. *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177, rev'g 65 App. D. C. 330, 83 Fed. (2d) 587. Rehearing den. 299 U. S. 624, 81 L. Ed. 89, 57 Sup. Ct. 319).

CUMULATIVE SENTENCES

Section 934 of 1901 code (U. S. C., title 6, § 401), relative to cumulative sentences, does not apply to sentences imposed upon different informations, after separate convictions at different times. Nor does it apply to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, as provided in this section. *Harris* v. *Lang* (27 App. D. C. 84). See also *Harris* v. *Nixon* (27 App. D. C. 94, cert. den. 201 U. S. 645, 50 L. Ed. 903, 26 Sup. Ct. 761).

FINDINGS OF COURT

Under this section the finding and judgment entered by the police court were entitled to the same force and effect in all respects as if entered and pronounced upon the verdict of a jury. *District of Columbia* v. *Kendall* (57 App. D. C. 271, 20 Fed. (2d) 287).

FINES AND IMPRISONMENT

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by § 11–606 and 11–616 is limited by the later § 25–128, is without merit, since the general statute existed before the special one and Congress must have been aware of the older ones, and had it intended to modify the earlier, would have done so. Accordingly, his imprisonment must be affirmed. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

A note of warning should be addressed to the trial court that the alternative sentence is a mode of compelling payment of a fine and its use should be confined to such and should not be used for the purpose of imposing a longer term of imprisonment than is permitted by law. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

MUNICIPAL ORDINANCE

One charged with the violation of a municipal ordinance, the maximum penalty for which is a fine not exceeding $40, is not entitled to a trial by jury. *Bowles* v. *District of Columbia* (22 App. D. C. 321).

NATIONAL PROHIBITION ACT

One convicted of violation of the National Prohibition Act, and sentenced to jail in default of fine is entitled to benefit of this section authorizing release of indigent prisoners. *Green* v. *Peak* (62 App. D. C. 176, 65 Fed. (2d) 809).

RIGHT TO TRIAL BY JURY

Congress in the exercise of its general and exclusive power of legislation over the District, could provide for the trial of civil causes of moderate amount by a justice of the peace, or, in his presence, by a jury of 12, or of any less number, and allowing either party an appeal. *Capital Traction Co.* v. *Hof* (174 U. S. 1, 43 L. Ed. 873, 19 Sup. Ct. 580).

Where the accused would be entitled to a jury trial under the Constitution, trial shall be by jury unless waived, but petty offenses may be tried without jury. *District of Columbia* v. *Colts* (282 U. S. 63, 75 L. Ed. 177, 51 Sup. Ct. 52).

The right of trial by jury does not extend to every criminal proceeding. *District of Columbia* v. *Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, aff'g 66 App. D. C. 11, 84 Fed. (2d) 265).

Constitutional provisions with relation to jury trial apply, first, in all cases, especially in all cases where as here there is no election of right and no appeal of right, in which the offense charged was an indictable offense under the common law, without regard to the measure of punishment; and, second, in all cases without regard to the nature of the offense, where the punishment which may be inflicted under the statute involves a sentence as severe as confinement in jail for 90 days. *Clawans* v. *District of Columbia* (66 App. D. C. 11, 84 Fed. (2d) 265).

A single offense of using premises for a purpose other than a single family dwelling without an occupancy permit or of operating a rooming house without a license, is a petty offense not involving moral turpitude nor indictable at common law, and therefore a jury trial is not demandable as of right. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 63 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

SOLICITING PROSTITUTION

Soliciting prostitution, punishable by jail sentence of 90 days, is a crime which is of right tried by a jury. *Blackburn* v. *United States* (66 App. D. C. 15, 84 Fed. (2d) 269).

Neither the nature of the offense of soliciting prostitution nor the amount of the punishment brought the prosecution within the limits of the constitutional guaranty of a jury trial. *Bailey* v. *United States* (69 App. D. C. 25, 98 Fed. (2d) 306).

VIOLATION OF TRAFFIC REGULATIONS

One charged with operating a motor vehicle in violation of statute not only recklessly but so as to endanger property and individuals, has a constitutional right to a jury trial. *District of Columbia* v. *Colts* (282 U. S. 63, 75 L. Ed. 177, 51 Sup. Ct. 52, aff'g 59 App. D. C. 224, 38 Fed. (2d) 535).

WAIVER

This section quoted as showing that trial by jury may be waived. *Shick* v. *United States* (195 U. S. 65, 49 L. Ed. 99, 24 Sup. Ct. 826).

§ 11–617 [18: 166]. Jury — Qualifications, compensation, tenure—Trial not concluded with term—Jury to hold over.

The jury for service in said court shall consist of twelve persons, who shall have the legal qualifications necessary for jurors in the District Court of the United States for the District of Columbia, and shall receive a like compensation for their services, and such jurors shall be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in said court, and shall serve for a like term as the petit jury in the District Court of the United States for the District of Columbia. When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury, as if said term had not commenced: *Provided,* That this section shall not be effective as to any panel or panels of jurors drawn under the existing law. (Mar. 3, 1901, 31 Stat. 1197, ch. 854, § 45; Mar. 3, 1925, 43 Stat. 1120, ch. 443, § 5; Aug. 22, 1935, 49 Stat. 681, ch. 604.)

AMENDMENTS

The 1901 act provided for a jury term of three successive monthly terms of the court, the terms to begin on the first Monday in January, April, July, and October, respectively.

The 1925 act changed the term to one jury term beginning on the first and third Mondays of each month.

The 1935 act changed the word "men" to "persons," made the jury term the same as the term of the petit jury of the District Court, and added the proviso.

§ 11–618 [18: 167]. Jury—Deficiencies in panels—Eligibility of jurors—Marshal in charge.

Deficiencies in any panel of any jury may be filled according to the law applicable to jurors in said District Court of the United States for the District of Columbia, and for this purpose any judge of said police court shall possess all the powers of a judge of said District Court of the United States for the District of Columbia and of said court sitting as a special term. No person shall be eligible for service on a jury in said police court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins. Service on such jury shall not render any person exempt, ineligible, or disqualified for service as a juror in said District Court of the United States for the District of Columbia, except during his term of actual service in said police court. The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1197, ch. 854, § 46.)

COMPILER'S NOTE

It is not clear that the words "who shall be paid three dollars a day while so employed" (which follow the word "purpose" in the last line in the statute) are entirely superseded by the Classification Act (U. S. C., title 5, ch. 13).

§ 11–619 [18: 168]. Judgment to be final.

In all cases tried before said court the judgment of the court shall be final, except as provided in section 17–103. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1197, ch. 854, § 47.)

COMPILER'S NOTE

Section 17–103 provides for appeals from police court.

§ 11–620 [18: 169]. Clerk — Appointment — Bond — To charge no fees.

The court shall have power to appoint a clerk, who shall hold his office at the pleasure of the court, and he shall give bond with surety and take the oath of office prescribed by law for clerks of the District Courts of the United States, and said clerk shall charge no fee for any service rendered by him. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 52.)

§ 11–621 [18: 170]. Deputy clerks.

The said clerk may appoint six deputies, with the approval of the court, if the business of the court requires it. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 53; Mar. 3, 1925, 43 Stat. 1120, ch. 443, § 3.)

AMENDMENT

Section 53 of the 1901 Code provided that said clerk may appoint four deputies.

The act of March 3, 1925, 43 Stat. 1120, ch. 443, § 3, purported to amend section 42 of the 1901 code but (c) of said section 3 provided that "the judges of the police court are authorized to appoint not exceeding two additional deputy clerks, * * *. The salaries of such additional deputy clerks * * * shall be fixed in accordance with the Classification Act of 1923." (U. S. C., title 5, § 673.)

§ 11–622 [18: 171]. Clerks may administer oaths.

The said clerk and deputy clerks shall have power to administer oaths and affirmations. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 54.)

NOTES TO DECISIONS

LIMITATION OF POWER

No authority to issue a warrant of arrest was conferred upon the clerk and deputy clerk of the District of Columbia. The section merely provided that they should have power to administer oaths and affirmations. *Zerega* v. *United States* (59 App. D. C. 67, 32 Fed. (2d) 963).

§ 11–623 [18: 172]. Bailiffs and other officers.

The said court may appoint not exceeding five bailiffs. Said bailiffs may act as deputies to the marshal for service of process issued by the court. The said court may also appoint a doorkeeper, an engineer, and a janitor. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 55; Mar. 3, 1925, 43 Stat. 1120, ch. 443, § 3.)

AMENDMENT

Section 55 of the Code of 1901 fixed the number of bailiffs at three. The act of March 3, 1925, ch. 443, § 3 (c) provided for the appointment of two additional bailiffs, the salaries of the additional bailiffs to be paid in accordance with the Classification Act of 1923, U. S. C., title 5, § 673.

CROSS REFERENCES

Present provisions covering subject matter contained in this section, see § 11–754 (c).

§ 11–624 [18: 173]. Salaries, how paid.

The salaries of the judges, clerk, deputy clerks, bailiffs, deputy marshal, doorkeeper, engineer, and janitor of the said court shall be paid as other salaries of the District of Columbia, from appropriations made by Congress. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 56.)

CROSS REFERENCES

Present provisions covering salaries of judges, see § 11–753.

Present provisions covering salary of clerk, etc., see § 11–754 (c).

§ 11–625 [18: 174]. Fines to be paid to clerk—Accounting by clerk.

All fines, penalties, costs, and forfeitures imposed or taxed by the police court shall be paid to the clerk of said court, either with or without process or on process ordered by the court. The clerk of the police court shall, on the first secular day of each week,

deposit with the collector of taxes the total amount of all fines, penalties, costs and forfeitures collected by him during the week next preceding the date of such deposit, to be covered into the treasury to the credit of the District of Columbia. The said clerk shall render an itemized statement of each deposit aforesaid upon such forms and in such manner as shall be prescribed by the auditor of the District of Columbia. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 58; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12.)

AMENDMENT

The foregoing section as enacted, had following the words "District of Columbia" where they first appear, the words "subject to the requirements of the provision of the act of June 11, 1896 (29 Stat. 404, 405) to meet any deficiency in the police fund or the firemen's relief fund." This provision has been superseded by the act of Sept. 1, 1916, cited to the text.

CROSS REFERENCE

Police and Firemen's Pension Fund, § 4–503.

§ 11–626 [18: 175]. Funds unclaimed for two years to be paid into Treasury.

All moneys remaining in the hands of the clerk of the police court for a period of two years and more for which claim or demand has not been made by the persons entitled thereto shall be paid over by the said clerk to the collector of taxes of the District of Columbia, to be by him paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (May 18, 1910, 36 Stat. 404, ch. 248; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCE

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 11–627 [18: 176]. Accounts, how audited.

It shall be the duty of the auditor of the District of Columbia, and he is hereby required, to audit the accounts of the clerk of the police court at the end of every quarter and to make prompt report thereof in writing to the commissioners of the District of Columbia. In order to enable the auditor of the District to perform the duty hereby imposed upon him, he shall have free access to all books, papers, and records of the said court. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1199, ch. 854, § 59.)

Chapter 7.—MUNICIPAL COURT AND MUNICIPAL COURT OF APPEALS

SUBCHAPTER I.—MUNICIPAL COURT

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§ 11–701 [18: 191]. Judges—Number — Appointment and qualifications—Bond of clerk.

The judges of the municipal court shall be five in number, and shall each be appointed by the President of the United States, by and with the advice and consent of the Senate, for a term of four years, and until his successor is duly appointed and qualified: *Provided,* That no person shall be appointed to said office unless he shall have been a bona fide citizen and resident of said District for the continuous period of at least five years immediately preceding his appointment, and shall either have been a judge of said court for at least one year, or shall have been engaged in the actual practice of law before the District Court of the United States for the District of Columbia for a period of at least five years prior to his appointment. Each judge, when appointed, shall take an oath for the faithful and impartial performance of the duties of his office. The judges of said court shall not be required to give bond, but a bond shall be given by the clerk of said court, who shall receive and account for all fees as hereinafter provided. Said municipal court shall sit for the trial of causes in one building to be designated by the commissioners of the District of Columbia, to be rented by said District of Columbia. Any member of said court may try any case within its jurisdiction according to law, regardless of the place of residence of the defendant therein. (Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 13.)

COMPILER'S NOTES

The municipal court was formerly the justice of the peace court. The act of February 17, 1909, 35 Stat. 623, ch. 134, provided: "The inferior court known as 'justice of the peace, in the District of Columbia shall remain as now constituted, but shall hereafter be known as 'the municipal court of the District of Columbia'."

Furthermore, the acts of February 17, 1909 and March 3, 1921, cited in the history lines throughout this chapter are acts defining the jurisdiction, powers, and duties of the municipal court and they and the applicable provisions of the 1901 code were consolidated by the compilers of the 1929 code.

NOTARY FEES

The act of July 1, 1902, 32 Stat. 609, ch. 1352, § 1, provides: "Hereafter justices of the peace (judges of the municipal court) in and for the District of Columbia who are also notaries public shall account for and pay over to the collector of taxes all fees earned as such notaries public, as they are required by law to do as to fees earned by them as justices of the peace (judges of the municipal court)."

CROSS REFERENCES

Present provisions covering this subject matter are contained in §§ 11–752 to 11–754.

Criminial penalty for impersonation of judge or for acting after commission has expired, § 22–1304.

§ 11–702 [18: 192]. Court of record—Seal—Terms.

Said municipal court shall be a court of record, shall have a seal, and shall have the same terms of court as those now obtaining, or as hereafter modified, in the circuit branches of the District Court of the United States for the District of Columbia. (Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 2.)

CROSS REFERENCES

Present provisions covering this subject matter are contained in § 11–752.

§ 11–703 [18: 193]. Jurisdiction — Limited — Exclusive in certain actions.

The municipal court of the District of Columbia shall have exclusive jurisdiction in the following civil cases in which the claimed value of personal property or the debt or damages claimed, exclusive of interest and costs, does not exceed $1,000, namely, in all civil cases in which the amount claimed to be due for debt or damages arises out of contracts, express or implied, or damages for wrongs or injuries to persons or property, including all proceedings by attachment or in replevin (except in cases involving title to real estate or actions against judges of the municipal court or other officers for official misconduct), and in actions for the recovery of damages for assault, assault and battery, slander, libel, malicious prosecution, and breach of promise to marry. (Mar. 3, 1901, 31 Stat. 1191, ch. 854, § 9; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

CROSS REFERENCES

Duty to ascertain names and residences of all deaf and dumb persons of teachable age and report to president of Columbia Institution for the Deaf, § 31–1015.

Equitable defenses may be interposed in actions at law, § 13–214.

Jurisdiction not enlarged by provisions concerning set-off, § 16–1903.

Jurisdiction of actions to collect fines for violations of constitution and by-laws of Boards of Trade, § 29–307.

Exclusive jurisdiction of actions against executors, administrators, and other fiduciaries, see § 11–755 (a).

Jurisdiction of civil actions up to $3,000, see § 11–755 (a).

NOTES TO DECISIONS

ATTACHMENT BEFORE JUDGMENT

Under provisions of this section regarding attachment and garnishment and giving the municipal court exclusive jurisdiction over various classes of actions, including proceedings by attachment that involve $1,000 or less, in action for $490.10 and interest on foreign judgment against nonresident, municipal court had jurisdiction to issue writs of attachment and notices of garnishment before judgment directed to executor of estate in which the nonresident claimed an interest and to bank in which estate funds had been deposited. *Frank* v. *Malone,* 1942 (126 F. 2d 651, 75 U. S. App. D. C. 296).

CIVIL RIGHTS

Civil Rights Act did not confer jurisdiction upon U. S. courts in general but so far as actions for penalties, it gave jurisdiction specifically to the territorial, district or circuit courts, and the Municipal Court is not one of these courts and has no such jurisdiction. *Henderson* v. *E. Street Theatre Corporation* (D. C. Mun. App. 1948, 63 A. 2d 649).

EXCLUSIVE JURISDICTION—IMPLIED CONTRACTS

Municipal court of District of Columbia had jurisdiction of a claim for debt arising out of an "implied" contract, not exceeding $300. *District of Columbia* v. *Thompson* (281 U. S. 25, 74 L. Ed. 677, 50 Sup. Ct. 172, aff'g 58 App. D. C. 313, 30 Fed. (2d) 476).

JURISDICTION

Jurisdiction of a subject matter may neither be assumed by a court nor conferred upon it by consent or silence. Objection to court's jurisdiction may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E. Street Theatre Corporation* (D. C. Mun. App. 1948, 63 A. 2d 49).

PERSONAL ACTION

Where, in an ordinary action for personal damages, the proof establishes that the title to realty is really in issue, the case no longer involves personal property, debt or damage, so as to come within court's expanded jurisdiction. *Duvall* v. *Southern Municipal Corp.* (D. C. Mun. App. 1949, 63 A. 2d 336).

RENTS FROM REAL ESTATE

Claims of son against sister involving rents from deceased father's property were within jurisdiction of municipal court. *Shields* v. *Shields* (69 App. D. C. 331, 101 Fed. (2d) 255).

REFORMATION, RESCISSION OR PERFORMANCE

The Municipal Court for the District of Columbia would be without jurisdiction to try issues appropriate to suit for reformation or rescission of instrument or for specific performance, unless such issues were presented by way of defense to action within the court's jurisdiction. *Howenstein Realty Corporation* v. *Richardson,* 1943 (135 F. 2d 803, 77 U. S. App. D. C. 299).

SUITS AGAINST ADMINISTRATOR

Municipal court does not have jurisdiction over suits against an administrator for the debt of the decedent, for judgment for full amount of debt. *Sanford* v. *Sanford* (52 App. D. C. 315, 286 Fed. 777).

Under § 11–755, Municipal Court for District of Columbia had jurisdiction to entertain suit against administrator for unpaid balance of note executed by deceased. *Mazo* v. *Ed. L. Stock, Inc.* (D. C. 1943, 31 A. 2d 660).

SUITS FOR $1,000 DAMAGES

Municipal court acted within its jurisdiction when it entered judgment for landlord and could enter judgment on tenant's undertaking to secure a stay of execution on a review of a judgment by writ of error even though judgment was for more than $1,000. *Bailey* v. *Allan E. Walker* (55 App. D. C. 74, 2 Fed. (2d) 123).

Suit for $1,000 as damages for negligence was in exclusive jurisdiction of municipal court and as writ of error was available the judgment could not be reviewed by certiorari to the District Court. *United States ex rel. Eure* v. *Borden* (65 App. D. C. 84, 80 Fed. (2d) 527).

The actual damages recoverable being for a sum within the exclusive jurisdiction of the municipal court, the District Court had no jurisdiction, and a mere ad damnum clause did not confer it. *Minick* v. *Associates Inv. Co.* (71 App. D. C. 367, 110 Fed. (2d) 267).

TITLE TO REAL ESTATE

Retrial of title to real estate. *Gray* v. *Ward* (45 App. D. C. 498).

This section expressly excludes from the jurisdiction of the municipal court actions involving title to real estate. *Johnson* v. *Simmons* (53 App. D. C. 356, 290 Fed. 331).

It is obvious that Congress intended to exclude from the jurisdiction of the municipal court only cases where there is a necessary and direct issue as to the title to real estate, and the court properly assumed jurisdiction of an action to recover the balance of money received on a foreclosure sale. *Schwartz* v. *Murphy* (72 App. D. C. 103, 112 Fed. (2d) 24).

§ 11–704 [18: 194]. Jurisdiction in cases of trespass except where title is in issue.

The said jurisdiction of the municipal court shall extend to cases of trespass upon or injury to real estate: *Provided,* That if the defendant shall file with the court an affidavit that he claims title or acts under a person claiming title to the real estate, setting forth the nature of his title, the court shall take no further cognizance of the case. (Mar. 3, 1901, 31 Stat. 1191, ch. 854, § 10; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

NOTES TO DECISIONS

ACTION TO POSSESS REALTY

The action of trespass to realty contemplated by this section is one for damages, and it was not applicable to give Municipal Court for District of Columbia jurisdiction of action to obtain possession of realty. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

The District of Columbia Municipal Court has jurisdiction to try actions involving possession of realty. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D. C. Mun. App. 1946, 47 A. 2d 400, modified, 1947, 54 A. 2d 144).

FORCIBLE ENTRY AND DETAINER

Forcible entry and detainer is not a substitute for trespass, and the actions are not the same. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

§ 11–705 [18: 195]. Judges may issue warrants returnable to police court—Record.

Any judge of the municipal court may at any time, including Sundays and legal holidays, on complaint under oath or actual view, issue warrants returnable to the police court against persons accused of crimes and offenses committed in the District of Columbia, and he shall make a record of his proceedings in every case in a book to be kept for that purpose. Such warrants shall be issued free of charge. (Apr. 21, 1906, 34 Stat. 126, ch. 1646; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125.)

§ 11–706 [18: 196]. Assignment of cases for trial.

All actions shall be assigned for trial among the members of said court in nearly equal numbers and in such manner as may be agreed upon between them. The judges of said court shall hold separate sessions, and are empowered to make rules for the apportionment of the business between them, and

the act of each of said judges respecting the business of said court shall be deemed and taken to be the act of said court. (Feb. 17, 1909, 35 Stat. 624, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125.)

CROSS REFERENCES

Present provisions covering this subject are contained in § 11–754.

§ 11–707 [18: 197]. Transfer of judges to police and juvenile courts.

In case of sickness, absence, disability, expiration of term of service of or death of any of the judges of the police court or of the juvenile court, any one of the justices of the District Court of the United States for the District of Columbia may designate one of the judges of the municipal court to discharge the duties of said judges until such disability be removed or vacancy filled. The justice so designated shall take the same oath prescribed for these judges. (Feb. 17, 1909, 35 Stat. 624, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125.)

COMPILER'S NOTE

The act of July 1, 1902, 32 Stat. 609, ch. 1352, § 1, provides that, "Hereafter any justice of the peace (judge of the municipal court) designated to serve as judge of the police court, as provided in section 51 of the act to establish a code of law for the District of Columbia, shall receive no additional compensation while so serving." See § 11–610.

CROSS REFERENCES

Disability of chief judge, see § 11–754 (c).

Present provisions covering this subject are contained in § 11–754.

NOTES TO DECISIONS

SENTENCES

Under Act Feb. 17, 1909, 35 Stat. 624, ch. 134 (§§ 11–610, 11–706 to 11–708, 11–710), providing that in case of sickness, vacation, or disability of either of District of Columbia police court judges, any justice of the Supreme Court may designate a municipal court judge to discharge such duties until the disability be removed or vacancy filled, a judge so designated and acting on trial held at least de jure judge and authorized to sentence prisoner convicted on trial even though regular police court judge had resumed his duties after the trial but before sentence was pronounced. *Shore* v. *Splain* (49 App. D. C. 6, 258 Fed. 150).

§ 11–708 [18: 198]. Clerk—Appointment, tenure.

The said court shall have power to appoint a clerk and an assistant clerk whose salaries shall be payable monthly by the District of Columbia, which clerks shall hold office at the pleasure of the court. (Feb. 17, 1909, 35 Stat. 624, ch. 134; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

AMENDMENT

The 1923 act is the Classification Act of 1923 which now determines salaries.

CROSS REFERENCES

Present provisions covering subject matter of section, see § 11–754.

§ 11–709 [18: 199]. Clerk—Bond.

The clerk shall give bond to the District of Columbia in the sum of $5,000, with surety or sureties to be approved by the commissioners of the District of Columbia, for the faithful performance of the duties of his office, and the assistant clerk shall give a like bond in the sum of $2,000. (Feb. 17, 1909, 35 Stat. 625, ch. 134.)

§ 11–710 [18: 200]. Clerk—To receive and care for fees—Deposits—Accounting.

The clerk shall receive and care for all deposits for costs made and fees exacted under the rules governing the fee charges of said court, and shall make a weekly deposit with the collector of taxes for the District of Columbia of all fees earned during the preceding week; and the money so collected shall be disposed of by said collector as other moneys belonging to the District are.

He shall return to suitors making such deposits any proportion of a deposit which shall remain in his hands over and above the earned fees in completed cases, and shall render an itemized statement to the auditor of the District of Columbia of every fee earned, on such forms and in such manner as shall be prescribed by the auditor of the District of Columbia. In case there shall remain in the hands of the said clerk for a term of three years a balance or part of a deposit in any case which shall not have been called for by the party or parties entitled to receive the same, the same shall revert to the District of Columbia, and be paid forthwith to the collector of taxes as part of the revenues of the District of Columbia. Mar. 3, 1901, 31 Stat. 1191, ch. 854, § 6; Feb. 17, 1909, 35 Stat. 624, ch. 134.

CROSS REFERENCE

Disposition of fees, § 47–126.

§ 11–711 [18: 201]. Clerk—Process—How signed.

In all suits in said court process shall be signed by the said clerk or assistant clerk in the name of the court. The assistant clerk may sign the name of the clerk to any official act required by law or by the practice of the court to be performed by the clerk. In such case the signature shall be "——— ———, Clerk, by ——— ———, Assistant Clerk." (Feb. 17, 1909, 35 Stat. 625, ch. 134.)

NOTES TO DECISIONS

STAMPED SIGNATURE

In landlord's action for possession of realty, where chief deputy clerk personally placed a facsimile of her signature on the summons by means of a stamp, the summons was valid since it was "signed" within this section. *McGrady* v. *Munsey Trust Co.* (D. C. 1943, 32 A. 2d 106).

§ 11–712 [18: 202]. Clerk—Power to administer oaths.

Both the clerk and assistant clerk are hereby given authority to administer oaths in all cases pending in said court, or about to be filed therein. (Feb. 17, 1909, 35 Stat. 625, ch. 134.)

§ 11–713 [18: 203]. Clerk—Duty to keep docket—Contents—Liability for failure to keep.

The clerk is required to keep a docket, in which he shall enter from day to day concurrently with the respective proceedings—

First. The title of each action.

Second. The date of the writ issued and the time of its return, the fact of affidavits being filed, with the name of any affiant.

Third. The appearance of the parties.

Fourth. The nature of the pleadings in brief.

Fifth. The names of witnesses sworn, and at whose request.

Sixth. The judgment of the court and the items of cost.

Seventh. The appeal, if one is taken, by which party taken, the undertaking and the time of giving the same.

Eighth. The satisfaction of the judgment and the date thereof.

And it shall be his duty to furnish a copy of any judgment rendered by him when required by either party to the action. If he shall omit to keep such docket or be guilty of any other negligence or omission whereby the plaintiff, having obtained a judgment before him, shall lose his debt, the clerk shall pay and satisfy to the plaintiff the debt, interest, and costs so lost, to be recovered in an action of debt against said clerk and his surety or sureties, with any additional interest that may have accrued. (Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 38; Feb. 17, 1909, 35 Stat. 625, ch. 134.)

§ 11–714 [18: 204]. Clerk—Duties prescribed by court.

The clerk shall perform such other and further duties as may from time to time be prescribed by the municipal court. (Feb. 17, 1909, 35 Stat. 625, ch. 134.)

§ 11–715 [18: 205]. Right to jury trial—Proceedings after verdict.

When the value in controversy in any action pending in said municipal court shall exceed $20, and in all actions for the recovery of possession of real property, either party may demand a trial by jury. The trial judge shall conduct such jury trial and according to the practice and procedure now obtaining, or as hereafter modified, in the District Court of the United States for the District of Columbia, and shall have the same power to instruct juries, set aside verdicts, arrest judgments, and grant new trials as said District Court. (Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 3.)

NOTES TO DECISIONS

CONSTRUCTION

This section providing that, in all actions for recovery of possession of real property, either party may demand a trial by jury, is permissive rather than mandatory and gives right to jury trial but does not require such trial. *Kass* v. *Baskin* (App. D. C. 1948, 164 F. 2d 513).

DEMAND FOR JURY TRIAL

When the value in controversy exceeds $20, either party to an action in the municipal court may demand a trial by jury. *Kennedy* v. *David* (71 App. D. C. 340, 109 Fed. (2d) 676).

Where court rule required demand for jury trial to be filed not later than appearance day, and two days before appearance day defendants filed motion to dismiss and before it was decided, but after appearance day, defendants filed demand for jury trial, demand was timely. *Daly* v. *Scala* (D. C. Mun. App. 1944, 39 A. 2d 478).

Where defendants in a class B suit against them on note, filed their jury demand before the return day, but did not accompany it by an answer as required by court rule, striking out defendants' jury demand was not error. *Alvarado* v. *Rosenberg* (D. C. Mun. App. 1946, 50 A. 2d 269).

DISCRETION OF COURT

Where defendant did not file demand for jury trial within time prescribed by court rule nor request extension of time for demand, denial of motion for jury trial filed four days later was not an abuse of discretion, where trial court found that defenses involving questions of fact were insubstantial, that jury trial was being sought primarily for purposes of delay, and that no circumstances indicating the advisability of such trial in the interest of justice existed. *Kass* v. *Baskin* (App. D. C. 1948, 164 F. 2d 513).

EVIDENCE

Where landlord sued for possession, the situation disclosed a genuine issue as to whether landlord sought the premises in good faith for immediate personal use. Since this was a material factual issue, the court must disregard the tenants' affidavits which were based on information and belief and did not conform to the rules. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766).

FACTUAL ISSUES

If conflict appears as to a material fact, the summary judgment procedure does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true; and to support summary judgment, the situation must justify a directed verdict insofar as the facts are concerned. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766).

In making determination of factual issues, doubts are to be resolved against the granting of a summary judgment. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766).

Factual issues are not to be tried or resolved by summary judgment procedure; only the existence of a genuine and material factual issue is to be determined. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766).

GOOD FAITH

In a suit for possession, the presence of the question of good faith as a crucial one should cause the court to hesitate more than ordinarily before concluding that it is in a position to deny a trial. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766).

INTERROGATORIES

Where there is a seeming inconsistency in answers of jury to interrogatories or some question as to what constituted true verdict of jury, matter is to be decided by trial judge in the proper exercise of his discretion. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

Where jury found in answer to three interrogatories that there had been a subletting, that landlord was not precluded from charging it as a basis of suit for possession, and that landlord was entitled to possession for tenant's violation of covenant against subletting, a comprehensive disposition of entire case was made, and it was unnecessary for jury to consider remaining interrogatories as to whether there had been a transfer of possession to alleged subtenant and jury's answer to remaining interrogatories was voluntary and mere surplusage. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

QUESTIONS FOR JURY

Under the evidence, whether tenant violated covenant in lease against subletting so as to authorize landlord to repossess premises was for jury. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

In landlord's action for possession of leased premises, tenant could not complain that fact issue of landlord's oral agreement that tenant might remain in possession was left to jury. *J. & J. Slater, Inc.* v. *Brainerd* (D. C. Mun. App. 1945, 43 A. 2d 714).

Where in a suit for possession for immediate and personal use, the crucial issue is whether landlord seeks possession in good faith, it is an extraordinary issue of fact since it involves the state of mind or motives rather than the ascertainment of a fact in the ordinary sense. *Dewey* v. *Clark* (C. A. D. C. 1950, 180 F. 2d 766).

RULES OF COURT

Parties may not be deprived of right to jury trial by a rigid construction of a procedural court rule. *Daly* v. *Scala* (D. C. Mun. App. 1944, 39 A. 2d 478).

Rules of the Municipal Court that demand for jury trial shall be filed not later than time for appearance of defendant stated in notice, or such extended time as judge may fix by special order, is reasonable. *Kass* v. *Baskin* (App. D. C. 1948, 164 F. 2d 513).

"Excusable neglect" is not a factor in fixing the applicability of a rule of court which makes no reference to such neglect. *Kass* v. *Baskin* (App. D. C. 1948, 164 F. 2d 513).

SPECIAL VERDICT

In landlord's action to recover possession of leased premises, conflicting evidence authorized submission for special verdict of issue whether landlord orally agreed that tenant could remain in possession so long as it paid any rental asked by landlord, and municipal court properly assumed responsibility of deciding remainder of case and questions of law. *J. & J. Slater, Inc.* v. *Brainerd* (D. C. Mun. App. 1945, 43 A. 2d 714).

§ 11–716 [18: 206]. Jurors—How drawn.

Jurors for said municipal court shall be drawn and selected under and in pursuance of the laws now obtaining, or as hereafter modified, concerning the drawing, selection, term of service and mode of filling deficiencies in a panel and shall be subject to the same duties and liabilities, and shall receive the same compensation as petit jurors in the District Court of the United States for the District of Columbia, as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October. At least ten days before the term of service of jurors shall begin, the clerk of the said District Court shall certify to the said municipal court, for service as jurors for the then ensuing term, the names of not to exceed thirty-six persons, drawn as directed by law. Deficiencies in any panel of any such jury may be filled according to the law applicable to jurors in said District Court, and for this purpose any judge of said municipal court shall possess all the powers of a judge of said District Court and of said court sitting as a special term.

Whenever the judges of the municipal court shall certify in writing that the business of said court requires the services of additional jurors and shall file a certificate to that effect in the office of the clerk of the District Court of the United States for the District of Columbia, said District Court shall direct the clerk of the said District Court to certify to said municipal court for service as jurors for the then ensuing terms the names of such number of other persons as may be necessary for such service, which names shall be drawn as directed by law. (Mar. 3, 1921, 41 Stat. 1311, ch. 125, § 4.)

CROSS REFERENCE

This section is affected by § 11–1407.

§ 11–717 [18: 207]. Trial by court—Findings—General, special—Exceptions.

If neither party shall demand a trial by jury, or if the value in controversy shall not exceed $20, the case may be tried and determined by any judge of the court, and his finding upon the facts, which may be either general or special, shall have the same effect as a verdict of a jury, with the same right of either party to take an exception to any ruling of the court, and have the same embodied in a bill of exceptions, as in case of a jury trial. (Mar. 3, 1921, 41 Stat. 1311, ch. 125, § 5.)

CROSS REFERENCES

Procedure, see § 11–756 (b).

NOTES TO DECISIONS

DUTY OF COURT

In a case tried by the court without a jury, the court has the duty to rule upon requested and pertinent questions of law. *Eggleton* v. *Vaughn* (D. C. Mun. App. 1946, 45 A. 2d 362).

§ 11–718 [18: 208]. Judgments—Duration—Docketing—Lien of.

All judgments entered after June 1, 1921, by said municipal court shall remain in force for six years and no longer, unless the same shall have been docketed in the office of the clerk of the District Court of the United States for the District of Columbia as provided by law, in which event they shall be liens as is provided by sections 15–101 to 15–111, 15–201 to 15–218, 15–301 to 15–313, and 15–401 to 15–403 for judgments of the municipal court. No judgment shall become a lien upon any lands, tenements, or hereditaments until so docketed. (Mar. 3, 1921, 41 Stat. 1311, 1313, ch. 125, §§ 6, 14.)

CROSS REFERENCES

Present provisions covering this subject matter are contained in § 11–755 (c).

NOTES TO DECISIONS

COMPUTATION OF TIME

The clause "from the date when an execution might first be issued thereon," signifies the date when an execution might first have been issued upon the judgment as and when docketed in the Supreme Court, and has no reference to the date when execution might first have been issued upon the judgment in the municipal court. *Brown* v. *Allan E. Walker & Co.* (58 App. D. C. 173, 26 Fed. (2d) 545).

Computation of time of six years' limitation. *Branham* v. *Johnson* (66 App. D. C. 230, 85 Fed. (2d) 807).

Fact that the suit in the case was begun within the period of six years after the rendition of the judgment is sufficient to sustain the jurisdiction of the court. *Branham* v. *Johnson* (66 App. D. C. 230, 85 Fed. (2d) 807).

§ 11–719 [18: 209]. Costs—Deposit for.

Nonresidents of the District of Columbia may commence suits in said municipal court without first giving security for costs, but upon motion may be required to give such security in pursuance of section 11–1506. (Mar. 3, 1921, 41 Stat. 1311, ch. 125, § 7.)

§ 11–720 [18: 210]. Costs—Paupers.

Upon satisfactory evidence being presented to the court or one of the judges thereof that the plaintiff in any suit is indigent and unable to make deposit of costs, such court or judge may, in its or his discretion, permit the prosecution of such suit without the prepayment or deposit of costs. (Mar. 3, 1921, 41 Stat. 1311, ch. 125, § 8.)

CROSS REFERENCE

Other provisions concerning deposit of costs by poor persons, § 11–1508.

§ 11–721 [18: 211]. Assignment of deputy marshals.

The marshal of the United States in and for the District of Columbia shall designate two of his deputies to take charge of the jurors in the municipal court, under the direction of the trial judge, and they shall perform such other services as the judge may require. (Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 10.)

§ 11–722 [18: 212]. Power to make rules, prescribe fees, and costs.

The said municipal court, sitting in banc, shall have power to prescribe fees and costs, including the fee to be paid for a jury trial, to make rules of practice, pleading, and procedure, not inconsistent with law, and to modify and change the same from time to time, to insure the proper administration of justice. Section 11–1502 relating to fees, shall not apply to said municipal court. (Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 11.)

CROSS REFERENCE

Costs in small claims branch of municipal court, § 11–807.

Procedure, see § 11–756 (b).

NOTES TO DECISIONS

AMENDMENT OF PLEADINGS

The trial court has wide discretion in the allowance of amendments of pleadings both before and during trial. *Peake* v. *Ramsey* (D. C. Mun. App. 1945, 43 A. 2d 763).

In landlords' action for possession of realty on ground of default in payment of rent, wherein tenant moved to dismiss complaint because of failure to show whether notice to quit had been given or had been waived in writing, and it was admitted that tenant held possession under written lease which waived notice to quit in event of default in payment of rent, trial court properly permitted landlords to amend complaint by inserting a check mark on printed form indicating that notice to quit had been waived. *Barnes* v. *Conner* (D. C. Mun. App. 1945, 44 A. 2d 925).

Where broker sought to recover commissions from another broker and owner of realty under claim that they had authorized him to obtain a purchaser for realty and that he had done so, but at trial plaintiff advanced evidence in support of that claim and in support of inconsistent claim that he was engaged only by the other broker to assist in selling realty with agreement that commission should be shared, court properly permitted plaintiff to amend bill of particulars after verdict on second claim in order to conform to the evidence. *Davis* v. *Bruno* (D. C. Mun. App. 1948, 57 A. 2d 828).

COMMENCEMENT OF ACTION

An action by landlords for possession of business property occupied by defendant as a tenant by sufferance was commenced when the complaint was filed, and not when the complaint was verified. *Globe Clothing Shop* v. *Skolnick* (D. C. Mun. App. 1946, 50 A. 2d 271).

CONSOLIDATION OF TRIALS

Under court rule regarding consolidation and joinder, consolidation of two or more informations for trial is conditioned on possibility of joinder of the offenses and of the defendants in a single information, and joinder is permitted only if defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. *District of Columbia* v. *Hunt* (App. D. C. 1947, 163 F. 2d 833, 82 U. S. App. D. C. 159).

CONTINUANCE

When a witness not under subpoena fails to make his promised appearance, the granting of a continuance rests in the discretion of the trial court. *Union Storage & Transfer Co.* v. *Lamphere* (D. C. Mun. App. 1944, 40 A. 2d 258).

COSTS

Where it was held that party attempting to appeal had no right to do so and judgment was affirmed, cost of stenographic record included in record on appeal could not be taxed against appellant by Municipal Court of Appeals, but could only be taxed by trial court. *Klein* v. *Liss* (D. C. Mun. App. 1945, 43 A. 2d 757).

Rule 68 (a) of municipal court permitting trial judge to make order respecting outside stenographers concerning furnishing of copies of transcript and compensation to be paid therefor is not mandatory. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

Where trial was half over and court requested defendant to furnish court with transcript of record up to that point with result that reporter's bill was $150 instead of lower cost at defendant's request was not called, refusal of court to make order fixing lower costs at defendant's request was not an abuse of discretion. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

DEFAULT JUDGMENT

Where a defendant had filed preliminary motion in behalf of all defendants, including himself, but it later developed that moving defendant, who was member of Virginia bar, had not been admitted to practice in District of Columbia, and was not entitled to appear in municipal court in representative capacity, plaintiff's motion for judgment by default against all other defendants was properly overruled. *Horne* v. *Ostmann* (D. C. Mun. App. 1944, 35 A. 2d 174).

A default judgment by court upon amended complaint not served upon defendant, though erroneous, is not void. *Campbell* v. *Campbell* (D. C. Mun. App. 1948, 58 A. 2d 825).

Municipal Court had authority to render default judgment for treble amount of overpayments for used automobile, though copy of complaint served on defendant differed from complaint filed in court in designating model years of automobiles involved. *Campbell* v. *Campbell,* (D. C. Mun. App. 1948, 58 A. 2d 825).

DIRECTED VERDICT

Question of whether accident was proximately caused by negligence of appellee's driver, and of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D. C. Mun. App. 1948, 62 A. 2d 797).

DISMISSAL

Under rule providing that any dismissal other than dismissal for lack of jurisdiction operates as adjudication on merits unless dismissal order otherwise specifies, dismissal is adjudication on merits and raises bar of res judicata against further actions on the same subject matter, and such defense of res judicata is good not only as to every claim which was actually offered in support of the first action but also as to every ground of recovery which might have been presented. *Mitchell* v. *David* (D. C. Mun. App. 1947, 52 A. 2d 125).

Defendant's motion to dismiss action could not properly be passed upon until evidence had been heard, where motion was based on an assumption of a disputed fact. *Tate* v. *Brawner* (D. C. Mun. App. 1948, 58 A. 2d 307).

A motion to dismiss concedes all facts well pleaded and if the complaint states a cause of action, however loosely drawn it may be, it is not subject to dismissal. Such motion may only be granted when it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

EFFECT OF RULES

Under this section authorizing Municipal Court of District of Columbia to make rules of practice, pleading, and

procedure, court rules have the force of law. *District of Columbia* v. *Hunt* (App. D. C. 1947, 163 F. 2d 833, 82 U. S. App. D. C. 159).

FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure following § 723c of 28 U. S. C., are not in force in the Municipal Court for the District of Columbia. *Plummer* v. *Johnson* (D. C. Mun. App. 1944, 35 A. 2d 647).

The Federal Rules of Civil Procedure following § 723c of 28 U. S. C., do not control practice in the Municipal Court for the District of Columbia. *Werth* v. *Nolan* (D. C. 1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9, 79 U. S. App. D. C. 33).

FINDINGS OF FACT

An issue of fact was presented whether or not a compromise agreement had been entered into, and though the trial court could have decided that plaintiff had not proved his case by the preponderance of evidence, it could also have decided the other way. After hearing the evidence the trial court accepted plaintiff's version, and we cannot say that it was wrong in doing so. *Saunders System Washington Co.,* v. *Kuffner* (D. C. Mun. App. 1950, 75 A. 2d 136).

JURISDICTION, WAIVER OF

The Rules of the Municipal Court for the District of Columbia, and the Federal Rules of Civil Procedure, 28 U. S. C. foll., § 723c, sharply limit acts which constitute a waiver of lack of jurisdiction over the person. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696).

LIMITATIONS

The fact that in a class B action in the Municipal Court the defendant was not called upon to file an answer or other pleading did not dispense with necessity of timely calling to the attention of trial court that plaintiff's claim was barred by limitations. *Atchison & Keller* v. *Taylor* (D. C. Mun. App. 1947, 51 A. 2d 297).

MINUTE ENTRIES

Under rule 48 of Municipal Court stating that action by the court shall be evidenced by a minute entry, the entry is not a condition of the effectiveness of the court's action. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

MOTION FOR SUMMARY JUDGMENT

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts, but he must state facts in detail showing that he has personal knowledge, and the burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

NOTICE OF ENTRY

Rule 66 (e) of the Municipal Court providing for notice immediately upon the entry of an order or judgment signed or decided out of the presence of parties or their counsel was not applicable where the judgment was pronounced in the presence of the parties and their counsel. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

ORDERS REVIEWABLE

Orders of the Rent Administrator must be reversed where he has not followed procedural due process in arriving at his findings of fact, or where he has adopted different fundamental bases in passing upon different requests involving fundamental facts approximately the same. *Winkler* v. *Ballard* (D. C. Mun. App. 1948, 63 A. 2d 660).

PLEADING

After delay of more than a month during which defendant did not demand trial by jury, such demand filed six days, and notice to opposing litigant given two days before time set for trial on the non-jury docket was properly denied. *Kennedy* v. *David* (71 App. D. C. 340, 109 Fed. (2d) 676).

The primary purpose of rule of municipal court of the District of Columbia providing that no formal pleadings shall be required, even for initiation of Class B cases, is to assure people of small means, ignorant of complexities of pleading and practice, often unrepresented by counsel, their day in court and that fair hearing on merits which in our system of jurisprudence is regarded as fundamental. *Shields* v. *Hawkins,* 1942 (125 F. 2d 204, 75 U. S. App. D. C. 172).

REAL PARTY IN INTEREST

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of this section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule 17a restricting right to maintain suit to real party in interest. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

THIRD PARTY PRACTICE

Under rules governing third party practice, the broker and third party defendant had the right and did assert numerous defenses to the purchaser's claim against the seller. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

VACATING DEFAULT

Where defendant had made clear to court and to plaintiff that defendant intended to defend the case, continuance of one day was granted, court's alleged intention that defendant should file his papers prior to call of next day's calendar was not clearly expressed and defendant filed his affidavit of defense and demand for jury trial a few hours after default was entered, refusal to vacate default was an abuse of discretion. *Barnes* v. *Conner* (D. C. Mun. App. 1945, 44 A. 2d 925).

A motion to vacate Municipal Court's default judgment on ground that copy of complaint served upon defendant differed materially from complaint as filed, made after judgment had been entered "paid and satisfied" after execution through garnishment proceedings, must be treated as an unseasonably filed "collateral attack". *Campbell* v. *Cambell* (D. C. Mun. App. 1948, 58 A. 2d 825).

Since action to set aside default judgment of Municipal Court must be considered an independent action, same requirements of jurisdictional service would apply as in other cases of beginning suit, including rule that personal service is not accomplished by service on attorney of record in original action. *Campbell* v. *Campbell* (D. C. Mun. App. 1948, 58 A. 2d 825).

On moving to vacate default, it is essential to present a prima facie defense to the action, but assertion in affidavit that affiant had a good and valid defense is a mere conclusion supported by no allegation of fact. *Huff* v. *Kraft* (D. C. Mun. App. 1949, 63 A. 2d 667).

§ 11–722a. Deposits for jury trials earned.

Deposits made on demands for jury trials in accordance with rules prescribed by the court under authority granted in section 11–722, shall be earned unless, prior to three days before the time set for such trials, including Sundays and legal holidays, a new date for trial be set by the court, cases be discontinued or settled, or demands for jury trials be waived. (July 18, 1950, 64 Stat. 347, ch. 467, § 1.)

SIMILAR PROVISIONS

1950—June 29, 1949, 63 Stat. 303, ch. 279, § 1.
1949—June 19, 1948, 62 Stat. 545, ch. 555, § 1.
1948—July 25, 1947, 61 Stat. 435, ch. 324, § 1.
1947—July 9, 1946, 60 Stat. 510, ch. 544, § 1.
1946—June 30, 1945, 59 Stat. 280, ch. 209, § 1.

§ 11–723 [18:213]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to review of judgments of the Municipal Court was based on Act Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 12 and is now obsolete. See D. C. Code, sections 11–771, 11–772.

NOTES TO DECISIONS

PROCEDURE

Judgment of corporation court of Virginia, based upon a judgment of the municipal court of the District, is not open to collateral attack, the court having jurisdiction. *Edward Thompson Co.* v. *Thomas* (60 App. D. C. 118, 49 Fed. (2d) 500).

By the 1921 act, appeals from the municipal court to the Supreme Court were abolished and the authority to issue statutory writ of certiorari should be denied when writ of error is provided. *United States ex rel. Eure* v. *Borden* (65 App. D. C. 84, 80 Fed. (2d) 527).

§ 11–724 [18: 214]. Judgments and executions — Interest.

It shall be lawful for the municipal court, in all cases within its jurisdiction, to try, hear, and determine the matter in controversy between the parties upon their allegations and proofs, and to give judgment according to law; and all judgments for money rendered by it shall bear interest from their date until paid or satisfied, unless by the terms of the judgment interest runs from an earlier date. The municipal court is authorized to issue writs of execution in all cases in which it is authorized to render judgment. (Mar. 3, 1901, 31 Stat. 1191, ch. 854, § 12; June 30, 1902, 32 Stat. 521, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1311, ch. 125, § 6.)

CROSS REFERENCE

Lien of execution, § 11–718.

NOTES TO DECISIONS

LIENS STATUTORY

Competing judgment liens find their support in the statute and are governed by the statute without regard to equitable principles. *Ginder* v. *Guiffrida* (61 App. D. C. 338, 62 Fed. (2d) 877).

STAY OF JUDGMENT

Defendants, upon failing to present certain defense until after adverse decision by Municipal Court of Appeals, could not thereafter relitigate the issue upon their new theory in trial court by presenting motion for stay and for reconsideration. *Shay* v. *Randall H. Hagner & Co.* (D. C. Mun. App. 1944, 38 A. 2d 617).

TIME LIMITATION ON JUDGMENT

It was provided by § 12, D. C. Code of 1901, as amended by act of Mar. 3, 1921 (41 Stat. 1311), that judgments of the municipal court of the District of Columbia remained in force for six years and no more after rendition unless docketed in the Supreme Court of the District. *Brown* v. *Allan E. Walker & Co.* (58 App. D. C. 173, 26 Fed. (2d) 545).

§ 11–725 [18: 215]. Replevin—Form of declaration—Affidavit—Undertaking.

The municipal court shall have authority to issue a writ of replevin whenever a plaintiff shall file a declaration in replevin, in the following or an equivalent form, to wit:

"The plaintiff sues the defendant for wrongfully taking and detaining (or wrongfully detaining) his, said plaintiff's, goods and chattels, to wit (here describe them), of the value of ——— dollars. And the plaintiff claims that the same may be taken and delivered to him, or, if they are eloigned, that he may have judgment for their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." And at the same time said plaintiff, his agent, or attorney shall file an affidavit stating, first, that, according to affiant's information and belief, the plaintiff is entitled to recover possession of the chattels described in the declaration; secondly, that the defendant has seized and detains or detains the same; thirdly, that said chattels were not subject to such seizure or detention, and were not taken under any writ of replevin between the parties; fourthly, that said chattels are not of the value of more than $1,000; and at the same time the plaintiff shall enter into an undertaking, with surety approved by said court, submitting to the jurisdiction of the court, to abide by and perform the judgment of said court. (Mar. 3, 1901, 31 Stat. 1192, ch. 854, § 13; June 30, 1902, 32 Stat. 521, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

CROSS REFERENCES

Procedure, see § 11–756 (b).

§ 11–726 [18: 216]. Replevin—Officer's return—Further prosecution, renewal of writ.

If the officer's return of the writ of replevin be that he has served the defendant with copies of the declaration, affidavit, and summons, but that he could not get possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the goods and damages for the detention, not to exceed in all $1,000, or he may renew the writ, in order to get possession of the goods and chattels themselves. (Mar. 3, 1901, 31 Stat. 1192, ch. 854, § 14; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

NOTES TO DECISIONS

DAMAGES FOR VALUE AND DETENTION

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ but prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D. C. Mun. App. 1947, 50 A. 2d 815).

§ 11–727 [18: 217]. Replevin—Defendant not found—Notice by publication.

If the officer's return be that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the said court may order that the defendant appear to the action by some fixed day, and cause notice of such order to be given by publication in some newspaper of said District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance; and if the defendant fails to appear, the court may proceed, as in case of default after personal service, to render judgment for the property in favor of the plaintiff. (Mar. 3, 1901, 31 Stat. 1192, ch. 854, § 15.)

§ 11–728 [18: 218]. Replevin—Pleading.

If the defendant appears, he may plead not guilty, in which case all matters of defense may be given in evidence, or he may plead specially. (Mar. 3, 1901, 31 Stat. 1192, ch. 854, § 16.)

NOTES TO DECISIONS

BURDEN OF PROOF

In replevin to recover household goods which defendant claimed as a gift from plaintiff and which, it was not disputed, had originally been plaintiff's property, defendant had burden of establishing a gift of such goods. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309).

In replevin to recover household goods which plaintiff claimed defendant had bought for plaintiff with his money and which defendant claimed to have bought with her own money, burden of proof upon such issue was upon plaintiff, and, if no evidence were produced on either side, plaintiff would have been out of court. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309).

§ 11–729 [18: 219]. Replevin—Marshal to retain property—Sufficiency of undertaking, quashing writ, return of property.

Property taken by the marshal under a writ of replevin, issued by the municipal court, shall be retained by him for three days, exclusive of Sundays and legal holidays, before delivering the same to the plaintiff, in order that the defendant or other persons claiming an interest therein may present objections to the said court to the sufficiency of the security on the undertaking or the jurisdiction of said court, and if the said court shall deem said undertaking insufficient, such property may be directed to be retained by the marshal for a further short time, to be designated by said court, until an undertaking to be approved by him shall be filed, in default of which the marshal shall return the property to the person from whom it was taken; or if it shall be made to appear to the said court that the property is of the value of over $1,000 he shall quash the writ of replevin and direct the property to be returned to the party out of whose possession it was taken. (Mar. 3, 1901, 31 Stat. 1192, ch. 854, § 17; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

§ 11–730 [18: 220]. Replevin—Motion for return of property.

Section 16–1809, governing the return to defendant of goods and chattels taken by virtue of the writ of replevin is hereby made applicable to the municipal court. (Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 9.)

§ 11–731 [18: 221]. Replevin—Measure of damages for plaintiff.

Whether the defendant plead and the issue joined be found against him, or his plea be held bad, or he make default after personal service, the plaintiff's damages shall be the full value of the goods, not to exceed $1,000, if eloigned by the defendant, and damages for the detention thereof, and judgment shall be given accordingly. (Mar. 3, 1901, 31 Stat. 1192, ch. 854, § 18; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

NOTES TO DECISIONS

EVIDENCE

Testimony of witness that, when he took check drawn by defendant's husband, now deceased, to order of cash to bank and had it cashed for him, defendant's husband stated that he intended to use the money to buy furniture from third party was inadmissible as part of "res gestae". *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

Evidence failed to show that refrigerating equipment was sold and installed by plaintiff upon false representations by owner of one of defendant companies concerning his own credit standing or that of his company or as to leasing business to other defendant company, so as to authorize plaintiff to recover the equipment in replevin suit. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D. C. Mun. App. 1948, 61 A. 2d 632).

INSTRUCTIONS

Defendant's instruction that question for jury to determine was whether plaintiff had shown by a fair preponderance of evidence that on date she brought replevin suit she was entitled as against all the world to immediate and exclusive possession of the furniture which was subject of the suit was properly modified by substituting for the words "all the world" the words "the defendant." *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

JUDGMENT FOR VALUE AND DETENTION

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ but prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D. C. Mun. App. 1947, 50 A. 2d 815).

RIGHT TO POSSESSION

Testimony as to statements made by defendant's deceased husband that he bought the property in controversy in replevin suit from certain person was not admissible as part of the "res gestae". *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

In replevin suits it is not necessarily the title which is in issue but merely the right to possession as between the parties. *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

If buyer obtains by fraud the seller's assent to transfer ownership of goods the seller may sue for value thereof or at his election may rescind and sue to regain title or possession, and replevin is a proper procedural remedy to test issue of the right to possession. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D. C. Mun. App. 1948, 61 A. 2d 632).

§ 11–732 [18:222]. Replevin—Judgment for defendant—Damages.

If the issue be found for the defendant, or the plaintiff shall dismiss or fail to prosecute his suit, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant, with damages for their detention, or, on failure, that the defendant recover from the plaintiff and his surety the damages sustained by him, to be assessed by the court. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 19.)

§ 11–733 [18: 223]. Attachment.

The provisions of this code relating to attachments shall apply to attachment proceedings in said municipal court. (Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 9.)

CROSS REFERENCE

Attachment and garnishment, §§ 16–301 to 16–335.

NOTES TO DECISIONS

GENERALLY

The provisions of this section regarding attachment and garnishment are applicable in municipal court. *Frank* v. *Malone* (App. D. C. 1942, 126 F. 2d 651).

ATTACHMENT AGAINST EXECUTOR

In action in municipal court of District of Columbia wherein writ of attachment is directed to an executor, in connection with an action against a third party who claims an interest in the estate, the interest of other persons in the estate and the exclusive jurisdiction of district court

in probate proceedings are fully protected by statutory provision that, if executor is in doubt whether defendant's share of estate will prove sufficient to pay plaintiff's debt, no judgment shall be entered against the executor until passage by probate court of his final or other account showing money or property in his hands to which defendant is entitled. *Frank* v. *Malone,* 1942 (126 F. 2d 651, 75 U. S. App. D. C. 296).

§ 11–734 [18: 224]. Payment of money into court.

Sections 13–217, 16–1401, 16–1402, authorizing payment of money into court in certain cases, are hereby made applicable to the said municipal court. (Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 9.)

CROSS REFERENCES

Interpleader and deposit of money on property with court, § 13–217.

Section 16–1401 et seq. authorizing defendant to pay amount alleged to be due plaintiff into court, apply to municipal court, § 16–1403.

§ 11–735 [18: 225]. Forcible entry and detainer—Definition—Summons—Procedure.

Whenever any person shall forcibly enter and detain any real property, or shall unlawfully, but without force, enter and unlawfully and forcibly detain the same; or whenever any tenant shall unlawfully detain possession of the property leased to him, after his tenancy therein has expired; or any mortgagor or grantor in a mortgage or deed of trust to secure a debt shall unlawfully detain the possession of the real property conveyed, after a sale thereof under such deed of trust or a foreclosure of the mortgage, or any person claiming under such mortgage or grantor, after the date of the mortgage or deed of trust, shall so detain the same; or a judgment debtor or any person claiming under him, since the date of the judgment, shall so detain possession of real property, after a sale thereof under an execution issued on such judgment, it shall be lawful for the municipal court, on complaint under oath, verified by the person aggrieved by said unlawful detention or by his agent or attorney, having knowledge of the facts, to issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of the possession. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 20; Apr. 19, 1920, 41 Stat. 555, ch. 153.)

CROSS REFERENCES

Procedure, see § 11–756 (b).

See §§ 22–3101, 45–820 to 45–910.

NOTES TO DECISIONS

AGREEMENTS AS PRECLUDING RECOVERY

Where tenant agreed to rent basement to landlord's grantee, entry of landlord's grantee into basement was not forcible so as to authorize tenant to recover, against landlord's grantee as for forcible entry. *Bedrosian* v. *Wong Kok Chung* (D. C. Mun. App. 1943, 33 A. 2d 811).

In owner's action to recover apartment from former tenant's estranged wife who had moved out of apartment during marital difficulties and who had resumed occupancy after tenant had surrendered his tenancy, evidence relating to manner in which wife re-entered apartment warranted finding that wife's re-entry and detention of possession was "forcible" within this section. *Tate* v. *Brawner* (D. C. Mun. App. 1948, 58 A. 2d 307).

APPEAL

Proceedings in appeal in cases of forcible entry and detainer, which are regulated by §§ 1232, 1233 of the 1901 code, are different from those which govern appeals in ordinary cases. *Dowling* v. *Buckley* (27 App. D. C. 205).

The complaint should be sufficient to advise the tenant of the breach which the landlord claims gives him a right to recover possession of the property, and if the complaint states only one ground, the landlord must be confined to that ground on appeal. *Davis* v. *Taylor* (51 App. D. C. 97, 276 Fed. 619).

In forcible entry and detainer action, exclusion of witnesses was discretionary with the trial judge, and, where it was not shown that denial of motion was prejudicial to appellant, there was no basis for review by appellate court. *Bedrosian* v. *Wong Kok Chung* (D. C. Mun. App. 1943, 33 A. 2d 811).

BOND

Defendant, in order to perfect his appeal from justice of peace, in landlord and tenant case, need not give supersedeas bond. *Dowling* v. *Buckley* (27 App. D. C. 205).

Bond given on appeal from justice of peace in a landlord and tenant case must be entered by two sureties in order to operate as a supersedeas. *Dowling* v. *Buckley* (27 App. D. C. 205).

CONCURRENT ACTIONS

A landlord could maintain action against tenant in District of Columbia District Court for arrears of rent and an action against tenant in the municipal court for possession of leased premises. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D. C. Mun. App. 1946, 47 A. 2d 400).

CONSTRUCTION OF PRIOR LAW

Construing original section, see *Green* v. *McIntire* (42 App. D. C. 250), holding code provision applicable, although title is claimed under instrument executed prior to adoption of code.

COUNTERCLAIMS

Court should not have entertained the counterclaims of defendant in suit in which possession was sought on the grounds of unlawful entry and detainer. Though it has been held that where a tenant is sued for possession for nonpayment of rent, he may defend by an equitable defense sufficient to defeat the claim for rent or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action, and where, as here, the suit was not for nonpayment and the counterclaim sounded in tort, this rule does not apply. *Bellmore* v. *Baum* (D. C. Mun. App. 1949, 68 A. 2d 588).

DAMAGES

Quaere: Whether landlord can recover damages for loss of rental of entire building when tenant leases only a part thereof. Such action, however, cannot be maintained under this section. *Desio* v. *Hutchinson* (36 App. D. C. 68).

DIRECTED VERDICT

Where subtenant claimed in opening statement that tenant in consideration of increased rent had orally agreed that subtenant might remain in possession as long as tenant's lease remained in effect, and that subtenant had thereafter paid such increased rent and had made certain substantial improvements on the premises, direction of verdict for tenant was error. *De Grazia* v. *Anderson* (D. C. Mun. App. 1948, 62 A. 2d 194).

DISCRETION OF COURT

In forcible entry and detainer action against a Chinese, appointment of principal defendant's niece as his interpreter rested in trial court's discretion. *Bedrosian* v. *Wong Kok Chung* (D. C. Mun. App. 1943, 33 A. 2d 811).

In forcible entry and detainer action against a Chinese, trial court did not abuse its discretion in appointing principal defendant's niece as his interpreter when his testimony had no substantial bearing upon the factual issues. *Bedrosian* v. *Wong Kok Chung* (D. C. Mun. App. 1943, 33 A. 2d 811).

EMERGENCY RENT CONTROL ACT

The effect of Emergency Rent Control Act, § 45–1605, restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Under the Emergency Rent Control Act, § 45–1605, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to ground upon which landlord may claim right of possession, remains the same as it was previously. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

A roomer, although a tenant under Emergency Rent Control Act, § 45–1611 (f), who had allegedly failed to pay rent could be evicted without institution of court proceedings for possession, in absence of any reference to roomers in this section relating to summary proceedings for possession. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

EQUITABLE RELIEF

Equity will relieve against a forfeiture caused by nonpayment of rent unless it is unjust or was inequitable to do so; the only condition precedent to such relief being the tender or payment of the arrears with accrued interest and tender, here, avoided forfeiture of the lease. *Burrows Motor Company* v. *Davis* (D. C. Mun. App. 1950, 76 A. 2d 163).

EVIDENCE

In forcible entry and detainer action by tenant against landlord's grantee, tenant's denial that he had made any "agreement" with agent of landlord's grantee to rent basement to him was a "conclusion" insufficient to contradict testimony of landlord's grantee. *Bedrosian* v. *Wong Kok Chung* (D. C. Mun. App. 1943, 33 A. 2d 811).

Evidence supported finding that there was no unlawful delegation of authority to vice president of real estate company serving as agent of insurance company in managing building owned by insurance company by president of insurance company in authorizing vice president of realty company to verify complaint in action to recover one of storerooms in building from tenant after expiration of lease. *Fowel* v. *Continental Life Ins. Co.* (D. C. Mun. App. 1947, 55 A. 2d 205).

FORCE, NECESSITY OF

In action brought under this section giving Municipal Court for District of Columbia jurisdiction of action brought against person charged with having forcibly entered and detained real property, there must be actual force employed in the entry or in detention of possession or such threats and menaces of personal violence as will prevent one through fear from asserting his rights. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

FORFEITURE OF LEASEHOLD

Forfeiture of a leasehold for conditions broken, and restrictions upon the right to assign are looked upon with disfavor. *Burrows Motor Company* v. *Davis* (D. C. Mun. App. 1950, 76 A. 2d 163).

The transfer of a portion of a tenant corporation's stock did not constitute an assignment of its lease in violation of its covenant not to assign without the lessor's consent, and judgment awarded to landlord must be reversed. *Burrows Motor Company* v. *Davis* (D. C. Mun App. 1950, 76 A. 2d 163).

IMPROVEMENTS

Where tenant of a row house, shortly before expiration of a five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

ISSUES TRIABLE

Landlord's suit for possession of leased premises on ground of nonpayment of rent under this section is statutory substitute for ancient action of ejectment, and issue to be tried is the right to possession. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

JURISDICTION

Municipal court had jurisdiction of subject-matter involved in landlord and tenant proceeding and also over the person of defendant in the case, who appeared and made a defense, and the judge was not liable in civil action for the issuance of writ of restitution. *Spruill* v. *O'Toole* (64 App. D. C. 85, 74 Fed. (2d) 559).

The jurisdiction of Municipal Court for District of Columbia to render judgment for possession of real estate is limited to those cases provided for by this section. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

The District of Columbia Municipal Court has jurisdiction to try actions involving possession of realty. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D. C. Mun. App. 1946, 47 A. 2d 400, modified, 1947, 54 A. 2d 144).

The jurisdiction of the Municipal Court over summary suits to recover possession of real property under this section is limited explicitly to actions by landlords against tenant. *Spruill* v. *Brooks* (D. C. Mun. App. 1949, 68 A. 2d 204).

Municipal court should not reject jurisdiction unless and until it is made to appear that the title to land is necessarily directly in issue between the parties, since this is a mandatory requirement provided for by statute. *Mindell* v. *Glenn* (D. C. Mun. App. 1949, 65 A. 2d 340. As aff'd 74 A. 2d 835).

MERITS

Where there was a voluntary dismissal by landlord of his action to recover possession of leased premises, prior to trial, and no issue was adjudicated, intervenor was not entitled to a judgment on the merits. *Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

MONEY JUDGMENT

The recovery of a money judgment for rent in landlord's action for possession of leased premises on ground of nonpayment of rent is but incidental to the main action, which remains basically one for possession. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

NATURE OF POSSESSORY ACTION

A landlord's action for possession of leased premises for nonpayment of rent is statutory substitute for the ancient remedy of ejectment. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D. C. Mun. App. 1946, 47 A. 2d 400, modified, 1947, 54 A. 2d 144).

NOTICE

Tenant is entitled to 30-day notice to quit before institution of summary proceedings for possession. *Thornhill* v. *Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).

Sufficient notice of termination of a month to month tenancy does not in and of itself allow institution of an action for possession, since notice merely cuts off future expectancy of a continuation of the tenancy for one or more terms, and thereupon a tenancy for the terminal month runs its course, and upon the occurrence of both events landlord may maintain action for possession, as tenant is then holding over. *Zoby* v. *Kosmadakes* (D. C. Mun. App. 1948, 61 A. 2d 618).

A notice to quit is a condition precedent to filing of action by landlord to recover possession of premises from tenant, but is not jurisdictional. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

PARTIES

A realty dealer acting as owner's rental agent for percentage of rents is not a party in interest such as is entitled to conduct a landlord and tenant proceeding. *Heiskell* v. *Mozie* (65 App. D. C. 255, 82 Fed. (2d) 861).

Where husband and wife own property by the entireties, a possessory action against a tenant may be brought by either, and a judgment in such an action inures equally to benefit of both. *Zoby* v. *Kosmadakes* (D. C. Mun. App. 1948, 61 A. 2d 618).

In owner's action to recover possession of apartment rented by defendant's husband, defendant was a proper party and owner was not required to name husband as a party defendant, where husband had surrendered key after defendant removed furniture and left apartment at time of marital difficulties and had stated to owner's representative that husband was finished with apartment and owner in reliance thereon had rented apartment to third party. *Tate* v. *Brawner* (D. C. Mun. App. 1948, 58 A. 2d 307).

PERSON AGGRIEVED

One suing under this section for recovery of leased premises was only obliged to establish that he was the person aggrieved by tenant's failure to vacate. *J. & J. Slater, Inc.,* v. *Brainerd* (D. C. Mun. App. 1945, 43 A. 2d 714).

Provision in lease for abatement of rent if lessor should be unable to deliver possession did not prevent lessor from being "person aggrieved" who could sue former tenant for possession, in absence of evidence that lessor had yielded right to sue to new tenant or had done anything to extinguish his own title. *J. & J. Slater, Inc.,* v. *Brainerd* (D. C. Mun. App. 1945, 43 A. 2d 714).

Owner was proper party to maintain suit against tenant to recover business premises at expiration of term lease, since he was a "person aggrieved" within this section authorizing municipal court to issue summons on complaint under oath of "person aggrieved" to recover premise detained, notwithstanding lease was made in the name of owner's agent. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

PETITION

Complaint alleging that defendant obtained possession of premises by fraud and had trespassed thereon and that he had refused to surrender possession, but not alleging that defendant entered by actual force or that he retained possession by force, or by menaces or other acts legally equivalent to force, did not state a case of forcible entry and detainer within jurisdiction of Municipal Court for District of Columbia. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

PLEADING

Although proceedings in landlord and tenant actions are informal, tenant is entitled to be informed by complaint of nature of recovery sought against him. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

If a landlord seeks a money judgment for rent in action to recover leased premises on ground of nonpayment of rent, he must set forth his claim for such in his complaint. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

Where action by husband and wife as landlords for possession of housing accommodations was brought as a summary proceeding, the verification of complaint by husband, for himself and as agent for his wife, was authorized by this section providing that complaint shall be verified by person aggrieved or by his agent or attorney having knowledge of the facts. *Wynn* v. *Washington* (D. C. Mun. App. 1947, 53 A. 2d 275).

PURPOSE

This section giving Municipal Court for District of Columbia jurisdiction of actions of forcible entry and detainer is intended to provide a summary remedy in definitely limited classes of cases, and is not a substitute for action of ejectment. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

RES JUDICATA

Where suit filed on March 17, 1942, was essentially one for trespass with conversion of personal property laid in aggravation of damages, in subsequent statutory action to recover possession allegedly withheld since April, 1942, evidence was insufficient to sustain defendant's plea of res judicata based on judgment in the former suit. *Kincade* v. *Wah* (D. C. Mun. App. 1944, 38 A. 2d 112).

A consent judgment awarding plaintiff husband possession of premises, in action brought by husband alone against defendant as tenant of property owned by husband and wife as tenants by the entireties, which judgment necessarily determined defendant's status as a tenant, was res judicata on that issue in subsequent suit brought by husband and wife against defendant to recover rent. *David* v. *Nemerofsky* (D. C. Mun. App. 1945, 41 A. 2d 838).

Where husband and wife owned realty as tenants by the entireties, as respects doctrine of res judicata, the wife should be regarded as in "privity" with husband, which denotes mutual or successive relationship to the same rights of property. *David* v. *Nemerofsky* (D. C. Mun. App. 1945, 41 A. 2d 838).

RIGHT TO POSSESSION

Where plaintiff sued for possession of property, which it had purchased at foreclosure sale, against defendant who had previously owned the property but had defaulted on the second trust note, the defense that, when the deed of trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605, is not applicable where premises are not housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

SUMMARY PROCEEDINGS

Summary proceedings under R. S., D. C., 684 cannot be maintained unless conventional relation of landlord and tenant exists between the parties. *Willis* v. *Eastern Trust & B. Co.* (169 U. S. 295, 42 L. Ed. 752, 18 Sup. Ct. 347).

SURRENDER OF TENANCY

Where wife removed furniture and left apartment and husband, who was the tenant, surrendered his tenancy, wife had no further rights in premises and her forcible re-entry and detention of possession was unlawful so as to entitle owner to recover possession under this section. *Tate* v. *Brawner* (D. C. Mun. App. 1948, 58 A. 2d 307).

TITLE NOT ISSUE

If complaint were forcible entry and detainer, a claim of title by the defendant would be a proper defense to the action. *Loring* v. *Bartlett* (4 App. D. C. 1).

In proceedings for forcible entry and detainer, the title is not tried and is not at issue, but solely the right to the possession. *Brown* v. *Slater* (23 App. D. C. 51).

Right to possession of alleged purchaser at trustee's sale, not proved where tenant under 5-year lease continued to comply with said lease and dealt throughout with the same agent and knew nothing of the sale. *Capital Apartment Corp.* v. *Vassos* (62 App. D. C. 136, 65 Fed. (2d) 482).

TRESPASS, ACTION FOR

The action of trespass to realty contemplated by section 11–704 is one for damages, and said section was not applicable to give Municipal Court for District of Columbia jurisdiction of action to obtain possession of realty. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

Forcible entry and detainer is not a substitute for trespass, and the actions are not the same. *Thurston* v. *Anderson* (D. C. Mun. App. 1944, 40 A. 2d 342).

§ 11–736 [18: 226]. Forcible entry and detainer—Service of summons.

The summons shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of the action. If the defendant has left the District of Columbia, or can not be found, said summons may be served by delivering a copy thereof to the tenant, or by leaving the same with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one be in actual possession of said premises, or residing thereon, by posting a copy of said summons on the premises where it may be conveniently read. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 21.)

NOTES TO DECISIONS

CHALLENGING SERVICE OF PROCESS

It is a general rule, with limited exceptions, that the question of defective service can be raised only by one on whom the attempted service was made and that one defendant has no standing to question the service on a co-defendant. Therefore, a motion to quash service made by one not even a party ought not to be heard. *Everett v. Miller* (D. C. Mun. App. 1949, 67 A. 2d 399).

CONFESSION OF JUDGMENT

A judgment in favor of landlord suing tenant for possession of leased premises was void for failure of court to acquire jurisdiction over tenant who was not served with process and who did not voluntarily appear, notwithstanding that tenant had signed "confession of judgment", where "confession of judgment" did not purport to contain a power of attorney authorizing landlord's attorney to appear for tenant and confess judgment. *Sandler* v. *Kass Realty Co.* (D. C. Mun. App. 1946, 48 A. 2d 617).

CONSTRUCTION

For the purpose of this statute, a person below the age of sixteen years does not come within the term "any one". *Dewey v. Clark* (C. A. D. C. 1950, 180 F. 2d 766).

Requirements of the statutory phrase "Cannot be found" were met by the deputy marshal in posting summons on door. *Dewey v. Clark* (C. A. D. C. 1950, 180 F. 2d 766).

POSTING ON DOOR

In suit to recover possession of house, process was not defective on ground that marshal, without using diligent effort to obtain personal service, posted summons on door, where record disclosed service in strict compliance with this section. *Gordon* v. *Tino* (D. C. Mun. App. 1946, 50 A. 2d 593).

Where deputy marshal returned to premises three times with no response, and finally fastened the two summons flat against the door, valid service was made, since defendant was not to be found and no one over sixteen could be said to be in possession. *Dewey v. Clark* (C. A. D. C. 1950, 180 F. 2d 766).

RETURN

Where a valid service had been effected in landlord's action against tenant for possession of realty, either by delivery of copy to one in possession of realty, or by posting copy on realty, service was valid regardless of whether marshal's return correctly showed the method by which the service was effected. *Etelson* v. *André* (D. C. Mun. App. 1948, 61 A. 2d 806).

SUBSTANTIAL COMPLIANCE

Service of summons by leaving a copy with a person over 16 years of age in possession of the premises and a return to that effect by the marshal was a substantial compliance with this section. *Bliss* v. *Duncan* (44 App. D. C. 93). Compare *Settlemier* v. *Sullivan* (7 Otto (97 U. S.) 444, 24 L. Ed. 1110).

SUBSTITUTE SERVICE

Where marshal returned in afternoon after receiving no response when he had rung bell several times on morning visit, and maid refused to take paper marshal requested her to take, and marshal tacked it on the door, failure to make more than two attempts to effect personal service was not as a matter of law a lack of due diligence to effect personal service so as to invalidate substituted service under this section prescribing methods of service available in summary actions for possession of realty. *Etelson* v. *André* (D. C. Mun. App. 1948, 61 A. 2d 806).

VOLUNTARY APPEARANCE

The voluntary appearance of tenant, through its attorney, gave the court jurisdiction to enter judgment in favor of landlord suing for possession of leased premises, notwithstanding that tenant was not served with process. *Crescent Cafe Co.* v. *Kass Realty Co.* (D. C. Mun. App. 1946, 48 A. 2d 618).

§ 11–737 [18: 227]. Forcible entry and detainer—Judgment and execution for possession and for costs.

If upon the trial it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 22.)

NOTES TO DECISIONS

ATTORNEY'S FEE

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

INTERVENTION

Where landlord took a voluntary nonsuit in a summary proceedings by landlord against tenant, intervenor who, though not specifically allowed to intervene as a defendant, intervened for the purpose of contesting landlord's right to possession, was entitled as a matter of law to judgment for her costs. *Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

LAW GOVERNING

Where there was a conflict between Landlord and Tenant Rule 6 and this section dealing with costs in a summary proceeding between landlord and tenant, this section would prevail. *Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

MANDATORY

This section providing that if it appears that plaintiff is entitled to possession of leased premises in summary proceeding between landlord and tenant, judgment and execution for possession shall be awarded in plaintiff's favor with costs, and that if plaintiff becomes nonsuit or fails to prove his right to possession, defendant shall have judgment and execution for his costs, is mandatory. *Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

§ 11–738 [18: 228]. Forcible entry and detainer—Plea of title—Undertaking.

If upon the trial the defendant pleads title to the premises, in himself or in another under whom he claims, setting forth the nature of said title, under oath, and shall enter into an undertaking, with sufficient surety, to be approved by the court, to pay all intervening damages and costs and reasonable intervening rent for the premises, the court shall certify the proceedings to the District Court of the United States for the District of Columbia, and the same shall be further continued in said court according to its rules. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 23; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

NOTES TO DECISIONS

REJECTION OF JURISDICTION

Generally, the municipal court will not reject jurisdiction until it is made to appear that the title to land is necessarily and directly in issue between the parties. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

SPECIAL PLEA, NECESSITY FOR

If tenant holding over after expiration of lease wished to dispute purchaser's title in suit instituted by purchaser in Municipal Court to obtain possession of dwelling for

use as a residence, a special plea was required to be filed and undertaking given whereupon the case would be certified to district court. *Miller* v. *Prophet* (D. C. Mun. App. 1944, 37 A. 2d 450).

In a summary proceeding brought in municipal court, question of title can enter the case only by special plea but defendant in such a plea must comply with this section, and if no plea of title is filed the court is free to proceed and try the issue of possession. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

This section providing that title in summary proceedings be put in issue by plea under oath, accompanied by an undertaking, is mandatory, since in such action the issue to be tried is one of possession and not of title. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Questions of title can enter the case only by special plea of the defendant and such a plea must comply with the statute. If no plea of title is filed, there is no question of title, and the court is free to proceed to try the issue of possession. *Mindell v. Glenn* (D. C. Mun. App. 1949, 65 A 2d 340, as aff'd 74 A. 2d 835).

§ 11–739 [18: 229]. Forcible entry and detainer—When judgment not a bar.

A judgment before the municipal court in this proceeding, shall not be a bar to any after action brought by either party or conclude any question of title between them, where title is not pleaded by the defendants as aforesaid. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 24; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 12.)

NOTES TO DECISIONS

TERMINATION OF TENANCY

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

§ 11–740 [18: 230]. Witnesses — Attendance — Punishment for contempt.

The municipal court shall have power to compel the attendance of witnesses from any part of the District of Columbia by attachment and to punish them for disobedience, as well as to punish anyone for disorder or contempt committed in its presence, by fine not exceeding ten dollars or imprisonment not exceeding ten days. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 25; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

CROSS REFERENCES

Present provisions covering this subject matter are contained in § 11–756 (c).

§ 11–741 [18: 231]. Nonresident witnesses—Testimony—How taken.

Where the testimony of nonresident witnesses is required by either party the municipal court may, upon motion designating the names of such witnesses, appoint an examiner to take such testimony, to whom it shall issue a commission; and said testimony shall be taken on written interrogatories and cross-interrogatories, which written interrogatories shall be filed at least three days before the issue of such commission: *Provided,* That such commission shall not issue unless the party or his agent or attorney applying therefor file his affidavit, setting forth that he believes that the testimony of said witnesses is material to the issue in said suit and that the motion is not made for the purpose of delay. (Mar. 3, 1901, 31 Stat. 1194, ch. 854, § 26; June 30, 1902, 32 Stat. 521, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

§ 11–742 [18: 232]. Satisfaction of judgment—Receipt of plaintiff.

No judgment or execution shall be recorded as satisfied without the receipt of the plaintiff or his attorney annexed thereto. (Mar. 3, 1901, 31 Stat. 1194, ch. 854, § 28.)

§ 11–743 [18: 233]. Docketing judgment in the District Court of the United States for the District of Columbia.

After recovering a judgment for twenty dollars or more, exclusive of costs, before the municipal court, the judgment creditor may, when execution is returned "No personal property found whereon to levy," file in the clerk's office of the District Court of the United States for the District of Columbia a certified copy of said judgment, which shall be docketed in the docket of law causes in said office; and when it is docketed the force and effect of the judgment for all purposes shall be the same as if it had been a judgment of the said District Court. (Mar. 3, 1901, 31 Stat. 1194, ch. 854, § 29; June 30, 1902, 32 Stat. 521, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

CROSS REFERENCES

Present provisions covering this subject matter are contained in § 11–755 (c).

Docketing judgments of municipal court, § 11–718.

NOTES TO DECISIONS

IN GENERAL

After rendition of judgment by the municipal court, the judgment creditor may file in the clerk's office of the Supreme Court a certified copy of the judgment, and, when so docketed, the judgment shall have the same force and effect as if it had been a judgment of the Supreme Court of the District. *Brown* v. *Allan E. Walker & Co.* (58 App. D. C. 173, 26 Fed. (2d) 545).

PETITION TO CORRECT ERROR

Where the court below accepted the record made by the municipal court as against an affidavit by party that there was clerical error, on appeal the ruling will not be disturbed. *Dreslin* v. *Phillips* (51 App. D. C. 324, 279 Fed. 303).

REVIVAL OF JUDGMENT

The District Court of the United States for the District of Columbia may revive judgment filed by scire facias. *Green* v. *Mann* (19 App. D. C. 243).

§ 11–744 [18: 234]. Trial of right to attached property—Notice to marshal, notice to plaintiff.

When personal property taken on execution or other process issued by the municipal court is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and such claimant shall give notice, in writing, to the marshal of his claim, or the defendant shall give notice, in writing, that the property is exempt, the marshal shall notify the plaintiff of such claim and return said notice to the court, and a trial of said right of property, or said question of exemption, shall be had before said court.

(Mar. 3, 1901, 31 Stat. 1194, ch. 854, § 33; June 30, 1902, 32 Stat. 521, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

NOTES TO DECISIONS

In General

This section "provides summary statutory method, unknown to the common law, of determining the right of property and restoring possession thereof to the rightful owner. * * * It makes no provision for the recovery of damages." *Tribby* v. *O'Neal* (39 App. D. C. 467).

Conclusiveness of Findings

Where evidence was such that in statutory proceeding for trial of right of property either one of two different conclusions might reasonably be drawn therefrom, trial court's judgment could not be disturbed by Municipal Court of Appeals. *Perlman* v. *Chal-Bro., Inc.* (D. C. Mun. App. 1945, 43 A. 2d 755).

Judgment

Judgment for third-party claimant on trial of right of property in goods seized was not res judicata against United States marshal and his surety, as they were not parties to the action and may defend on ground of fraudulent transfer prior to levy made by the marshal thereon. *Snyder* v. *Charles Levine, Inc.* (65 App. D. C. 81, 80 Fed. (2d) 382).

Jurisdiction to Enjoin

The District Court of the District of Columbia has jurisdiction to enjoin sale of chattels under execution writ from municipal court of the District as the District Court, similar to nisi prius courts in the States, is the first court of general equity powers. *Palais Royal* v. *Calhoun* (67 App. D. C. 364, 92 Fed. (2d) 515).

Notice to Marshal

Notice to marshal of company's claim to chattels was given as provided by this section. *Stern Co. of Washington* v. *Rosenberg* (67 App. D. C. 99, 89 Fed. (2d) 843).

Possession Under Lien

Person in possession of property under lien may claim benefit of section and does not waive his right to maintain action thereunder by becoming purchaser at marshal's sale. *Brown* v. *Petersen* (25 App. D. C. 359). See *Bond* v. *Carter Hdw. Co.* (15 App. D. C. 72, construing 28 Stat. 668).

Subsequent Action for Damages

A proceeding under this section is no bar to subsequent action for damages. *Tribby* v. *O'Neal* (39 App. D. C. 467).

§ 11–745 [18: 235]. Claim against attached property—How docketed and tried.

The case made by such claim shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the municipal court. (Mar. 3, 1901, 31 Stat. 1194, ch. 854, § 34; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

Cross Reference

See notes to § 11–744. *United States ex. rel. Robertson* v. *Barnard* (24 App. D. C. 8); *Tribby* v. *O'Neal* (39 App. D. C. 467).

§ 11–746 [18: 236]. Claim against attached property—Judgment.

In case the property shall appear to belong to the claimant or to be exempt from such process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall be released. If the property shall not appear to belong to the claimant or to be exempt, as aforesaid, judgment shall be entered against said claimant or the defendant, as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ. (Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 35; June 30, 1902, 32 Stat. 521, ch. 1329; Apr. 19, 1920, 41 Stat. 555, ch. 153.)

Amendments

The 1902 amendment struck out the word "execution" and inserted in lieu thereof the words "such process" and struck out the words "in the execution" following the word "plaintiff" in the first sentence.

The act of April 19, 1920, struck out the above section as originally enacted and inserted the foregoing in lieu thereof. The change made was to leave out a sentence providing for appeal.

Cross Reference

See note to § 11–744. *Snyder* v. *Charles Levine, Inc.* (65 App. D. C. 81, 80 Fed. (2d) 382).

§ 11–747 [18: 237]. Claim against attached property—Replevin.

Nothing herein contained shall prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as aforesaid. (Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 37.)

NOTES TO DECISIONS

Legislative Intention

Statute is mainly intended, by summary means, to indemnify and save harmless the officer charged with the execution of the writ or process, and to protect plaintiff who may direct the levy upon or seizure of the property, and also to uphold and maintain power and jurisdiction of the justice, in making his process effective, but at same time to avoid injury to third persons. *Snyder* v. *Charles Levine, Inc.* (65 App. D. C. 81, 80 Fed. (2d) 382).

§ 11–748 [18: 238]. Process, service of—Judgments—Stay of execution.

All process issued by the municipal court shall be served by the United States marshal for the District of Columbia, or, if he is disqualified, by the coroner, and the fees for such service shall be as prescribed by rule of the District Court of the United States for the District of Columbia.

SUPERSEDEAS

On all judgments rendered by the municipal court, except as hereinafter provided, stay of execution may be had upon good and sufficient security being entered by a person who may be at the time the owner of sufficient real property located in the District, above all liabilities and exemptions, to secure the debt, costs, and interest.

In such cases stay of execution shall be entered as follows:

For the sum of five dollars, and not exceeding twenty dollars, one month.

For all sums over twenty dollars, and not exceeding forty dollars, two months.

For all sums over forty dollars, and not exceeding seventy-five dollars, four months.

For all sums exceeding seventy-five dollars, six months.

There shall be no stay of execution on any judgment for the wages of a servant or common laborer, nor upon any judgment for a less sum than five dollars. (Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

CROSS REFERENCES

Provisions of this section made applicable to Municipal Court for District of Columbia, see § 11–755 (b).

Stay of execution on appeal, § 17–104.

§ 11–749 [18: 239]. Deposits for jury trials—When earned.

Deposits made on demands for jury trials in accordance with rules prescribed by the court under authority granted in section 11–722 shall be earned unless, prior to three days before the time set for such trials, including Sundays and legal holidays, a new date for trial be set by the court, cases be discontinued or settled, or demands for jury trials be waived. (June 7, 1924, 43 Stat. 564, ch. 302; Mar. 3, 1925, 43 Stat. 1239, ch. 477; May 10, 1926, 44 Stat. 441, ch. 276; Mar. 2, 1927, 44 Stat. 1321, ch. 271; May 21, 1928, 45 Stat. 670, ch. 659 and other appropriation acts down to and including June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

SUBCHAPTER II.—THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

EFFECTIVE DATE

Section 14 of act April 1, 1942, cited to text, provided as follows: "The provisions of this Act authorizing the appointment and salaries of the judges of The Municipal Court of Appeals for the District of Columbia and the clerk, deputy clerks, and other employees of said court, shall take effect one month after approval of this Act. The other provisions of this Act shall take effect three months after the date of its approval.

"The expression 'effective date of this Act', as used in this Act, means three months after the approval of this Act."

CROSS REFERENCES

Previous provisions covering this subject matter, see §§ 11–601 to 11–626 and §§ 11–701 to 11–749.

§ 11–751. Consolidation of Police Court and Municipal Court—Designation.

The Police Court of the District of Columbia and the Municipal Court of the District of Columbia, be, and they are hereby, consolidated into a single court to be known as "The Municipal Court for the District of Columbia". (Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

SEPARABILITY CLAUSE

Section 12 of act April 1, 1942, cited to text, provided as follows: "If any provision of this Act, or the application thereof to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby; and if any provision hereof becomes inoperative, either by reason of failure of appropriations or otherwise, it shall not affect the legality or operative effect of any or all of the remaining features and provisions hereof."

§ 11–752. Composition—Appointments—Chief judge—Tenure—Seal—Court of record.

The court shall consist of thirteen judges appointed by the President with the advice and consent of the Senate, one of whom shall be designated by the President as chief judge.

The court shall adopt and have a seal, and shall be a court of record. (Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Oct. 25, 1949, 63 Stat. 887, ch. 706, § 1.)

AMENDMENT

The Act of Oct. 25, 1949, cited to text, increased the number of judges from ten to thirteen, and provided that "appointments and reappointments in the case of the additional judges authorized by this Act shall be for a term of ten years each."

EFFECTIVE DATE

See note preceding § 11–751.

SAVING CLAUSE

See note under § 11–751.

NOTES TO DECISIONS

COURT OF RECORD

The Municipal Court of the District of Columbia created by Congress under this chapter is a court of record and, within the limits of its civil jurisdiction which is far in excess of that of the old municipal court, has equitable jurisdiction. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

Municipal Court is a court of record and its judgments have full effect (except as liens on real estate) without docketing in District Court. The express power of a court of record to enforce its judgment by proper process should not be abridged by courts in absence of express or implied statutory authority. *Halperin* v. *Cohen* (D. C. Mun. App. 1949, 67 A. 2d 295).

§ 11–753. Judges—Appointments—Removal—Salaries—Oath—Qualifications.

Subsequent appointments and reappointments to this court shall be for a term of ten years each. All judges shall continue in office until their successors shall be appointed and qualified. Each judge shall be subject to removal only in the manner and for the same causes as are now or hereafter provided for the removal of Federal judges. The salary of the chief judge shall be $13,500 per annum and the salary of each associate judge shall be $13,000 per annum. Each judge, when appointed shall take the oath prescribed for judges of courts of the United States. No person other than a bona fide resident of the area consisting of the District of Columbia; Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the city of Alexandria, Virginia, and maintaining an actual place of abode in such area for at least five years immediately prior to his appointment, or who shall have been a judge of one of the courts of the District of Columbia, shall be appointed a judge of The Municipal Court for the District of Columbia: *Provided, however,* That not more than two nonresident persons may be appointed and serve as judges of the said Municipal Court at any one time. Further, all appointees shall have been members of the bar of the District of Columbia for a period of at least five years, and shall have been actively engaged in the private practice of law in the District of Columbia for a period of at least five consecutive years immediately prior to their appointment, or shall have been employed as an attorney in the District of Columbia in the Government of the United States or in the government of the District of Columbia for a period of at least five consecutive years immediately prior to their appointment. Service during the present emergency in the armed forces of the United States shall be included in the computation of the five-year requirements herein specified. (Apr. 1, 1942, 56 Stat. 191, ch. 207, § 2; July 28, 1949, 63 Stat. 482, ch. 369, § 2; Oct. 25, 1949, 63 Stat. 887, ch. 706, §§ 2, 3.)

AMENDMENTS

The act of July 28, 1949, cited to text, increased the salary of the chief judge from $8,500 to $13,500, and of each associate judge from $8,000 to $13,000.

The act of Oct. 25, 1949, cited to text, struck out the words "bona fide resident of the District of Columbia and maintaining an actual place of abode therein" and inserted in lieu thereof the words "bona fide resident of the area consisting of the District of Columbia; Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the city of Alexandria, Virginia, and maintaining an actual place of abode in such area" and also struck out the words "further, all appointees shall have been actively engaged in the practice of law in the District of Columbia for a period of at least five years immediately prior to their appointment" and inserted in lieu thereof the words "further, all appointees * * * for a period of at least five consecutive years immediately prior to their appointment."

EFFECTIVE DATE

See note preceding § 11–751.

SAVING CLAUSE

See note under § 11–751.

§ 11–754. Chief judge — Duties — Disability of chief judge—Duties of judges—Clerk—Appointment and tenure—Salary—Duties—Probation officer—Appointment and tenure—Duties—Retention of officials and employees of Police Court and Municipal Court.

(a) The chief judge shall, from time to time and for such period or periods as he may determine, designate the judges to preside and attend at the various branches and sessions of the court. He shall have the power to determine the number and fix the time of the various sessions of the court, to arrange the business of the court, and to divide it and assign it among the judges. He shall also be charged with the general administration and superintendence of the business of the court.

(b) The chief judge shall give his attention to the discharge of the duties especially pertaining to his office, and to the performance of such additional judicial work as he may be able to perform.

(c) It shall be the duty of the chief judge and the associate judges to meet together at least once in each month in each year, at such time as may be designated by the chief judge, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them.

It shall be the duty of each associate judge to attend and serve at any branch or session of the court to which he is assigned. Each associate judge shall submit to the chief judge a monthly report in writing of the duties performed by him, which report shall specify the number of days attendance in court of such judge during said month, and the branch courts upon which he has attended, and the number of hours per day of such attendance, and such other data as may be required by the chief judge, and in such form as the chief judge shall require.

The chief judge shall submit to the Attorney General of the United States and to the Commissioners of the District of Columbia a quarterly report in writing of the business of the court and of the duties performed by each of the judges of the court during the preceding three months. A copy of said report shall be filed in the office of the clerk of the court and shall be available and subject to public inspection during business hours.

In the event of the absence, disability, or disqualification of the chief judge, his duties shall devolve upon and be performed by the other judges in the order of seniority of their commissions.

Each judge shall be entitled to vacation, which shall not exceed thirty-six court days in any one calendar year, and which shall be taken at such times as may be determined by the chief judge.

The court shall have authority to appoint and remove a clerk of the court, whose salary shall be fixed by the court in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and the clerk so appointed shall have and exercise the powers and authority heretofore had or exercised by the clerk of the Police Court of the District of Columbia and the clerk of the Municipal Court of the District of Columbia.

The clerk of the court shall have authority, subject to the approval of the chief judge, to appoint and remove such deputy clerks and such other employees as he may deem necessary, and to have their compensation fixed by the chief judge in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and shall have supervision and direction over them, except clerks serving the respective judges, who shall be appointed and removed from office by the respective judges, their compensation to be fixed by the respective judges in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674).

The court shall have authority to appoint and remove a probation officer of the court, whose salary shall be fixed by the court in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and the probation officer so appointed shall have and exercise the powers of the authority heretofore had or exercised by the probation officer of the Police Court of the District of Columbia.

The probation officer of the court, subject to the approval of the chief judge, shall have authority to appoint and remove such assistant probation officers and such other employees of the probation office as he may deem necessary, and to have their compensation fixed by the chief judge in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and shall have supervision and direction over them.

All officials and employees of the Police Court of the District of Columbia and of the Municipal Court of the District of Columbia holding office on the effective date of this subchapter shall continue in office unless and until they are removed therefrom; and all appropriations for the said Police Court or the said Municipal Court shall be available for the payment of the salaries and expenses of The Municipal Court for the District of Columbia as hereby established. (Apr. 1, 1942, 56 Stat. 191, ch. 207, § 3.)

EFFECTIVE DATE

See note preceding § 11–751.

SAVING CLAUSE

See note under § 11–751.

CROSS REFERENCES

Powers and duties of clerk, see §§ 11–620 to 11–622 and §§ 11–709 to 11–714.

Recall of retired judges to service, see § 11–776.

NOTES TO DECISIONS

REDUCTION OF SENTENCE

Municipal Court of District of Columbia had power to reduce sentences during term at which they were imposed. *Peden* v. *Fleming* (App. D. C. 1946, 153 F. 2d 800).

Where Municipal Court of District of Columbia imposing sentence in August, 1942, directed that its term then current be kept open, the court could not extend the August, 1942, term until September 3, 1943, and could not at that time reduce sentences imposed more than a year before. *Peden* v. *Fleming* (App. D. C. 1946, 153 F. 2d 800).

Where order of probation was void because entered after defendant had been committed, release of defendant under the probation order was premature and it was duty of court to cause him to be recommitted, and the void probation order did not amount to an unconditional reduction of sentence. *Peden* v. *Fleming* (App. D. C. 1946, 153 F. 2d 800).

§ 11–754a. Reporters' fees for transcripts.

In addition to their annual salaries, official reporters for the municipal court for the District of Columbia are authorized to charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, such fees therefor, and no other, as may be prescribed from time to time by the court. All supplies shall be furnished by the official reporters at their own expense. The court shall have the power and is hereby directed to prescribe such rules, practice, and procedure pertaining to fees for transcripts as it may deem necessary, and the same shall conform as nearly as may be practicable to the rules, practice, and procedure pertaining to fees for transcripts established for the District Court of the United States for the District of Columbia. No fee shall be charged or taxed for any copy of a transcript delivered to a judge at his request or for any copies of a transcript delivered to the clerk of the court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require any party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript. (July 18, 1947, 61 Stat. 381, ch. 267.)

§ 11–755. Jurisdiction—Criminal and civil branch—Exclusive in certain actions—Service of process—Judgments—Duration—Docketing—Fees.

(a) The Municipal Court for the District of Columbia, as established by this subchapter shall consist of a criminal and a civil branch. The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia or the judges thereof on the effective date of this subchapter and in addition the said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000 and, in addition, shall also have exclusive jurisdiction of such actions against executors, administrators and other fiduciaries: *Provided, however,* That the District Court of the United States for the District of Columbia shall have jurisdiction of counterclaims and crossclaims interposed in actions over which it has jurisdiction. The court shall also have jurisdiction over all cases properly pending in the Municipal Court of the District of Columbia or the Police Court of the District of Columbia on the effective date of this subchapter.

(b) Service of process in the criminal division of the court shall be had as provided under existing law for the Police Court of the District of Columbia; service of process in the civil division of the court shall be had as provided under existing law for the Municipal Court of the District of Columbia, or in such other manner as may be prescribed by rules of court.

(c) All judgments entered by the Municipal Court for the District of Columbia on or after the effective date of this subchapter shall remain in force for six years and no longer unless the same be docketed in the office of the clerk of the District Court of the United States for the District of Columbia. Upon payment of a fee of 50 cents the clerk of the Municipal Court for the District of Columbia shall prepare a copy of any judgment of the said court whether heretofore rendered and in force and effective on the effective date of this subchapter or hereafter rendered, and the same upon being docketed with the clerk of said District Court shall have the same force and effect for all purposes as if it had been a judgment of said District Court. For the docketing of the same the clerk of said District Court shall charge a fee of 50 cents. (Apr. 1, 1942, 56 Stat. 192, ch. 207, § 4.)

EFFECTIVE DATE

See note preceding § 11–751.

SAVING CLAUSE

See note under § 11–751.

CROSS REFERENCES

Accounts audited, see § 11–627.

Attachment proceedings, see § 11–733.

Claim against attached property, see §§ 11–745 to 11–747.

Costs, see §§ 11–719 and 11–720.

Finality of judgments, see § 11–619.

Forcible entry and detainer, see §§ 11–735 to 11–739.

Funds unclaimed for two years paid into Treasury, see § 11–628.

Interest, see § 11–724.

Judgments and executions, see § 11–724.

Payment of money into court, see § 11–734.

Powers and jurisdiction of Municipal Court, see §§ 11–703 to 11–705.

Powers and jurisdiction of Police Court, see §§ 11–602 to 11–608.

Provisions covering service of process for Police Court and Municipal Court, see §§ 11–611 to 11–614 and 11–748, respectively.

Replevin actions, see §§ 11–725 to 11–732.

Trial of right to attached property, see § 11–744.

NOTES TO DECISIONS

AFFIRMATIVE DEFENSES

The defense of the statute of frauds is an affirmative defense and must be pleaded. *Saunders System Washington Co., v. Kuffner* (D. C. Mun. App. 1950, 75 A. 2d 136).

ADMINISTRATORS

Municipal Court for District of Columbia had jurisdiction to entertain suit against administrator for unpaid balance of note executed by deceased. *Mazo* v. *Ed. L. Stock, Inc.* (D. C. 1943, 31 A. 2d 660).

AMOUNT CLAIMED

District Court for District of Columbia did not have jurisdiction of action to have trust impressed on funds amounting to $1,980 or, in alternative, for money judgment, regardless of whether complaint would have formerly been denoted a suit at law or a bill in equity, in view of this section giving Municipal Court exclusive jurisdiction of "civil actions" involving "personal property" having value less than $3,000. *Klepinger* v. *Rhodes,* 1944 (140 F 2d 697, 78 U. S. App. D. C. 340, certiorari denied 64 S. Ct. 1047, 322 U. S. 734, 88 L. Ed. 1568).

Suits in which the alleged value of personal property or debt or damages claimed does not exceed $3,000 are in exclusive jurisdiction of Municipal Court for the District of Columbia. *Rowe* v. *Nolan Finance Co.,* 1944 (142 F. 2d 93, 79 U. S. App. D. C. 35).

Where husband and wife in a single action each sought damages in amount of $3,000 for personal injuries, suit was within jurisdiction of Municipal Court, since each of claims was within $3,000 limit of court's jurisdiction. *Taylor* v. *Yellow Cab Co. of D. C.* (D. C. Mun. App. 1947, 53 A. 2d 691).

The District Court had jurisdiction of action by administrator for balance due on compensation award to plaintiff's decedent although amount owing at time of decedent's death was less than $3,000. *Turner* v. *Christian Heurich Brewing Co.* (C. A., D. C. 1948, 169 F. 2d 681).

In some classes of cases, such as suits for rent overcharges and actions transferred by the District Court, the jurisdiction of the Municipal Court is unlimited as to amount. However, its jurisdiction in tort and contract cases is limited to $3,000. It is entirely clear that this limitation applies not only to the original claim but also to counterclaims and cross claims. *Hillyard* v. *Kline* (D. C. Mun. App. 1949, 64 A. 2d 759).

The trial court is one of limited jurisdiction and the pleadings in that court should show that the matter involved is within its jurisdiction. Where there was no claim of value stated in the petition below, but where it was agreed that when the case was tried, the goods involved had then been converted into cash exceeding the jurisdictional limits, the court was without jurisdiction. *Bowles* v. *Stonebraker* (D. C. Mun. App. 1949, 65 A. 2d 575).

When a third party makes claim to goods seized under an attachment on a judgment, the amount involved is not the amount of the judgment but the value of the property claimed. *Bowles* v. *Stonebraker* (D. C. Mun. App. 1949, 65 A. 2d 575).

CONTINUANCE

Where accused was represented by counsel of his own choice at time of arraignment and such counsel was with accused on date case was originally set for trial, but case was continued at request of accused and there was no evidence of further action by such counsel or explanation of his absence on trial date or showing that accused on day of trial made any effort to locate such counsel, there was no abuse of discretion in refusing a continuance or in proceeding to trial with assigned counsel. *Slaughter* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 700).

Denial of continuance requested by accused because of the absence of witnesses was not improper in absence of showing of expected testimony or probability that absent witnesses would be available if case were continued or showing of probability that absence of witnesses substantially affected result of trial or that result would have been different if they had been located and produced. *Slaughter* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 700).

Where the trial court had said a doctor's certificate would be required before the case could be continued because of appellant's illness and appellant was produced in court for the trial which continued without further objection, the question of granting the continuance was in the judicial discretion of the trial court. *Campbell* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

Under the circumstances of the case, the question whether to grant a further continuance was a matter of discretion with the trial judge. The refusal thereof affords no basis for inquiry by an appellate court. *Glenn* v. *Mindell* (D. C. Mun. App. 1950, 74 A. 2d 835).

Where illness of defendant prevented trial, motion for continuance rests in sound discretion of the Trial Court and is not subject to reversal unless discretion is abused or not in accordance with fixed legal principles. *Etty* v. *Middleton* (D. C. Mun. App. 1948, 62 A. 2d 371).

The granting or refusal of a continuance by the trial court is not reviewable except for abuse of discretion. *Hillyard* v. *Smither & Mayton, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 166).

DISCOVERY

Where case originates in the Municipal Court of the District of Columbia and proceeds to judgment in that forum, which judgment is subsequently transcripted to the District Court for lien purposes or to extend the statutory period of limitations, the better practice would be to utilize the methods of discovery provided by the rules of the Municipal Court. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

DISCRETION OF COURT

Whether a defense shall stand or be set aside rests in the sound discretion of the trial court and where before denying the motion to vacate, the trial court heard all testimony to determine whether appellant had a meritorious defense and was convinced that no such defense existed, discretion was not abused. *Schoon* v. *Marvins Credit, Inc.* (D. C. Mun. App. 1949, 65 A. 2d 212).

DISMISSAL

Where, on the second call of the calendar after plaintiff failed to appear, defendant moved that the action be dismissed with prejudice, and the court granted this motion, argument that rule permits only dismissal without prejudice is unfounded. The rule limits the authority of the clerk to a dismissal but imposes no express restriction on action by the court. Unless expressly restricted by statute or rule, a court has inherent power to dismiss an action for want of prosecution. *Jarcy* v. *Griffith* (D. C. Mun. App. 1949, 65 A. 2d 919).

Where a complaint for libel did not set forth the alleged defamatory matter verbatim, dismissal of the complaint was plainly correct. *Watwood* v. *Credit Bureau, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 905).

DIRECTED VERDICT

Directed verdict in favor of the District was proper where there was no evidence showing that defendant's automobile ran through a depression and collided with plaintiff's automobile in road maintained by the District. *Bale* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 551).

DOCKETING, EFFECT OF

Under this chapter, the mere docketing of a judgment of the Municipal Court of the District of Columbia in the District Court makes the judgment of the Municipal Court a judgment of the District Court for all purposes as if it had originally been obtained there, but the judgment does not lose its character as a judgment of the inferior court although it also becomes a judgment of the District Court. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

Where judgment obtained in the Municipal Court of the District of Columbia was docketed in the District Court, giving the District Court concurrent jurisdiction with the Municipal Court, and there was no reason why proceedings supplemental to execution could not be taken in the Municipal Court, the District Court would, under the doctrine of forum non conveniens, refuse to exercise its jurisdiction of the proceeding. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

Municipal Court is not divested of jurisdiction where it entertains supplemental proceedings in aid of execution of its judgment subsequent to the docketing of the judgment in the District Court, since there is no statute to the effect that Municipal Court loses jurisdiction upon

the docketing of its judgment in District Court. *Halperin* v. *Cohen* (D. C. Mun. App. 1949, 67 A. 2d 295).

EXECUTION

Generally, in the absence of statute to the contrary, execution should issue from the court rendering the judgment, rather than from the superior court to which the judgment has been transcripted. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

EQUITABLE POWER

Even in the exercise of its equitable power, the Municipal Court for the District of Columbia had no right to entertain a collateral attack on foreign judgment or to award judgment debtor a retrial of his case. *Suydam* v. *Ameli* (D. C. Mun. App. 1946, 46 A. 2d 763).

Principles that equitable defense may be interposed in all actions at law, that mutual debts and claims under contract between parties to common-law action may be set off against each other and that where claim of set-off is made, judgment must be rendered for balance found due whether to plaintiff or defendant with costs, apply to landlord and tenant actions in Municipal Court in District of Columbia. *Mitchell* v. *David* (D. C. Mun. App. 1947, 51 A. 2d 375).

The remedy in equity for breach of a partnership agreement is not exclusive, and there may be at law a recovery for such breach. It is only when the controversy involves an investigation and audit of accounts that resort must be had to equity. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

IDENTITY OF CLAIM

If two separate and distinct primary rights should be invaded by one and the same wrong or if a single primary right should be invaded by two distinct and separate legal wrongs, two causes of actions would result, and unless the "evidence necessary to prove one cause of action would establish the other" there is no identity of causes of action. *Astor Pictures Corp.* v. *Shull* (D. C. Mun. App. 1949, 64 A. 2d 160).

JURISDICTION

Where the parties both claim title to the real estate, which is the subject of the possessory action, it is clear that the trial court has no power to decide the question of ownership. *Everett* v. *Miller* (D. C. Mun. App. 1949, 67 A. 2d 399).

In a class B action involving less than $500, Municipal Court rules apply, and trial court erred in ruling that defendant waived jurisdiction by failing to raise it by motion since rules do not preclude raising any defense available; further, jurisdiction over subject matter may never be conferred by consent and may even be questioned for first time on appeal. *Duvall* v. *Southern Municipal Corp.* (D. C. Mun. App. 1949, 63 A. 2d 336).

So long as a wife's action for divorce or separate maintenance was pending in District Court, the Municipal Court ought not to entertain a proceeding between the parties involving any of the issues in the District Court proceeding. *Keleher* v. *Keleher* (D. C. Mun. App. 1948, 62 A. 2d 638).

Jurisdiction of the subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and it may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D. C. Mun. App. 1948, 63 A. 2d 649).

Where, in an ordinary action for personal damages, the proof establishes that the title to realty is really in issue, the case no longer involves personal property, debt or damage, so as to come within court's expanded jurisdiction. *Duvall* v. *Southern Municipal Corp.* (D. C. Mun. App. 1949, 63 A. 2d 336).

Where in a motion for summary judgment, supporting affidavits show plainly that the issue between the parties was whether defendant had good title to real estate, the court is without jurisdiction since court would have had to determine the state of the title. *Cohen* v. *Brandt* (D. C. Mun. App. 1949, 63 A. 2d 853).

JURISDICTION AFTER APPEAL

When the mandate of an appellate court is filed in the lower court, that court reacquires the jurisdiction which it lost by the taking of the appeal. *Pyramid National Van Lines, Inc.* v. *Goetze* (D. C. Mun. App. 1949, 66 A. 2d 693).

JURISDICTION, DISTRICT COURT DECREE

An issue of how much defendant should pay his wife for necessaries litigated in District Court was res judicata between husband and wife and that court alone had the power to reopen and modify decree. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

LAW OF THE CASE

Instructions approved by appellate court became "law of the case", and failure to give them upon retrial was error unless they were given in substance in general charge. *Frazer* v. *Crounse* (D. C. Mun. App. 1948, 56 A. 2d 54).

MOTION FOR NEW TRIAL

Trial judge may on his own motion require more detailed affidavits or testimony for and against motion for new trial, but failure to do so does not necessarily constitute abuse of discretion. *Peay* v. *Parks* (D. C. Mun. App. 1945, 42 A. 2d 250).

One seeking a new trial must present substantial reasons for believing that an injustice has been done or that for some other good reason the circumstances entitle him to a second day in court, and it is not enough merely to suggest vague grounds for new trial. *Peay* v. *Parks* (D. C. Mun. App. 1945, 42 A. 2d 250).

Where defendant moved for a new trial or for judgment notwithstanding verdict, trial court must act upon each and granting of motion for judgment is not ground for summarily denying motion for new trial. The court must indicate its reasons therefor. *Crusade* v. *Capital Transit Co.* (D. C. Mun. App. 1949, 63 A. 2d 878, see also 68 A. 2d 207).

PLEADINGS

An assertion in pleadings that plaintiff received tax deed from commissioner does not place title in issue and where intervenor did not plead irregularity in tax deed, he did not waive right to raise the question of the jurisdiction of the Municipal Court over the controversy. *Duvall* v. *Southern Municipal Corp.* (D. C. Mun. App. 1949, 63 A. 2d 336).

Where subject matter of the present suit was returned after suit was filed, but prior to the filing of the answer, evidence warranted the invocation of the rule providing that when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings, and failure to amend does not affect the result of these issues. *Orrison* v. *Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

PROBATION CONDITIONED ON RESTITUTION

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile* v. *United States* (D. C. Mun. App. 1944, 38 A. 2d 620).

Where record was devoid of anything indicating that there was newly discovered evidence or that claimed newly discovered evidence met any of the familiar tests which would entitle defeated litigant to a new trial, refusal of motion for new trial on the ground of newly discovered evidence was not an abuse of discretion. *Levy* v. *Bryce* (D. C. Mun. App. 1946, 46 A. 2d 765).

PURPOSE

The real purpose of this section providing that where a judgment of the Municipal Court of the District of Columbia is docketed in the District Court it becomes a judgment of the District Court, was to provide for a lien on real estate and to extend the period of limitation. *Paley* v. *Solomon* (D. C., D. C. 1945, 59 F. Supp. 887).

REMEDY AS LEGAL OR EQUITABLE

The term "personal property," within this section giving Municipal Court for District of Columbia jurisdiction of

civil actions involving personal property having value less than $3,000, covers choses in action whether they are legal or equitable, and the words "civil actions" are generally held to cover both actions at law and actions in equity. *Klepinger* v. *Rhodes,* 1944 (140 F. 2d 697, 78 U. S. App. D. C. 340, certiorari denied 64 S. Ct. 1047, 322 U. S. 734, 88 L. Ed. 1568).

The jurisdiction of the Municipal Court for the District of Columbia embraces equitable as well as legal actions. *Ridgley* v. *U. S.* (D. C. Mun. App. 1945, 45 A. 2d 475).

Representation by Counsel

Where accused made no protest or objection with respect to appointment of counsel but conferred with such counsel for some fifteen minutes prior to trial, and no request was made for further period of consultation or for continuance, accused could not complain that he was deprived of effective assistance of counsel because of short time that elapsed between appointment of counsel and time of trial, particularly where accused was free on bond for four months between time of arraignment and time of trial, during which period he and counsel of his choice had ample opportunity to prepare defense. *Slaughter* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 700).

Where defendant had been granted four additional days in which to procure his own counsel and the trial court finally appointed an attorney with the defendant expressing no dissatisfaction, conferred with him for fifteen minutes prior to the trial and did not ask for a longer period, the defendant was not deprived of counsel of his own choice at the trial of his case. *Slaughter* v. *U. S.* (D. C. Mun. App. 1949, 65 A. 2d 570, C. A. D. C. 1949, 172 F. 2d 281).

Res Judicata

Where, even assuming jurisdiction in Municipal Court, the responsibility of the husband to pay rent for wife's separate apartment has been fully presented to and decided by the District Court, and the doctrine of res judicata precluded relitigation of that issue in the Municipal Court. *Keleher* v. *Keleher* (D. C. Mun. App. 1948, 62 A. 2d 638).

Right of Suit

To acquire the right of suit, the plaintiff must be a direct, as distinguished from a mere incidental beneficiary because an incidental beneficiary acquires by virtue of the promise no right against the promisor or the promisee. *Schwartz* v. *Brown* (D. C. Mun. App. 1949, 64 A. 2d 298).

Right to Jury Trial

In the Landlord and Tenant Branch of the Municipal Court, parties are not entitled as a matter of right to separate jury trials on what used to be called pleas and abatements and it lies within the sound discretion of the trial court to decide whether such separate jury trials shall be had. *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

Right to Nonsuit

Under rule 37 (a) of the Municipal Court, plaintiffs have lost their right to a nonsuit or voluntary dismissal after defendant's answer has been filed, since beyond that point an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. *Mercer* v. *Equitable Life Insurance Society* (D. C. Mun. App. 1949, 65 A. 2d 207).

Separate Maintenance

Municipal court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly, judgment obtained by physician for professional services rendered to wife against husband must be dismissed. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

Wife's claim against husband for amount of rent due was in substance an action to compel the husband to provide funds for her separate maintenance over which the Municipal Court had no jurisdiction since such relief is specifically given to the District Court. *Keleher* v. *Keleher* (D. C. Mun. App. 1948, 62 A. 2d 638).

Splitting of Claim

A single or entire claim or demand cannot be split up and divided into separate claims and separate suits maintained for the various parts thereof. But the rule does not require that two distinct causes of actions, either of which would by itself authorize independent relief, must be presented in a single suit though they exist at the same time and might be considered together. *Astor Pictures Corp.* v. *Shull* (D. C. Mun. App. 1949, 64 A. 2d 160).

Statutory Penalty

Civil Rights Act did not confer jurisdiction upon United States courts in general but in respect of actions for penalties, the act gave jurisdiction specifically to the territorial, district or circuit courts. The Municipal Court is not one of these courts and has no such jurisdiction. *Henderson* v. *E Street Theatre Corporation* (D. C. Mun. App. 1948, 63 A. 2d 649).

Stay of Proceedings

The Municipal Court has power, under proper circumstances, to stay its own proceedings pending determination of an action in the District Court. *Bradley* v. *Triplex Shoe Company* (D. C. Mun. App. 1949, 66 A. 2d 208).

Subpoena Duces Tecum

There is no rule in the trial court with respect to the issuance of subpoena duces tecum in criminal cases, but the practice there appears to require the approval of the court for the issuance of such a subpoena. In view of the federal rules and the trial court's own rule in civil cases, it would have been better policy to issue the subpoena and rule on the admissibility of the evidence when offered, but we find no prejudicial error in the court's refusal of such requests. *Kelly* v. *United States* (D. C. Mun. App. 1950, 73 A. 2d 232).

Where appellant was convicted for violation of Code § 22–2701, it was not error for the court to refuse to issue a compulsory process for obtaining witnesses, since the rule is well established that a party is not entitled of right to a subpoena duces tecum in any form, at any time and under any circumstances and a subpoena duces tecum too indefinite in terms, too broad in scope, or untimely requested may properly be denied. *Kelly* v. *United States* (D. C. Mun. App. 1950, 73 A. 2d 232).

Title to Realty

Municipal court should not reject jurisdiction unless and until it is made to appear that the title to land is necessarily directly in issue between the parties. *Mindell* v. *Glenn* (D. C. Mun. App. 1949, 65 A. 2d 340, as aff'd 74 A. 2d 835).

Where plaintiff's purchase included real property at a sale under a deed of trust made by defendant to secure a debt, suit for possession must not be confused with other categories of actions in which it is claimed that title to real property is involved. *Mindell* v. *Glenn* (D. C. Mun. App. 1949, 65 A. 2d 340, as aff'd 74 A. 2d 835).

United States Actions

The Municipal Court of District of Columbia does not have jurisdiction of suits brought by the United States. *U. S.* v. *Sheriff Motor Co.* (D. C., D. C. 1943, 63 F. Supp. 685).

The Municipal Court for the District of Columbia had jurisdiction of action brought by the United States to recover $269.03 for rent. *Ridgley* v. *U. S.* (D. C. Mun. App. 1945, 45 A. 2d 475).

The United States was not precluded from bringing dispossessory proceedings against tenant in the Municipal Court for the District of Columbia, over objection of tenant that the United States District Court for the District of Columbia had exclusive jurisdiction. *Wittek* v. *U. S.* (D. C. Mun. App. 1947, 54 A. 2d 747; reversed 171 F. 2d 8, 83 U. S. App. D. C. 377, cert. granted 69 S. Ct. 737, 336 U. S. 931, 93 L. Ed. 1092; reversed and remanded 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406).

§ 11–756. Transfer of actions from District Court of the United States for the District of Columbia—Amount of judgment—Power to prescribe rules and procedure—Attendance of witnesses.

(a) If, in any action, other than an action for equitable relief, pending on the effective date of this subchapter or thereafter commenced in the District Court of the United States for the District of Columbia, it shall appear to the satisfaction of the court at any pretrial hearing thereof that the action will not justify a judgment in excess of $1,000, the court may certify such action to The Municipal Court for the District of Columbia for trial. The pleadings in such action, together with a copy of the docket entries and of any orders theretofore entered therein, shall be sent to the clerk of the said Municipal Court, together with the deposit for costs, and the case shall be called for trial in that court promptly thereafter; and shall thereafter be treated as though it had been filed originally in the said Municipal Court, except that the jurisdiction of that court shall extend to the amount claimed in such action, even though it exceed the sum of $3,000.

(b) The Municipal Court for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure in such court, to provide for the efficient administration of justice, and the same shall conform as nearly as may be practicable to the forms, practice, and procedure now obtaining under the Federal Rules of Civil Procedure. Said rules shall not abridge, enlarge, or modify the substantive rights of any litigant. After September 16, 1938, all laws in conflict therewith shall be of no further force or effect: *Provided, however,* That nothing in this section shall be construed to require any change in the existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia; nor shall this subchapter and subchapter III or any section thereof in any way repeal or modify the provisions of sections 11–801 to 11–820, establishing said small claims and conciliation branch.

(c) The Municipal Court for the District of Columbia shall have the power to compel the attendance of witnesses from any part of the District of Columbia by attachment, and any judge thereof shall have the power to punish for disobedience of any order, or contempt committed in the presence of the Court by a fine not exceeding $50 or imprisonment not exceeding thirty days. (Apr. 1, 1942, 56 Stat. 193, ch. 207, § 5.)

EFFECTIVE DATE

See note preceding § 11–751.

SEPARABILITY CLAUSE

See note under § 11–751.

CROSS REFERENCES

Deposits for jury trials, see § 11–749.

Jury trials and juries, see §§ 11–616 to 11–618 and §§ 11–715 and 11–716

Nonresident witnesses, see § 11–741.

Witness fees, see § 11–615.

NOTES TO DECISIONS

AFFIRMATIVE DEFENSES

Contributory negligence is an affirmative defense and must be pleaded and proved by defendant. *Gittleson* v. *Robinson* (D. C. Mun. App. 1948, 61 A. 2d 635).

The defense of the statute of frauds is an affirmative defense and must be pleaded. *Saunders System Washington Co.* v. *Kuffner* (D. C. Mun. App. 1950, 75 A. 2d 136).

CONDITIONS ON DISMISSAL

Rule 37 providing that after service of answer an action shall not be dismissed at plaintiff's instance save on order of the court and on such terms as the court deems proper, does not make it mandatory on the trial judge to assess counsel fees as a condition to dismissal without prejudice. *Adams* v. *Davis* (D. C. Mun. App. 1946, 47 A. 2d 792).

Where plaintiffs did not know seriousness of injuries for which recovery was sought until shortly before trial in municipal court because physician who had treated injuries could not previously be located because he was in the navy, plaintiffs' motion to dismiss the action without prejudice was granted without requiring plaintiffs to pay defendants' counsel fees as a condition of the dismissal. *Adams* v. *Davis* (D. C. Mun. App. 1946, 47 A. 2d 792).

CONTEMPT

Where an attorney for accused during trial publishes a document containing highly derogatory assertions regarding trial judge's alleged relations to trial and his alleged conduct of the trial and which is in effect a public profession of contempt for the judge's character, attorney should ask to be excused from trial. *Laughlin* v. *Eicher,* 1944 (145 F. 2d 700, 79 U. S. App. D. C. 266, certiorari denied 65 S. Ct. 1403, 325 U. S. 866, 89 L. Ed. 1985).

Where during trial and in open court attorney accused trial judge of gross and habitual misconduct in the trial, the attorney's conduct was contempt in court's presence and justified order dismissing attorney from the trial. *Laughlin* v. *Eicher* (App. D. C. 1944, 145 F. 2d 700).

A defendant may be adjudged in contempt for failure to pay permanent alimony awarded in a final judgment for absolute divorce. *Tilghman* v. *Tilghman* (D. C., D. C. 1944, 57 F. Supp. 417).

A court, once having acquired jurisdiction over person of defendant, is empowered to enter a contempt order, notwithstanding defendant's absence from jurisdiction, provided he received notice of the motion. *Tilghman* v. *Tilghman* (D. C., D. C. 1944, 57 F. Supp. 417).

To call another a liar in the presence of the court and while the court is in session amounts to contempt of court. An attorney, as an officer of the court, must behave with propriety in the courtroom. *In re Chaifetz* (D. C. Mun. App. 1949, 68 A. 2d 228).

Due process of law in the prosecution of contempt, except where committed in open court, requires that the accused be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. *In re Chaifetz* (D. C. Mun. App. 1949, 68 A. 2d 228).

Where contempt would be civil in nature, the rule is that action on such a matter is not reversible unless an abuse of discretion is made to appear. *Daime* v. *Price* (D. C. Mun. App. 1950, 71 A. 2d 611).

COMPLIANCE WITH PROCESS

A court will not condone a wilful or negligent disregard of court process, rules or orders. *Manos* v. *Fickenscher* (D. C. Mun App. 1948, 62 A. 2d 791).

COUNTERCLAIMS

Whether claim asserted in District of Columbia Municipal Court action actually constituted compulsory counterclaim to suit in District Court of United States for District of Columbia was question for District Court, since such question involved interpretation of District Court's own rules. *Kaplowitz Bros.* v. *Kahan* (D. C. Mun. App. 1948, 59 A. 2d 795).

Defendant's argument that, under rules of the Municipal Court, his claim constituted a compulsory counterclaim which would be waived if not pleaded in the Municipal Court action, is unfounded since the Municipal

Court could not change or enlarge its jurisdiction by a rule. *Hillyard* v. *Kline* (D. C. Mun. App. 1949, 64 A. 2d 759).

It is clear that in an action for earned freight charges, a counterclaim for cargo damages is a compulsory counterclaim under court rules. *Pyramid National Van Lines, Inc.* v. *Goetz* (D. C. Mun. App. 1949, 66 A. 2d 693).

Defendant's Statement Before Sentence

Where accused, conducting his own defense, testified fully and argued his position exhaustively, he was not deprived of any substantial right by failure to afford him the opportunity to make a statement before sentence was pronounced as accorded him by Rule 12 (a) of the Criminal Division of the Municipal Court. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 1948, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied, 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied, 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

Depositions

Municipal court has no general authority to award counsel fees or traveling expenses incurred by counsel to attend taking of deposition in another city on notice of opposing party, in absence of specific statutory authority or court rule having statutory force and effect. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

Where counsel served notice that deposition would be taken in another city and on assurance that witness would attend failed to serve subpoena but witness, because of emergency surgical operation, was unable to attend and would not have done so even under subpoena, opposite party was not entitled under municipal court rule to attorney's fees and expenses for attendance at time and place stated in notice. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

Directed Verdict

The practice of submitting cases to the jury and reserving determination of questions of law raised on motion for a directed verdict, so that if the Municipal Court of Appeals disagrees with the trial court's ruling on motion for directed verdict, the jury's verdict can be reinstated without necessity for a new trial, is commendable. *Resnick* v. *Wolf & Cohen* (D. C. Mun. App. 1946, 49 A. 2d 809).

Question of whether accident was proximately caused by negligence of appellee's driver and question of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D. C. Mun. App. 1948, 62 A. 2d 797).

Dismissal

The municipal court, after hearing evidence and taking case under advisement, was authorized to make finding for either plaintiffs or defendant, had discretion to reopen case for purpose of taking further testimony respecting plaintiffs' damages, and could have suggested to plaintiffs advisability of taking voluntary nonsuit, but was not authorized to order dismissal of case without prejudice, in absence of plaintiffs' consent.—*Wade* v. *Union Storage & Transfer Co.* (D. C. Mun. App. 1943, 58 A. 2d 493).

Dismissal of cause without prejudice on ground that plaintiff has shown no right to relief after he has completed presentation of his evidence has effect of involuntary nonsuit, but such dismissal after completion of evidence on both sides and submission of case for decision is not authorized by municipal court rules.—*Wade* v. *Union Storage & Transfer Co.* (D. C. Mun. App. 1948, 58 A. 2d 493).

Municipal Court Rule 37, providing that an action shall not be dismissed at plaintiff's insistence save on order of court, was not applicable in suit by landlord to recover leased premises, and municipal court was governed by general practice which existed prior to adoption of municipal court rules, and which permitted plaintiff to dismiss his action at any time prior to verdict, since Rule 10 of the Landlord and Tenant Branch which makes applicable to that branch of the court certain general civil rules, does not include the Municipal Court Rule 37 dealing with voluntary dismissal by plaintiff.—*Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

Duty of Court

A party to a cause of action is entitled to have his theory submitted to jury when supported by evidence and pleadings, and the court has duty to submit all such issues, both affirmative and negative. *Fraser* v. *Crounse* (D. C. Mun. App. 1945, 45 A. 2d 757).

In a case tried by the court without a jury, the court has the duty to rule upon requested and pertinent questions of law. *Eggleton* v. *Vaughn* (D. C. Mun. App. 1946, 45 A. 2d 362).

The trial court not only has the power but also the duty to set aside a verdict which is grossly and capriciously excessive. Failure to do so will constitute reversible error. *Munsey* v. *Safeway Stores* (D. C. Mun. App. 1949, 65 A. 2d 598).

Examination and Cross-Examination

Where trial court erroneously ruled that defendant was bound by testimony of plaintiff when plaintiff was called for cross-examination by defendant, but before conclusion of trial announced that it would not treat testimony of witness as binding, defendant could not be deemed prejudiced thereby. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

Under court rule providing that party may call, interrogate and impeach adverse party in all respects as if he had been called by adverse party, defendant was not bound by testimony of plaintiff when plaintiff was called for cross-examination by defendant. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

Federal Laws

28 U. S. C. § 632 providing that the failure of a defendant in a criminal case to testify shall not create any presumption against him applies to prosecution in the Municipal Court for the District of Columbia since there is no local statute on the subject. *Brooks* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 339).

Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., do not control the practice in the Municipal Court of the District of Columbia, and, although this section authorized that court to prescribe court rules, the existing rules prevail until adoption of new rules. *Yellow Cab Co. of D. C.* v. *Rogers* (D. C. Mun. App. 1943, 34 A. 2d 36).

The Federal Rules of Civil Procedure, following § 723c of 28 U. S. C. do not control practice in the Municipal Court for the District of Columbia. *Werth* v. *Nolan* (D. C. 1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9, 79 U. S. App. D. C. 33).

The Federal Rules of Civil Procedure, 28 U. S. C., are inapplicable to Municipal Court for District of Columbia. *Taylor* v. *United Broadcasting Co.* (D. C. Mun. App. 1948, 61 A. 2d 480).

Rules of United States District Court for District of Columbia do not govern practice of Municipal Courts for District of Columbia. *Coates* v. *Ellis* (D. C. Mun. App. 1948, 61 A. 2d 28).

Findings

Under Municipal Court rule providing for the entry of judgment on the fifth day after verdict or finding by the court and that if a motion for new trial or for judgment notwithstanding the verdict has been filed forthwith upon the ruling of the court on such motion, "finding" means a general finding or decision of the court which ripens into a judgment on the fifth day in the absence of the filing of a motion. *Rice* v. *Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

Municipal Court Rule 37 (b) authorizing defendant to move for dismissal of action on ground that plaintiff has shown no right to relief on facts and law after plaintiff completes presentation of his evidence, does not give such court power to make fact findings at conclusion of plaintiff's case, but such findings should await conclusion of entire evidence. *Taylor* v. *United Broadcasting Co.* (D. C. Mun. App. 1948, 61 A. 2d 480).

INSTRUCTIONS

Where defendant's counsel twice objected to prosecutor's statement in presence of jury that defendant had not testified and was directed by court to proceed, prosecutor's statement was improper and was not cured by instruction after argument that defendant's failure to take the stand should not be taken against him and that jury should not speculate as to reason for such failure. *Brooks* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d. 339).

The trial court does not have duty to recast a misleading instruction requested by accused in a criminal case. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 56 A. 2d 851).

Police officers who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct shall be received with caution. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied, 180 F. 2d 909).

JOINDER OF CLAIMS

Parties asserting claims arising out of the same transaction or occurrence may join claims in one action under Municipal Court rule. *National City Development Co.* v. *McFerran* (D. C. Mun. App. 1947, 55 A. 2d 342).

JUDGMENT NOTWITHSTANDING VERDICT

Under rule 46 (b) of the Municipal Court, a motion for judgment notwithstanding verdict cannot be granted unless as a matter of law the opponent of the movant failed to make a case and therefore a verdict in movant's favor should have been directed. *McSweeney* v. *Wilson* (D. C. Mun. App. 1946, 48 A. 2d 469).

Granting of new trial is addressed to sound discretion of trial judge. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

Under Municipal Court rule 46 (b), a motion for judgment notwithstanding verdict can be entertained only where party making it has at trial moved for a directed verdict. *Snyder* v. *Thorniley* (D. C. Mun. App. 1948, 62 A. 2d 316).

LAW GOVERNING

Where there was a conflict between Landlord and Tenant Rule 6 and § 11–737 dealing with costs in a summary proceeding, § 11–737 would prevail. *Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

LAW OF THE CASE

Where on appeal in an action for abuse of civil process, summary judgment was granted in favor of the defendant, and the action originally filed in the District Court was transferred to the Municipal Court, this jurisdiction requires a final judgment to sustain the application of the rule of the law of the case. The procedural rights and duties of the litigant are governed by the municipal court rules from the time of filing of the case in that court. *Davis* v. *Boyle Brothers* (D. C. Mun. App. 1950, 73 A. 2d 517).

MINUTE ENTRIES

Under rule 48 of Municipal Court stating that action by the court shall be evidenced by a minute entry, the entry is not a condition of the effectiveness of the court's action. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 46 A. 2d 562).

NEW TRIAL

The municipal court's finding, at completion of both parties' evidence, that plaintiff failed to prove amount of damages to which he was entitled, but might supply sufficient evidence to substantiate his claim on new trial, and that, consequently, action was dismissed without prejudice, did not order new trial, especially as such order would have been improper at that stage of case. *Wade* v. *Union Storage & Transfer Co.* (D. C. Mun. App. 1948, 58 A. 2d 493).

MOTIONS IN NON-JURY ACTIONS

A motion by defendant for directed verdict at conclusion of plaintiff's case in action tried by court without jury is improper, but proper procedure is to move for finding for defendant, and law questions to be decided at conclusion of all evidence should be raised by request for rulings of law, not by motion for directed verdict. *Taylor* v. *United Broadcasting Co.* (D. C. Mun. App. 1948, 61 A. 2d 480).

NOTICE OF ENTRY

Rule 66 (e) of the Municipal Court providing for notice immediately upon the entry of an order or judgment signed or decided out of the presence of parties or their counsel was not applicable where the judgment was pronounced in the presence of the parties and their counsel. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

NOTICE OF HEARING

Notice by defendant to plaintiff's counsel of the taking of plaintiff's deposition by oral examination was sufficient without resort to a subpoena to secure plaintiff's attendance at deposition hearing, since notice to attorney was notice to plaintiff. *Parker* v. *Hot Shoppes* (D. C. Mun. App. 1946, 49 A. 2d 657).

PERMISSIVE JOINDER OF PARTIES

Where subsection (b) of this section directed Municipal Court to prescribe rules conforming as nearly as might be practicable to Federal Rules of Civil Procedure, following section 723c of 28 U. S. C., proviso not appearing in Rule 20 (a) following section 723c of 28 U. S. C. but inserted in Municipal Court Rule 20 (a) relating to permissive joinder of parties, to effect that total amount claimed must not exceed court's jurisdiction, was invalid as constituting an attempt to limit court's jurisdiction. *Taylor* v. *Yellow Cab Co. of D. C.* (D. C. Mun. App. 1947, 53 A. 2d 691).

QUESTIONS FOR COURT

The trial judge could not consider weight or credibility of evidence and render judgment for defendant after plaintiff rested his case, without requiring defendants to introduce their evidence, as there was then no fact question before judge, but only law question of legal sufficiency of plaintiff's case. *Taylor* v. *United Broadcasting Co.* (D. C. Mun. App. 1948, 61 A. 2d 480).

REAL PARTY IN INTEREST

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of this section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule 17a restricting right to maintain suit to real party in interest. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

REMAND

District of Columbia Municipal Court cannot remand cases to District Court of United States for District of Columbia even though it might seem in the interests of justice so to do. *Kaplowitz Bros.* v. *Kahan* (D. C. Mun. App. 1948, 59 A. 2d 795).

REOPENING CASE

In action by mother against purchaser of rooming house and rooming house business owned by her daughters to recover value of goods and services claimed by purchaser to have been included in sales price, where court found upon ample evidence that purchaser had agreed to buy disputed items but that no sales price had been agreed upon, court could properly reopen case of its own motion after both sides had rested and case had been taken under advisement to admit evidence as to value of goods notwithstanding mother's case had been based on theory of account stated. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

Motion to reopen case to receive testimony of additional witnesses is addressed to sound discretion of trial judge. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

REPORT OF PROCEEDINGS

Where trial court refused to order official reporter and requested that stenographer employed by appellant write up testimony for court at conclusion of two different sessions of trial practice, though not to be approved, could

not be deemed reversible error since appellee was not a party to court's action and was not to be prejudiced thereby. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

Where outcome of case was not affected by refusal of trial judge to order proceedings reported by one of court's official reporters when requested to do so by defendants, and defendants were not harmed by judge's action except to extent that amount they paid to private reporter was greater than that which an official reporter would have charged, defendants had no ground to complain, since such expenditures were not taxable as costs. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D. C. Mun. App. 1948, 61 A. 2d 632).

Where trial court refused to provide an official stenographer at government's expense to report argument on motion for new trial, court did not abuse discretion where it appeared that the motion was one with which the judge was already familiar and where the proceedings consisted only of legal argument usually unnecessary to report. *Campbell* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

RULES OF COURT

Although this section authorized Municipal Court for District of Columbia to prescribe court rules, existing rules would prevail until adoption of new rules. *Werth* v. *Nolan* (D. C. 1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9).

In construing Municipal Court Rule based on Federal Rule of Civil Procedure, 28 U. S. C., Municipal Court of Appeals must give due and careful consideration to federal cases, but must keep clearly in mind different practices in two jurisdictions and avoid such construction of rule as to produce too great departure from established traditions and practice peculiar to Municipal Court. *Taylor* v. *United Broadcasting Co.* (D. C. Mun. App. 1948, 61 A. 2d 480).

Where in a suit for possession of real estate, the tenants desired to contest service of process and filed a motion to quash service and demanded jury trial on factual issues raised by such motion and another jury trial on the merits of the case if the issues of the motion were lost, trial judge correctly ruled that it is in the discretion of the court to order that jury trials upon the motion be deferred until the trial on the merits. *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

It is the policy of the court to give defendant an opportunity to present his case, and court is prone to adopt a liberal attitude in dealing with default judgment when satisfied of the good faith of the applicant. Such relief is remedial and should be liberally construed. *Manos* v. *Fickenscher* (D. C. Mun. App. 1948, 62 A. 2d 791).

STATEMENT OF CLAIM

If a party is in doubt as to how evidence will develop, he may under rule of Municipal Court set forth two or more statements of his claim alternatively or hypothetically, either in one count or separate counts. *Etty* v. *Federal Consulting Service* (D. C. Mun. App. 1948, 59 A. 2d 692).

STAY OF PROCEEDINGS

Where first party sued second party for personal injuries in District Court, and after filing of that complaint, but before service of process, second party filed independent action against first party in Municipal Court for property damages sustained in same collision, Municipal Court had power to stay proceedings until claims of both parties had finally been determined in District Court though it had no right to dismiss second action even if without prejudice. *Coates* v. *Ellis* (D. C. Mun. App. 1948, 61 A. 2d 28).

SUMMARY JUDGMENT

The Municipal Court Rule relating to summary judgment is substantially the same as Rule 56 following section 723c of 28 U. S. C. which has been construed as authorizing summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is and no genuine issue remains for trial. *McConchie* v. *Realty Associates* (D. C. Mun. App. 1947, 54 A. 2d 862).

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts but he must state facts in detail showing that he has personal knowledge. The burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

THIRD PARTY PRACTICE

Where third party defendants were not served with notices of the motion for summary judgment, such a defendant was deprived of no rights by such failure to serve notice and cannot complain; and court properly exercised its discretion in passing on the motion. *Schwartz v. Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

Under rules governing third party practice, the broker and third party defendant had the right to assert defenses to the purchaser's claim against the seller. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

VACATING DEFAULT

Allowance or refusal of a motion to set aside a default is within the discretion of the Trial Court but such discretion implies conscientious judgment which takes into account the law, the particular circumstances and competing considerations. *Manos* v. *Fickenscher* (D. C. Mun. App. 1948, 62 A. 2d 791).

There is nothing in the record indicating lack of good faith, or a showing of wilful disregard or contempt of the process. Although appellant was served only five days before return date, he acted with reasonable diligence after realizing his default and was in court less than twenty days after he was served with a prima facie defense. Reversal of a default judgment was justified. *Manos* v. *Fickenscher* (D. C. Mun. App. 1948, 62 A. 2d 791).

VARIANCE

Under rules of municipal court, a variance between pleading and proof is "material" where it is of a character to take the adversary by surprise and mislead him in the prosecution of his cause of action or defense. *Etty* v. *Federal Consulting Service* (D. C. Mun. App. 1948, 59 A. 2d 692).

There was no "fatal variance" between complaint alleging that defendant wrongfully withheld from plaintiff a sum of money representing a portion of funds which came into defendant's hands for distribution to plaintiff, and proof tending to show that defendant engaged plaintiff to assist defendant in making a sale of steel and agreed to pay plaintiff a sum equal to one-half of commission received by defendant, that through plaintiff's efforts the sale was made, and that defendant received her commission but refused to pay plaintiff the full sum agreed on. *Etty* v. *Federal Consulting Service* (D. C. Mun. App. 1948, 59 A. 2d 692).

SUBCHAPTER III.—THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

CROSS REFERENCES

Prior provisions covering this subject matter, see §§ 11–601 to 11–626 and §§ 11–701 to 11–749.

§ 11–771. Creation—Court of record—Seal—Judges—Number — Appointments — Qualifications — Tenure—Salaries—Oath—Disability—Clerk—Appointment and tenure—Duties—Salary—Other employees—Salaries.

There is hereby established and created an intermediate appellate court for the District of Columbia to be known as "The Municipal Court of Appeals for the District of Columbia", for the hearing of appeals from judgments and orders of The Municipal Court for the District of Columbia as established by subchapter I, and of the Juvenile Court of the District of Columbia, as hereinafter provided.

The court shall adopt and have a seal, and shall be a court of record.

The said court shall consist of three judges appointed by the President with the advice and consent of the Senate, two of whom shall constitute a quorum, and one of whom shall be designated by the President as chief judge.

No person other than a bona fide resident of the area consisting of the District of Columbia; Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the city of Alexandria, Virginia, and maintaining an actual place of abode in such area for at least five years immediately prior to his appointment, or who shall have been a judge of one of the courts of the District of Columbia, shall be appointed a judge of The Municipal Court of Appeals for the District of Columbia. Further, all appointees shall have been actively engaged in the practice of the law in the District of Columbia for a period of at least five years immediately prior to their appointment. Service during the present emergency in the armed forces of the United States shall be included in the computation of the five-year requirements herein specified.

The chief judge shall be appointed for a term of ten years and the associate judges shall be appointed initially for terms of eight and six years each.

Subsequent appointments and reappointments to this court shall be for a term of ten years each. All judges shall continue in office until their successors shall be appointed and qualified. Each judge shall be subject to removal only in the manner and for the same causes as are now or hereafter provided for the removal of Federal judges. The salary of the chief judge shall be $14,500 per annum and that of each associate judge shall be $14,000 per annum. Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States. In the event of the absence, disability, or disqualification of any judge of The Municipal Court of Appeals for the District of Columbia, or in the event of a vacancy in the office of any such judge, the chief judge of said court may designate and assign any judge of The Municipal Court for the District of Columbia to act temporarily as a judge of said court. Likewise the chief judge, whenever he finds it in the public interest to do so, may designate and assign any judge of said Municipal Court of Appeals to act temporarily as a judge of The Municipal Court for the District of Columbia. In the event of the absence, disability, or disqualification of the chief judge of said court, his powers shall be exercised by that judge of said court next in seniority according to the date of commission.

The said court shall appoint and remove a clerk who shall exercise the same powers and perform the same duties in regard to all matters within the jurisdiction of the court as are exercised and performed by the clerk of the United States Court of Appeals for the District of Columbia, so far as the same may be applicable, and his compensation shall be fixed by the court in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674). The clerk of the court, subject to the approval of the chief judge, shall have authority to appoint and remove such deputy clerks and such other employees as he may deem necessary, and to have their compensation fixed by the chief judge in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674), and shall have supervision and direction over them, except clerks serving the respective judges, who shall be appointed and removed from office by the respective judges, their compensation to be fixed by the respective judges in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, §§ 661–663, 664–673, and 674). (Apr. 1, 1942, 56 Stat. 194, ch. 207, § 6; July 28, 1949, 63 Stat. 483, ch. 369, § 3; Oct. 25, 1949, 63 Stat. 887, ch. 706, § 2.)

AMENDMENTS

The act of July 28, 1949, cited to text, increased the salary of the chief judge from $9,500 to $14,500, and of each associate judge from $9,000 to $14,500.

The act of Oct. 25, 1949, cited to text, changed the residence qualifications for judges by striking out the words "bona fide resident of the District of Columbia and maintaining an actual place of abode therein" and inserting in lieu thereof the words "bona fide resident of the area consisting of the District of Columbia; Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the city of Alexandria, Virginia, and maintaining an actual place of abode in such area".

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

CROSS REFERENCES

Recall of retired judges to service, see § 11–776.

§ 11–772. Right to appeal—Final order or judgment—Interlocutory orders—Appeals to United States Court of Appeals for the District of Columbia—Procedure—Printing of record or briefs on appeal—Scope of review—Retroactive effect.

(a) Any party aggrieved by any final order or judgment of The Municipal Court for the District of Columbia, as created by subchapter I, or of the Juvenile Court of the District of Columbia, may appeal therefrom as of right to The Municipal Court of Appeals for the District of Columbia. Appeals may also be taken to said court as of right from all interlocutory orders of The Municipal Court for the District of Columbia whereby the possession of property is changed or affected such as orders dissolving writs of attachment and the like: *Provided, however,* That reviews of judgments of the small claims and conciliation branch of the Municipal Court of the District of Columbia, and reviews of judgments in the criminal branch of the court where the penalty imposed is less than $50, shall be by application for the allowance of an appeal, filed in said Municipal Court of Appeals. Said application shall be on a standard form, in simple language, prescribed by The Municipal Court for the District of Columbia. When the appealing party is not represented by counsel, it shall be the duty of the clerk to prepare the application in his behalf. The application for appeal shall be filed in The Municipal Court of Appeals for the District of Columbia within three days from the date of judgment. It shall be

promptly presented by the clerk to the chief judge and to each of the associate judges for their consideration. If they or any one of them are of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal, and given a preferred status on the calendar, and heard in the same manner as other appeals in said court. If the chief judge and both associate judges shall be of the opinion that an appeal should be denied, such denial shall stand as an affirmance of the judgment of the trial court, from which there shall be no further appeal.

After the effective date of this subchapter, no writs of error or appeals, except in respect of judgments theretofore rendered, shall be granted by the United States Court of Appeals for the District of Columbia to the said Municipal Court or to the said Juvenile Court.

(b) The Municipal Court of Appeals for the District of Columbia shall have the power to prescribe by rules what parts of the proceedings in the court below shall constitute the record on appeal, and to require that the original papers be sent to it instead of copies thereof, and generally to regulate all matters relating to appeals, whether in the court below or in said The Municipal Court of Appeals for the District of Columbia.

(c) The Municipal Court of Appeals for the District of Columbia shall not require the record or briefs on appeal to be printed, and if they are printed, the cost of printing shall not be taxed as costs in the case. Said court shall review the record on appeal and shall affirm, reverse, or modify the order or judgment in accordance with law. If the issues of fact shall have been tried by jury, The Municipal Court of Appeals for the District of Columbia shall review the case only as to matters of law. If the case shall have been tried without a jury, The Municipal Court of Appeals for the District of Columbia shall have the power to review both as to the facts and the law, but in such case the judgment of the trial court shall not be set aside except for errors of law or unless it appears that the judgment is plainly wrong or without evidence to support it.

(d) This section shall not apply to any judgments rendered prior to the effective date of this subchapter. (Apr. 1, 1942, 56 Stat. 195, ch. 207, § 7.)

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

NOTES TO DECISIONS

GENERALLY

The Municipal Court of Appeals for the District of Columbia cannot extend language of statute so as to include a class of appeals which Congress plainly did not intend to be within court's jurisdiction. *Brown* v. *Randle & Garvin* (D. C. 1943, 32 A. 2d 104).

The Municipal Court of Appeals for the District of Columbia has no power to entertain special appeals nor discretionary power with reference to interlocutory orders. *Brown* v. *Randle & Garvin* (D. C. 1943, 32 A. 2d 104).

An unsuccessful party cannot reinvest himself with a lost right of appeal by moving to set aside the judgment and grant new trial. *Crowley* v. *Wood* (D. C. 1943, 31 A. 2d 861).

Generally, applications for allowance of appeal from judgment of Small Claims and Conciliation Branch of Municipal Court of District of Columbia are allowed only when there is a showing of apparent error or a question of law which has not been, but should be, decided by Municipal Court of Appeals. *Ionescue* v. *Dettmers* (D. C. Mun. App. 1947, 53 A. 2d 287); *American Storage Co.* v. *Briggs* (D. C. Mun. App. 1948, 56 A. 2d 557).

In brokers' action against restaurant owners for commissions for attempted sale of restaurant, agreement between restaurant owners and prospective buyers for sale of business, subsequent to trial and subsequent to submission of case on appeal, could not affect decision of reviewing court. *Young* v. *De Vito* (D. C. Mun. App. 1948, 56 A. 2d 558).

AFFIRMANCE

The Municipal Court of Appeals is entitled to affirm a decision which it believes correct, even though the reasons given for the decision by the trial court are erroneous. *Plant* v. *Plant* (D. C. Mun. App. 1948, 57 A. 2d 204).

ALLOWANCE OF APPEAL

Where application for leave to appeal from judgment of Small Claims and Conciliation Branch of Municipal Court merely stated that court denied defendant right to present a complete defense without any facts to support the conclusion, application would be denied. *American Storage Co.* v. *Briggs* (D. C. Mun. App. 1948, 56 A. 2d 557).

ALTERNATIVE PENALTIES

That the penalty imposed was $25 or 30 days did not take case out of this section requiring application for allowance of appeal where penalty imposed was less than $50, since the alternative of imprisonment may be avoided by payment of the fine. *Yeager* v. *District of Columbia* (D. C. 1943, 33 A. 2d 629).

APPEALABLE ISSUES

Where defendant motor carrier by a motion to quash service of process raised question of jurisdiction of Municipal Court for the District of Columbia because of service on a person allegedly not authorized to accept service of process, defendant could participate in trial on merits and preserve right to present question on appeal. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696).

A finding or verdict on sharply conflicting evidence presents no reviewable issue on appeal. *McKenna* v. *Wilcox* (D. C. Mun. App. 1945, 41 A. 2d 303).

Government's contention that because a fine was suspended, there was no final sentence from which an appeal may be taken, is erroneous. *Smith* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 766).

The unauthorized suspension of execution of sentence did not take away appellant's right of appeal. The court had the power to impose the sentence and the void suspension did not void the sentence. *Ziegler* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 618).

ASSIGNMENT OF ERRORS

Where record contained a full stenographic report of proceedings and testimony, Municipal Court of Appeals overlooked violation of its rules and considered various points argued in brief but which were not specifically assigned as error. *Watwood* v. *Potomac Chemical Co.* (D. C. Mun. App. 1945, 42 A. 2d 728).

Assignment of errors must be specific and must be filed prior to filing proposed statement of proceedings and evidence. *Lee* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 250).

Appellants' failure to file a statement of errors, was a breach of rules. *Hoover* v. *Babcock* (D. C. Mun. App. 1947, 53 A. 2d 591).

In Municipal Court's statement of proceedings and evidence, recital of evidence was surplusage when not called for by any of the errors assigned by appealing defendants, and could not establish trial court's lack of jurisdiction. *Brooks* v. *Trigg* (D. C. Mun. App. 1947, 51 A. 2d 302).

Where alleged ruling by trial judge refusing to direct verdict for plaintiff did not appear in stenographic transcript or in record and there was neither written prayer for preemptory instruction nor verbal request therefor, plaintiffs could not predicate assignment of error on a refusal to direct a verdict. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

Where appellant assigned part of the judgment as error but did not mention it in his brief, the court would consider the assignment of error as abandoned and hence would not reach it. *Consumers Credit Service* v. *Craig* (D. C. Mun. App. 1950, 75 A. 2d 525).

Contention that the trial court should not have believed the testimony of prosecuting witness but should have believed appellant's testimony is not subject to review as an assignment of error. *Cohen* v. *United States* (D. C. Mun. App. 1949, 63 A. 2d 854).

Burden of Proof

It is well established that proof of delivery of goods and failure of bailee to retain them makes out a prima facie case for plaintiff, even in the case of gratuitous bailment. Where defendant offered no explanation or justification for his loss but did offer proof regarding care of a car in his possession, burden of proof was not shifted to defendant but remained always with plaintiff presenting a question of fact for determination by the trial court. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D. C. Mun. App. 1949, 65 A. 2d 338).

In a suit against an attorney for negligence, the plaintiff must prove three things in order to recover: The attorney's employment, his neglect of a reasonable duty, and his negligence as the proximate cause of the loss to the client. *Niosi* v. *Aiello* (D. C. Mun. App. 1949, 69 A. 2d 57).

The general rule that the burden of proof in its true sense remains throughout the trial upon the party who affirms is not to be limited in application where the facts as to a given issue are solely or peculiarly within the knowledge of one party, although authorities may be found which seemingly place upon this party the burden of proving such facts, *Lang* v. *F. G. Arwood and Co.* (D. C. Mun. App. 1949, 65 A. 2d 194).

In an insured's action on a policy insuring against any loss arising from any cause whatsoever, with certain exceptions, the burden of proving that the loss comes within the exception rests on the insurer. *Lang* v. *F. G. Arwood and Co.* (D. C. Mun. App. 1949, 65 A. 2d 194).

Change in Law

A change in the law between a nisi prius and an appellate decision requires reviewing court to apply changed law. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

Where landlord made no motion for mistrial after objecting to opening statement of tenants' counsel that landlord's action to recover possession of premises was not brought in good faith and was motivated by dispute over an increase in rent, claim that court erred in overruling such objection could not be considered. *Daly* v. *Scala* (D. C. Mun. App. 1944, 39 A. 2d 478).

Save in exceptional cases, appellate court can review only points specifically brought to attention of and ruled upon by trial court. *Lee* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 250).

Objection to instruction presented for first time in appellate court was too late. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

Conclusiveness of Findings

The Municipal Court of Appeals cannot disturb a verdict if it is supported by substantial evidence. *De Bobula* v. *Coppedge* (D. C. Mun. App. 1944, 40 A. 2d 255).

Ultimate findings of fact of a trial court, if reached upon an application of erroneous legal standards, are not binding upon the appellate court. *Zis* v. *Herman* (D. C. Mun. App. 1944, 39 A. 2d 65).

Generally, negligence is a matter of fact to be determined by trial court, and if supported by substantial evidence its determination cannot be reviewed on appeal, and the same principle applies to contributory negligence. *Eclov* v. *Dalton* (D. C. Mun. App. 1944, 38 A. 2d 661).

Findings of trial judge, supported by substantial evidence, cannot be disturbed. *Ferranti* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 38 A. 2d 116).

The Municipal Court of Appeals is not at liberty to set aside trial judge's findings of fact unless they are clearly erroneous. *Goldberg* v. *Roumel* (D. C. Mun. App. 1946, 47 A. 2d 790).

Where the Municipal Court of Appeals could not say that the evidence as a whole was such as to justify holding that trial judge was plainly wrong in deciding for plaintiff on his claim, the judgment would be affirmed. *Rossiter* v. *National Sav. & Trust Co.* (D. C. Mun. App. 1946, 46 A. 2d 540).

Where evidence was such that either of two different conclusions might reasonably have been drawn therefrom and Municipal Court of Appeals could not say with conviction that trial judge's finding was plainly wrong or without evidence to support it, judgment could not be disturbed. *Little* v. *Dilling* (D. C. Mun. App. 1946, 46 A. 2d 371).

In action for legal services rendered to defendant charged with sedition, wherein evidence was in conflict on essential issues whether plaintiff had agreed to act without compensation, whether agreement extended beyond beginning of trial, whether arrangement required plaintiff to certify to affidavit of prejudice, and whether plaintiff actually performed services entitling him to compensation, trial judge's finding for defendant could not be disturbed. *Little* v. *Dilling* (D. C. Mun. App. 1946, 46 A. 2d 371).

Where municipal court judge in a case without a jury first made a general finding for plaintiff and then on defendant's motion entered judgment for defendant, findings of trial court could not be treated as conclusive on appeal. *Rice* v. *Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

Where municipal court judge found that garage operator was negligent in failing to lock customer's automobile which was placed overnight in lot without a watchman, but that such negligence was not the proximate cause of injury to another parked automobile which was run into by one who had stolen such unlocked automobile, such findings of fact could not be disturbed on appeal. *Eesley* v. *Dottellis* (D. C. Mun. App. 1948, 61 A. 2d 564).

On appeal from judgment of conviction, appellate court cannot reweigh evidence or override trial court's fact findings, unless judgment is plainly wrong or without evidential support, though government produced only one witness, whose testimony contained elements of weakness and contradictions and two witnesses testified for defense. *Filippone* v. *District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 565).

General finding of trial court on factual issue cannot be overridden on appeal if there is sufficient evidence in the record, together with inferences to be fairly drawn therefrom to sustain the finding. *Hollingsworth* v. *Rieffer* (D. C. Mun. App. 1948, 57 A. 2d 199).

Rarely is expert testimony as to value binding on the trier of the facts and it is never binding when inconsistent with other evidence. *Urciolo* v. *Sachs* (D. C. Mun. App. 1948, 62 A. 2d 308).

Ruling of trial court on question of knowledge by plaintiff of liability printed on claim check is one of fact, and cannot be disturbed where there is sufficient evidence to support it. *Lucas* v. *Auto City Parking Co.* (D. C. Mun. App. 1948, 62 A. 2d 557).

Court has no right to substitute its own judgment as to how the case should have been decided on the facts. *Goldberg* v. *Stouck* (D. C. Mun. App. 1950, 76 A. 2d 785).

The evidence clearly presented questions of fact as to negligence and contributory negligence. In such case, the findings of the trial court must stand. *Shipp* v. *Weaver* (D. C. Mun. App. 1950, 75 A. 2d 925).

Trial court's findings are to be accepted if supported by evidence or are not plainly wrong. *Rogers* v. *Cox* (D. C. Mun. App. 1950, 76 A. 2d 776).

A trial judge may not find the absence of negligence or contributory negligence as matter of law unless the evi-

dence is so clear as to be beyond question. *Wohlstetter* v. *Capital Transit Co.* (D. C. Mun. App. 1948, 62 A. 2d 797).

The weight of the evidence is a question for the trier of the facts and a finding of fact supported by substantial evidence cannot be set aside on appeal. *Cohen* v. *United States* (D. C. Mun. App. 1949, 63 A. 2d 854).

CONTINUANCE

Generally, postponement or continuance of trial is within discretion of trial court, and its action will not be disturbed on appeal except for an abuse of discretion. *Boyer* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U. S. App. D. C. 202, 166 A. L. R. 209).

Where illness of defendant prevented trial, motion for continuance rests in sound discretion of the Trial Court and is not subject to reversal, unless discretion is abused or not in accordance with fixed legal principles. *Etty* v. *Middleton* (D. C. Mun. App. 1948, 62 A. 2d 371).

COSTS

The question whether intervenor in summary proceedings by landlord against tenant for possession of realty, was entitled to judgment for cost of stenographic transcript when landlord took a voluntary nonsuit, was a matter for the trial court, and until the trial court passed specifically on that question, the Municipal Court of Appeals had nothing to review. *Schwaner* v. *George* (D. C. Mun. App. 1948, 56 A. 2d 161).

Where costs consisted of a charge for the reporter's transcript of the trial, they must be disallowed since such charges under the rules are not recoverable as costs. *Holmes* v. *Floyd E. Davis Company* (D. C. Mun. App. 1949, 66 A. 2d 212).

Usage and practice, as well as statutory law, determine whether the cost of a bond is taxable and it was not error to disallow a bond premium as a taxable cost. *Thompson* v. *Clark* (D. C. Mun. App. 1949, 64 A. 2d 166).

An unusual item of expense, such as the cost of a reporter's transcript, cannot properly be taxed as costs either by the Municipal Court or the Municipal Court of Appeals. In the absence of express statutory authority, attorney's fees are not taxable as costs nor are expenses incurred in attempting to take the deposition of plaintiff in advance of trial. *Thompson* v. *Clark* (D. C. Mun. App. 1949, 64 A. 2d 166).

Counsel fees may be awarded as a condition of the vacating of the judgment of the garnishee, and the rule that, in the absence of statutory authority, attorneys' fees are not taxable as costs has no application since the payment of counsel fees is not imposed as costs but as a condiiton to obtaining relief to which the party is not entitled as a matter of right. *Bridgett* v. *Perpetual Building Association* (D. C. Mun. App. 1950, 75 A. 2d 780).

DIRECTED VERDICT

Defendant having proceeded with submission of its own evidence after denial of its motion for directed verdict at close of plaintiff's case was precluded from seeking review of such action on appeal. *Woodward & Lothrop* v. *Heed,* (D. C. Mun. App. 1945, 44 A. 2d 369).

Defendant who introduced evidence waived her right to complain of court's refusal to direct a verdict at close of plaintiff's case. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

The trial court is not justified in directing a verdict where there is substantial evidence upon which jury may base a conviction. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

On appeal from judgment on verdict directed for defendants, Municipal Court of Appeals was required to consider as admitted, every fact in evidence that tended to sustain plaintiff's case together with every inference reasonably deducible therefrom. *Resnick* v. *Wolf & Cohen* (D. C. Mun. App. 1946, 49 A. 2d 809).

The practice of submitting cases to the jury and reserving determination of questions of law raised on motion for a directed verdict, so that if the Municipal Court of Appeals disagrees with the trial court's ruling on motion for directed verdict, the jury's verdict can be reinstated without necessity for a new trial, is commendable. *Resnick* v. *Wolf & Cohen* (D. C. Mun. App. 1946, 49 A. 2d 809).

Failure to interpose motion for directed verdict at close of all testimony and secure ruling thereon precludes party from questioning sufficiency of evidence on appeal. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

On appeal from judgment on directed verdict for defendants, evidence of plaintiffs was taken in light most favorable to plaintiffs. *Young* v. *De Vito* (D. C. Mun. App. 1948, 56 A. 2d 558); *Snyder* v. *Thorniley* (D. C. Mun. App. 1948, 62 A. 2d 316).

Directed verdict in favor of the District was proper where there was no evidence showing that defendant's automobile ran through a depression and collided with plaintiff's automobile in road maintained by the District. *Bale* v. *District of Columbia* (D. C. Mun. App. 1949, 62 A. 2d 551).

The Municipal Court should use more frequently special verdicts as authorized by court rules in multiple controversies or complicated situations for such procedure tends to produce better defined issues of fact, better focused legal questions, and clearer and safer results. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company* (D. C. Mun. App. 1950, 72 A. 2d 254).

Court may set aside a verdict supported by substantial evidence where in its opinion it is contrary to the weight of the evidence, or is based upon evidence which is false. Even though the evidence be sufficient to preclude the direction of a verdict, it is still duty of the appellate court to exercise such power to prevent miscarriage of justice. *Capital Transit Co.* v. *Crusade* (D. C. Mun. App. 1949, 68 A. 2d 207).

A defendant does not lose his right to make a motion for a directed verdict in his favor even though he has himself offered evidence. Such a party is entitled to make such a motion even though he has made his opening statement. *Niosi* v. *Aiello* (D. C. Mun. App. 1949, 69 A. 2d 57).

DISCRETION OF COURT

A ruling refusing new trial will not be disturbed except for an abuse of discretion. *District Hauling & Construction Co.* v. *Argerakis* (D. C. Mun. App. 1943, 34 A. 2d 31).

The right of appeal is a statutory right, and Municipal Court of Appeals has no discretion to entertain appeals not taken in accordance with this section requiring application for allowance of appeal where penalty is less than $50, nor can language of this section be extended. *Yeager* v. *District of Columbia* (D. C. 1943, 33 A. 2d 629).

Ordinarily, the denial of motion for new trial is nonappealable, but refusal to grant new trial on ground of newly discovered evidence may be ground for reversal where an abuse of discretion appears, since newly discovered evidence does not appear on the record supporting judgment and the only possibility for review of the ruling lies in appeal from denial of motion for new trial. *Hamilton* v. *U. S.,* 1944 (140 F. 2d 679, 78 U. S. App. D. C. 316, reversing 31 A. 2d 887).

Where accused was convicted in the morning for offense committed the night before, trial court abused its discretion in denying motion for new trial for newly discovered evidence when court indulged in hypothetical interpretation of statement of newly discovered evidence in affidavit in order to make it consistent with testimony it was intended to rebut. *Hamilton* v. *U. S.,* 1944 (140 F. 2d 679, 78 U. S. App. D. C. 316, reversing 31 A. 2d 887).

The granting of a mistrial because of prejudicial newspaper publicity is within sound discretion of trial judge. *Sherman* v. *U. S.* (D. C. Mun. App. 1944, 36 A. 2d 556).

The question whether trial should continue on without a recess past the dinner hour is a matter in the realm of discretion of trial judge. *Shapiro* v. *Vautier* (D. C. Mun. App. 1944, 36 A. 2d 349).

Whether a jury shall be permitted to view premises is discretionary with trial court and its action thereon is reviewable only for abuse. *Coleman* v. *Chudnow* (D. C. Mun. App. 1944, 35 A. 2d 925).

Whether testimony shall be received on motion for new trial is largely in discretion of trial court and except in clear cases action of trial court in such matters ought

not to be disturbed. *Coleman* v. *Chudnow* (D. C. Mun. App. 1944, 35 A. 2d 925).

Whether discretion to grant or refuse a continuance is abused depends upon whether it is exercised in the furtherance of justice, and, if it serves to delay or defeat justice, it may well be deemed an "abuse of discretion". *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

The Municipal Court of Appeals for the District of Columbia does not have discretionary power to entertain special appeals from interlocutory orders. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696).

Under civil rule 53 (b), authorizing trial court to grant relief from judgment entered against party through his mistake, inadvertence, surprise or excusable neglect, ordinarily that is a matter in trial court's discretion and is not reviewable. *Barnes* v. *Conner* (D. C. Mun. App. 1945, 44 A. 2d 925).

Where defendant had made clear to court and to plaintiff that defendant intended to defend the case, continuance of one day was granted, court's alleged intention that defendant should file his papers prior to call of next day's calendar was not clearly expressed and defendant filed his affidavit of defense and demand for jury trial a few hours after default was entered, refusal to vacate default was an abuse of discretion. *Barnes* v. *Conner* (D. C. Mun. App. 1945, 44 A. 2d 925).

Rules limiting time for various steps on appeal in the Municipal Court of Appeals were not adopted for the convenience of the court but in the interest of an orderly and expeditious appellate procedure as prescribed by the Congress. *Karika* v. *District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 93).

The refusal of a new trial may not be reviewed on appeal unless there is clear abuse of discretion. *Brown* v. *Haas* (D. C. Mun. App. 1950, 72 A. 2d 39).

Trial court did not commit error when, after the jury had retired, it gave further instructions at jury's request as to what constituted a trespass and refused plaintiff's counsel's request for additional instructions on the ground that such instructions would only confuse the jury. *Munsey* v. *Safeway Stores* (D. C. Mun. App. 1949, 65 A. 2d 598).

Trial court did not abuse its discretion by not reinstating a second action on the mere showing that plaintiff's counsel through inadvertence failed to appear and was in another court at the time. *Jarcy* v. *Griffith* (D. C. Mun. App. 1949, 65 A. 2d 919).

Where trial court stated to counsel for the defendant "Don't you ever again ask a question like that before me or you will be done with", it did not violate the rule that a trial judge should not use language which tends to bring an attorney into contempt before the jury. It is within the judge's province to admonish and rebuke counsel as occasion may require, and to use other preventative measures necessary to maintain the dignity of the court. In rebuking counsel, the degree of severity is left to the trial judge so long as it does not prevent the party from having a fair trial. *Rosenberg* v. *District of Columbia* (D. C. Mun. App. 1949, 66 A. 2d 489).

It was not an abuse of discretion for trial court to refuse moving party leave to amend after verdict, where she knew or should have known what the pending litigation would probably develop. Having lost on one defense, she had no right to have case reopened to assert a new one. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

A court may not limit cross-examination upon a pertinent subject at the outset, but after a substantial exploration of the subject, a judge is within his right in limiting examination which may become needlessly protracted. Where the record discloses that on a trial for the illegal sale of alcoholic beverages, appellant's counsel was permitted to cross-examine freely and fully all government witnesses, there was no undue restriction or limitation upon the right of cross-examination. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied, 180 F. 2d 909).

Where government witness admitted that, during a recess, he had talked with another government witness who had been excluded from the court room, trial court did not abuse its discretion in permitting him to testify. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied, 180 F. 2d 909).

Allowance or refusal of a motion to set aside a default is within the discretion of the Trial Court. Such discretion implies conscientious judgment which takes into account the law, the particular circumstances and competing considerations. *Manos* v. *Fickenscher* (D. C. Mun. App. 1948, 62 A. 2d 791).

While the rules of the court contemplate that leave to amend shall be freely given, it is not their purpose to allow amendments under any and all circumstances. *Buchanan* v. *Farmer and Light* v. *Farmer* (D. C. Mun. App. 1948, 62 A. 2d 367).

Allowance or refusal of a motion to set aside a default is within the sound discretion of trial court. *Huff* v. *Kraft* (D. C. Mun. App. 1949, 63 A. 2d 667).

Whether a defense shall stand or be set aside rests in the sound discretion of the trial court, and where, before denying the motion to vacate, the trial court heard all the testimony to determine whether appellant had a meritorious defense and was convinced that no such defense existed, discretion was not abused. *Schoon* v. *Marvins Credit, Inc.* (D. C. Mun. App. 1949, 65 A. 2d 212).

It was error for trial court to refuse to exercise its discretion in setting aside a dismissal since a refusal to exercise discretion has the same effect as an abuse of discretion. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Dismissal

Where Municipal Court of Appeals lacked jurisdiction of appeal in a criminal case, the appeal must be dismissed although appellee made no motion to dismiss and did not raise the question in his brief, since neither silence nor consent of the parties could confer jurisdiction on appeal, and lack of jurisdiction must be noticed even though the parties desire a decision on the merits. *Yeager* v. *District of Columbia* (D. C. 1943, 33 A. 2d 629).

The denial of motion to dismiss action was not a "final" or appealable order and dismissal of appeal from such decision was required. *De Bobula* v. *Tamamian* (D. C. Mun. App. 1947, 55 A. 2d 204).

Where brief for appellant set out twenty-two alleged errors occurring at trial but contained no statement of the case with references to the transcript of record and no arguments in support of the claim of error as required by rule and where the errors assigned would require searching through the two hundred-page transcript, the so-called brief is no brief at all and the appeal must be dismissed. *Poole* v. *Hurlbert* (D. C. Mun. App. 1949, 67 A. 2d 266).

Where record on appeal was not only filed late but was filed without authority in complete disregard of order refusing further extentions, the appeal should be dismissed. *Greene* v. *Mindell* (D. C. Mun. App. 1950, 72 A. 2d 775).

Duty of Court

In absence of objection, a duty is nevertheless imposed on court to notice an excess of jurisdiction and to limit review to appealable orders or judgments. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

Evidence

Appellate court examines evidence only to test its sufficiency. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

The Municipal Court of Appeals may not substitute its judgment on conflicting evidence for that of the trial court. *Modern Engineering & Service Corp.* v. *McCrea* (D. C. Mun. App. 1946, 46 A. 2d 767).

Where defendant went to the jury without moving for a directed verdict at close of the case, she could not challenge the sufficiency of the evidence on appeal by assigning as error the refusal to grant a judgment notwithstanding verdict. *Snyder* v. *Thorniley* (D. C. Mun. App. 1948, 62 A. 2d 316).

Question of weight of evidence was for trial court as trier of the facts, and was not subject to review on appeal. *Etty* v. *Federal Consulting Service* (D. C. Mun. App. 1948, 59 A. 2d 692).

On appeal from judgment entered on jury's verdict, Municipal Court of Appeals was bound to accept jury's determination of the facts and could not reweigh the evidence. *Lyons* v. *Capital Transit Co.* (D. C. Mun. App. 1948, 62 A. 2d 312).

Reviewing court determines only whether there was sufficient evidence to support trial court's finding. *De Bobula* v. *Winston* (D. C. Mun. App. 1948, 57 A. 2d 742).

A general finding for plaintiff requires appellate court to accept evidence most favorable to his case. *Shu* v. *Basinger* (D. C. Mun. App. 1948, 57 A. 2d 295).

Preliminary evidentiary questions such as the competency of a witness and the admissibility of the evidence are within the control of the trial judge, but these questions must be distinguished from credibility and the weight to be assigned to competent and admissible testimony. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

Declaration made from a few moments to five or ten minutes after an accident neither met test of spontaneity nor closeness of time so as to be considered part of the res gestae. *Bale* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 551).

Admission in evidence of an "incidental book" maintained at police precinct to show District had notice of the depression in District road was harmless error where there was other evidence covering the same subject and the report would have no relevancy without testimony connecting the depression with the accident. *Bale* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 551).

Weight of the evidence and credibility of the witness are questions for the trial court. *Rogers* v. *Cox* (D. C. Mun. App. 1950, 75 A. 2d 776).

The weight of the evidence is a question for the trier of the facts, and a finding of fact supported by substantial evidence cannot be set aside by an appellate court. The trier of the facts is the judge of the credibility of witnesses. *Soresi* v. *Repetti* (D. C. Mun. App. 1950, 76 A. 2d 585).

As a general rule any evidence which is logically probative of some fact in issue is relevant and prima facia admissible unless it conflicts with some settled exclusionary rule. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

Testimony offered as character evidence was inadmissible where plaintiff's good character had not been put in issue. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

An offer made in compromise is not admissible in evidence. The test is whether the statement is made conditionally or unconditionally. A conditional concession is not admissible whereas an unconditional assertion is admissible. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D. C. Mun. App. 1949, 65 A. 2d 338).

It is necessary that one objecting to evidence make known to the court and opposing parties the precise ground on which he relies, since grounds not raised in the trial court will not be considered on appeal. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D. C. Mun. App. 1949, 65 A. 2d 338).

No error was committed in excluding federal and district income tax returns by which defendant proposed to show that the business was owned and operated by her alone and not as a partnership where such evidence would have been merely corroborative of other evidence, verbal and documentary. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

It was not error for trial court to refuse to permit police officer to testify regarding the extent to which arrest followed from tips or information given to the police, where the information sought was immaterial. *Glover* v. *Jewish War Veterans of United States* (D. C. Mun. App. 1949, 68 A. 2d 233).

Where an owner signed a listing agreement with broker, authorizing sale on specified terms if and when a purchaser was found, it was not error for trial court to permit the owner to testify that she had signed on the assurance that time of her occupancy would be extended if she had no place to go. Such testimony does not vary a written contract by parole testimony and was not offered to contradict any written instrument, but only to show misrepresentation. *Ellis* v. *Morgan* (D. C. Mun. App. 1949, 65 A. 2d 797).

One cannot speculate on allowing evidence to be introduced, participate in developing it, and then, when evidence proves unfavorable, demand that it be stricken. *Lewis* v. *Shiffers* (D. C. Mun. App. 1949, 67 A. 2d 269).

While it is well established that the proof of delivery and failure of the bailee to return makes out a prima facie case for the plaintiff, even in case of a gratuitous bailment, requiring the defendant to go forward with proof, such proof need not necessarily consist of an explanation or justification of the loss. *Columbia Operating Corp* v. *Kettler* (D. C. Mun. App. 1949, 67 A. 2d 267).

Findings of Fact

Although there was no requirement that trial court file findings of fact, where judgment was entered on specific findings leaving undetermined a material issue of fact as to which evidence was conflicting, Municipal Court of Appeals could require finding on such issue. *Provident Life Ins. Co.* v. *Grant* (D. C. 1943, 31 A. 2d 885).

An order overruling a motion to quash service on garnishee was interlocutory and not appealable, but appeal was properly taken from final judgment, as against claim that application for appeal was not filed within statutory time. *Atlantic Coast Line R. Co.* v. *Goldberg* (D. C. Mun. App. 1944, 39 A. 2d 563).

The rule that findings of fact are entitled to great weight in an appellate court is modified where such findings are based wholly on depositions. *Rogers* v. *Cox* (D. C. Mun. App. 1950, 75 A. 2d 776).

Findings of Fact and Conclusions of Law

It was not error for the trial court to deny appellant's request for findings of fact and conclusions of law, for trial court rules provide that in actions tried on the facts without a jury the court may, if requested by any party, find the facts specially and state separately its conclusions of law. The rule is permissive, not mandatory. *Eide* v. *Traten* (D. C. Mun. App. 1950, 73 A. 2d 522).

Instructions

Defendant's request for instruction that opinion evidence of a handwriting expert is so weak as scarcely to deserve a place in our system of jurisprudence was properly refused as not stating the law. *Boyer* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U. S. App. D. C. 202, 166 A. L. R. 209).

Trial court had duty of including in its charge a definition of reasonable doubt, and appellate court could not assume that trial court failed in its duty in such respect. *Boyer* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595).

Charge to jury cannot be considered piecemeal but must be viewed in its entirety. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

Where the text of the instructions was not included in the record and the court cannot tell what parts of the sections in question were read, and the record shows that defendant's only objection to the court's charge was confined to that portion of it relating to unjust enrichments, we cannot consider such objection on appeal. *Hillyard* v. *Smither & Mayton, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 166).

Instructions must be suited to the facts of the particular case and the judge should explain the law of the case, state the issues involved, and should also point out the essentials to be proved on one side or the other. *Reese* v. *Wells* (D. C. Mun. App. 1950, 73 A. 2d 899).

Police officers, who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct shall be received with caution. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied, 180 F. 2d 909).

Joint Appeal

Where eight separate charges were consolidated for trial and verdict of guilty and a fine of $25 was imposed for

each offense, defendant could not consider the total of the fines imposed as one penalty and file a joint appeal, since judgment in each case was a single judgment from which there was no right of appeal but only the right to make application for appeal. *Yeager* v. *District of Columbia* (D. C. 1943, 33 A. 2d 629).

JUDGMENT NOTWITHSTANDING VERDICT

Where appellants made no motion for directed verdict at trial, Municipal Court of Appeals would not review ruling refusing judgment notwithstanding verdict. *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

Reviewing court, in judging the correctness of decision entering a judgment notwithstanding the verdict, applies the same tests as are applied upon review of ruling on motion for directed verdict. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

There is a difference between the legal discretion of the court to set aside a verdict as against the weight of evidence, and the obligation of the court to withdraw a case from the jury or direct a verdict for insufficiency of evidence. In the latter case, it must be so insufficient in fact as to be insufficient in law. In the former case, it is merely insufficient in fact and it may be either insufficient in law, or may have more weight, and not enough to justify the court in exercising the control which the law gives it to prevent unjust verdicts, to allow a verdict to stand. *Capital Transit Co.* v. *Crusade* (D. C. Mun. App. 1949, 68 A. 2d 207).

JUDICIAL NOTICE

Municipal Court of Appeals took judicial notice of wartime difficulties in obtaining laundry service as well as many other services in the District of Columbia, but refused to assume therefrom that it was impossible for a customer of one laundry to find another laundry willing and able to accept him as a customer. *Manhattan Co.* v. *Goldberg* (D. C. Mun. App. 1944, 38 A. 2d 172).

The court will take judicial notice of adoption of OPA regulations and existence of official acts necessary to their validity. *Sherman* v. *U. S.* (D. C. Mun. App. 1944, 36 A. 2d 556).

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

Court took judicial notice that suffering and inability to get about and climb stairs is normal sequel of most surgical operations, especially in the presence of pregnancy. *Barnett* v. *Bachrach* (D. C. Mun. App. 1944, 34 A. 2d 626).

The Municipal Court of Appeals will take judicial notice that Government of the United States has no connection with Inter-Allied Shipping Pool and that such Pool does not exist as an agency of the United States Government and is not created by agreement to which United States is a party. *Trost* v. *Tompkins* (D. C. Mun. App. 1945, 44 A. 2d 226).

The Municipal Court of Appeals would take judicial notice of appeal in prior case between the same parties. *Block* v. *Wilson* (D. C. Mun. App. 1947, 54 A. 2d 646).

Courts will judicially notice that desks are ordinarily and properly used by officers and employees of the government for keeping their personal effects. *Blok* v. *United States* (D. C. Mun. App. 1949, 70 A. 2d 55).

Court will take judicial notice that during the war the government and various persons in official and unofficial positions urged that the public forego luxury items which consumed manpower and critical war materials. It cannot be said as a matter of law that the landlord's refusal to supply such items rendered him guilty of a service standard violation. *Connolly* v. *B. F. Saul Co., Inc.* (D. C. Mun. App. 1949, 68 A. 2d 236).

Courts may take judicial notice that the period of human gestation is about two hundred eighty days or nine calendar months. *Monday* v. *United States* (D. C. Mun. App. 1950, 76 A. 2d 68).

JURISDICTION

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance," and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D. C. Mun. App. 1948, 60 A. 2d 232).

JURISDICTION OF GOVERNMENT APPEALS

Under this section providing that any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia may appeal to the Municipal Court of Appeals, such court had jurisdiction of government's appeal from an order of the municipal court for such district quashing a warrant of arrest in a disorderly house case, in view of § 23–105 entitling the government to appeal in criminal prosecutions. *U. S.* v. *Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

In a class B action involving less than $500, Municipal Court rules apply, and trial court erred in ruling that defendant waived jurisdiction by failing to raise it by motion since rules do not preclude raising any defense available; further, jurisdiction over subject matter may never be conferred by consent and may even be question for first time on appeal. *Duvall* v. *Southern Municipal Corp.* (D. C. Mun. App. 1949, 63 A. 2d 336).

LAW GOVERNING

The Municipal Court of Appeals for District of Columbia must follow the law as stated in highest appellate court of the District. *Davidson* v. *Jones* (D. C. Mun. App. 1943, 34 A. 2d 261).

In absence of local statutes governing landlord's liability to tenant, Municipal Court of Appeals must look to the common law as reflected in decisions of Supreme Court, of United States Court of Appeals, and the courts of some of the states. *Hariston* v. *Washington Housing Corp.* (D. C. Mun. App. 1946, 45 A. 2d 287).

MANDATE

Mandate of appellate court from which the trial court had no power to deviate, clearly required that there be a trial on the merits, completely unemcumbered by any earlier proceedings below. Even upon a reversal with general directions, the case stands in the trial court in the same position as if no trial had been held, pleadings can be amended or new ones filed, new issues framed, and a complete new trial will result, subject only to the restriction that the new proceedings shall not be inconsistent with the opinion of the appellate court. *Glenn* v. *Mindell* (D. C. Mun. App. 1950, 74 A. 2d 835).

MODIFICATION OF JUDGMENT

Where judgment for insured for recovery of disability benefits under life policy and for return of premiums was incorrectly computed in favor of insured, Municipal Court of Appeals ordered insured to file a remittitur of excessive amount or, in the alternative, ordered a new trial. *National Life Ins. Co.* v. *White* (D. C. Mun. App. 1944, 38 A. 2d 663).

Where no authority was cited in support of proposition and record contained no evidence from which its soundness could be determined, appellate court would not pass upon such proposition. *Manhattan Co.* v. *Goldberg* (D. C. Mun. App. 1944, 38 A. 2d 172).

A judgment appealed from may be modified by reducing amount thereof when computation of amount due appellee is clear on record. *Group Health Ass'n* v. *Shepherd* (D. C. Mun. App. 1944, 37 A. 2d 749).

MOOT QUESTIONS

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without attempting to stay judgment and without making protest

or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 189).

A federal appellate court will not review a moot case. *Hanback* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 189).

Where in District of Columbia Municipal Court no supersedeas bond was filed to stay judgment for landlord for possession of an apartment and United States marshal evicted tenant, who stated restitution was expected if the appeal from judgment was successful, the surrender of possession was not voluntary, and appeal was not moot. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

It is not the duty of the court to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue. Moreover, it has often been decided where possession of land was involved under an alleged lease, the question becomes moot after the expiration of such lease. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

Where petitioner failed to post bond and was committed to jail the case became moot after petitioner served his sentence upon its expiration there was no longer a subject matter on which the judgment of court could operate. Reversal of the judgment cannot operate to undo or restore the petitioner to the penalty of the term of imprisonment which he has served. *Hill* v. *United States* (D. C. Mun. App. 1950, 75 A. 2d 138).

The question of refusal to require the posting of a supersedeas bond pending appeal has become moot because even if a supersedeas bond had been posted, it would have expired by its own terms upon the reversal of the judgment which the bond superseded. *Daime* v. *Price* (D. C. Mun. App. 1950, 71 A. 2d 611).

Motion for Summary Judgment

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts but he must state facts in detail showing that he has personal knowledge, and the burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

Motion for New Trial

Refusal to grant a new trial may be reviewed by Municipal Court of Appeals only if there is an abuse of discretion. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

The grant or refusal of new trial may be reviewed on appeal only where there is a clear abuse of discretion. *Palmer Const. Co.* v. *Patouillet* (D. C. Mun. App. 1945, 42 A. 2d 273).

Trial judge's disposition of a motion for new trial is not subject to appellate review unless an abuse of discretion is shown. *Peav* v. *Parks* (D. C. Mun. App. 1945, 42 A. 2d 250).

Once an appeal is perfected, trial court is without power to order a new trial. *Maltby* v. *Thompson* (D. C. Mun. App. 1947, 55 A. 2d 142).

To warrant new trial in Municipal Court on ground of newly discovered evidence, evidence must be in fact newly discovered since trial, it must be shown that it was not due to want of diligence that movant did not discover evidence sooner, evidence relied on must not be merely cumulative or impeaching, and it must be such as would probably produce a different verdict if new trial were granted. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309).

Plaintiff was not entitled to new trial on ground of alleged newly discovered evidence, where affidavits in support of motion revealed incidents practically all of which had taken place in plaintiff's presence. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309); *Krupsaw* v. *W. T. Cowan, Inc.* (D. C. Mun. App. 1948, 61 A. 2d 624).

Fact that trial judge kept case, which had been submitted to him without jury, under advisement for some 13 months did not so taint finding as to require granting of new trial and refusal of new trial was not an abuse of discretion, notwithstanding that only a factual issue was involved. *Eberhard* v. *Mehlman* (D. C. Mun. App. 1948, 60 A. 2d 540).

An order granting a new trial was not a "final order", was not reviewable and dismissal of attempted appeal from such order was required. *De Grazia* v. *Anderson* (D. C. Mun. App. 1948, 58 A. 2d 306); *Snyder* v. *Thorniley* (D. C. Mun. App. 1948, 62 A. 2d 316).

Since judgment will not be entered until after a new trial is had, plaintiff cannot appeal from an order which is not a final order or judgment. An order made within the time limited by the rules and granting a new trial is not appealable, since the effect of the motion to reinstate the "judgment" was to test the validity of the grant of the new trial. A litigant is not allowed to do by indirection what he could not do directly. *Students Book Company* v. *Semerjian* (D. C. Mun. App. 1949, 66 A. 2d 487).

Where the chief reason given to support a motion for dismissal was a desire to file the suit anew and demand a jury trial on the ground that refusal to permit dismissal subjected her to material injury and deprived her of fundamental rights, the court did not abuse discretion in rejecting such motion when moving party failed to comply with the rule relating to jury trial. Failure to make timely demand therefor constituted a waiver thereof. *Mercer* v. *Equitable Life Insurance Society* (D. C. Mun. App. 1949, 65 A. 2d 207).

Counsel cannot be permitted to make the motion for new trial a vehicle for asserting objections retroactively or for grounding an appeal on a theory never presented during the trial. *Germaine* v. *Cramer* (D. C. Mun. App. 1949, 65 A. 2d 573).

Granting or denying a motion for a new trial is not an appealable order unless it is shown that the trial court has abused its discretion. *Capital Transit Co.* v. *Crusade* (D. C. Mun. App. 1949, 68 A. 2d 207).

Where defendant moved for a new trial or for judgment notwithstanding verdict, trial court must act upon each, and granting of motion for judgment is not ground for summarily denying motion for new trial. *Crusade* v. *Capital Transit Co.* (D. C. Mun. App. 1949, 63 A. 2d 878; see also 68 A. 2d 207).

Where evidence was introduced and no announcement of surprise nor request made for any continuance or recess in order to make use of the evidence claimed to have been damaging to plaintiff's case, it cannot be said that the refusal of the trial court to set aside the judgment and award a new trial on the grounds of newly discovered evidence was an abuse of discretion. *Mutual Benefit Health and Accident Association* v. *McGinn* (D. C. Mun. App. 1950, 75 A. 2d 643).

The granting or denial of a motion for new trial based on newly discovered evidence is within discretion of trial court. *Kreis* v. *Block* (D. C. Mun. App. 1950, 75 A. 2d 523).

New Trial

Where it appears probable that a trial court has by comment invaded the fact finding function of the jury, particularly in a criminal case, a new trial ought to be awarded. *Prezzi* v. *U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

While a new trial does not automatically follow every general reversal, such will ordinarily be the result. Where there is doubt as to what further proceedings are to be taken by the trial court after reversal, such doubt is generally resolved by granting a new trial. *Price* v. *Daime* (D. C. Mun. App. 1950, 71 A. 2d 608).

Notice of Appeal

Where penalty imposed was less than $50 and defendant's right to review is by application for allowance of an appeal and not by notice of appeal, defendant's notice of appeal filed in the Municipal Court and not in the Municipal Court of Appeals could not be regarded as an "application for allowance of appeal". *Yeager* v. *District of Columbia* (D. C. 1943, 33 A. 2d 629).

Where defendant took no action within the time limited for filing a notice of appeal, defendant's motion for leave of court to file notice of appeal was denied for want of jurisdiction to hear the appeal. *Beach* v. *District of Columbia* (D. C. Mun. App. 1945, 44 A. 2d 926).

Rules provide that notice of appeal in civil cases shall be filed with the clerk of the trial court within ten days of the date of the judgment or order appealed from. Such time limit is jurisdictional and may not be enlarged or extended either by the trial court or by this court. *Holland* v. *Eng* (D. C. Mun. App. 1950, 75 A. 2d 143).

The time for filing notice of appeal is jurisdictional and cannot be extended by the trial court or by this court. *Glenn* v. *Mindell* (D. C. Mun. App. 1950, 74 A. 2d 835).

Rules of this court make the filing of the notice of appeal jurisdictional. When such notice is filed out of time, court has no power to review the case. *Syndicated Construction Corp.* v. *Ross* (D. C. Mun. App. 1950, 73 A. 2d 899).

Orders or Judgments

An order striking out item of damage from complaint and bill of particulars did not finally dispose of rights of the parties, and was not reviewable by the Municipal Court of Appeals for the District of Columbia. *Brown* v. *Randle & Garvin* (D. C. 1943, 32 A. 2d 104).

An order striking out item of damage from complaint and bill of particulars was neither a "final order or judgment", nor an "interlocutory order whereby possession of property is changed or affected", within this section. *Brown* v. *Randle & Garvin* (D. C. 1943, 32 A. 2d 104).

An appeal taken during pendency of motion for new trial was subject to dismissal on ground that there was no "final judgment". *Hamilton* v. *U. S.* (D. C. 1943, 31 A. 2d 887, reversed on other grounds 140 F. 2d 679, 78 U. S. App. D. C. 316).

A judgment is not "final" and is not appealable while a motion for new trial, seasonably filed, remains undecided. *Hamilton* v. *U. S.* (D. C. 1943, 31 A. 2d 887, reversed on other grounds 140 F. 2d 679, 78 U. S. App. D. C. 316).

Ordinarily trial court's action on motion for new trial is not subject to review on appeal unless there is shown a clear abuse of discretion. *Franklin* v. *Chas. C. Schulman Co.* (D. C. 1943, 31 A. 2d 871).

Where matters raised by motion to set aside judgment and grant new trial could have been reviewed by timely appeal from the original judgment, action on such motion was not appealable. *Crowley* v. *Wood* (D. C. 1943, 31 A. 2d 861).

Ruling on motion to vacate judgment rendered because of a party's default in appearing or pleading is not reviewable except for an abuse of discretion. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

Where motion for new trial was granted after entry of verdict, there was no "final judgment" from which an appeal would lie until after a new trial was had. *Phillips* v. *Marvin's Credit* (D. C. Mun. App. 1944, 35 A. 2d 825).

Accused does not ordinarily have the right to an independent appeal from a ruling on a motion to quash a warrant of arrest. *U. S.* v. *Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

An order quashing a warrant of arrest in a disorderly house case was appealable. *U. S.* v. *Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

Granting or refusing a continuance is usually discretionary and not subject to review on appeal except when it is shown to have been an abuse of discretion. *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

An appeal cannot be heard while motion for new trial is pending, since judgment at that time has not become final. *Hamilton* v. *U. S.*, 1944 (140 F. 2d 679, 78 U. S. App. D. C. 316, reversing 31 A. 2d 887).

The jurisdiction of the Municipal Court of Appeals for the District of Columbia is limited to a review of final orders or judgments and interlocutory orders whereby possession of property is changed or affected. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696); *Crowder* v. *Lackey* (D. C. Mun. App. 1945, 44 A. 2d 223); *Lee* v. *Zentz* (D. C. Mun. App. 1945, 44 A. 2d 872).

An order of the Municipal Court for the District of Columbia, overruling defendant's motion to quash service, was an interlocutory order which did not change or affect possession of property, and order was not appealable to such court. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696).

An express desire of both parties for a decision on merits would not confer jurisdiction on the Municipal Court of Appeals for the District of Columbia of special appeals from interlocutory orders. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696).

Orders granting motion to amend complaint to include claim for overdue rent, overruling motion for summary judgment, granting motion to dismiss counterclaim without prejudice to right to file separate suit, and denying leave to amend counterclaim, were not "final orders" or "interlocutory orders affecting possession of property" from which appeal would lie to Municipal Court of Appeals. *Crowder* v. *Lackey* (D. C. Mun. App. 1945, 44 A. 2d 223).

An order granting a motion for new trial was not a "final order" and hence not appealable. *United Retail Cleaners and Tailors Ass'n of D. C.* v. *Denahan* (D. C. Mun. App. 1945, 44 A. 2d 69).

Order denying motion filed within term at which judgment was entered, to vacate default judgment against garnishee, is not an "appealable order." *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

The "finality" of an order, necessary to jurisdiction of the Municipal Court of Appeals depends not upon its name, its propriety, or its normal function, but upon whether it disposes of the whole case on its merits so that the court has nothing to do but to execute the judgment or decree rendered. *Lee* v. *Zentz* (D. C. Mun. App. 1945, 44 A. 2d 872).

An order vacating a judgment, which left the case undecided with the right in plaintiff to proceed to trial and judgment, was "interlocutory" and not "final," and was not appealable to the Municipal Court of Appeals. *Lee* v. *Zentz* (D. C. Mun. App. 1945, 44 A. 2d 872).

Where plaintiff permitted time to lapse for taking appeal from order dismissing complaint before filing motion to amend complaint, plaintiff could not appeal from order denying motion to amend complaint, especially where it did not appear that there had been any abuse of discretion in refusing leave to amend. *Mitchell* v. *David* (D. C. Mun. App. 1946, 49 A. 2d 84).

A "final order" within this section is one that disposes of the whole case on its merits so that court has nothing to do but to execute judgment or decree already rendered. *Whitman* v. *Noel* (D. C. Mun. App. 1947, 53 A. 2d 280).

Order denying defendant's motion for summary judgment on ground that it was apparent on face of claim that it was barred by statute of limitations was not an appealable "final order." *Whitman* v. *Noel* (D. C. Mun. App. 1947, 53 A. 2d 280).

An order denying a motion for rehearing of order denying motion to vacate judgment was not appealable. *Brooks* v. *Trigg* (D. C. Mun. App. 1947, 51 A. 2d 302).

District of Columbia Municipal Court's order overruling motion to dismiss or to remand action to District Court of United States for District of Columbia was not "final order" and hence was not appealable to Municipal Court of Appeals for District of Columbia. *Kaplowitz Bros.* v. *Kahan* (D. C. Mun. App. 1948, 59 A. 2d 795).

An order of Municipal Court vacating default judgment which had been entered "paid and satisfied" after execution through garnishment proceedings was appealable. *Campbell* v. *Campbell* (D. C. Mun. App. 1948, 58 A. 2d 825).

Record did not indicate that plaintiff was compelled to take a voluntary nonsuit because his request for a continuance and motion to dismiss without prejudice was denied so as to permit review of trial court's order on appeal since plaintiff could have submitted to the court's ruling and proceeded to trial and in case of an adverse judgment could have appealed. *Halpern* v. *Gunn* (D. C. Mun. App. 1948, 57 A. 2d 741).

Where in an interpleader action, judgment was rendered on the counterclaim in favor of the plaintiff, such judgment is not a final and appealable one because it did not decide all issues between the parties since the main action remained pending and unheard. *Weiss* v. *Young* (D. C. Mun. App. 1949, 64 A. 2d 309).

Where a motion to set aside a judgment was not filed within the time limited by the court's rule, the court was without jurisdiction to grant such relief. *Mike's Mfg. Company* v. *Zimzoris* (D. C. Mun. App. 1949, 66 A. 2d 414).

Where defendant moved to set aside a judgment on the ground that, through inadvertence, defendant's counsel failed to appear to defend and defendant had a good defense, the granting or denial of the motion rested in the sound discretion of the trial court. *Madden* v. *Horigan* (D. C. Mun. App. 1949, 66 A. 2d 525).

Where a judgment previously entered by defendant is reversed without further order, the mandate to that effect does not preclude any other affirmative action unless specifically so directed by the appellate court. The lower court is free to make any other order or direction in further progress of the case not inconsistent with the appellate decision. *Pyramid National Van Lines, Inc.* v. *Goetze* (D. C. Mun. App. 1949, 66 A. 2d 693).

Generally, an order denying a motion for rehearing, a motion for new trial or other like order is not an appealable order. However, where it is obvious that the appeal was intended to be from the order granting judgment, and appellee concedes that, because the motion for rehearing extended the time for appealing, the notice was timely filed even as to that order; the notice may be treated as an appeal from the judgment. *Diatz* v. *Washington Technical School* (D. C. Mun. App. 1950, 73 A. 2d 227; rehearing denied by 73 A. 2d 718).

Trial court had power to vacate judgment where, in execution or judgment, the marshal had taken funds from the garnishee and was prepared to deliver them to the plaintiff since vacating such judgment prevented delivery subject to future order of the court. *Bridgett* v. *Perpetual Building Association* (D. C. Mun. App. 1950, 75 A. 2d 780).

It was beyond the power of the trial court to set aside the judgment where the motion to vacate came more than three months after the entry of the judgment and hence was too late. *Breckenridge* v. *Mebane* and *Calvert Fire Insurance Company* v. *Mebane* (D. C. Mun. App. 1950, 75 A. 2d 441).

The imperative condition of equitable intervention in setting aside a judgment is that the party applying for it shall make it clearly apparent that he had a good defense to the action which, by fraud or accident, he was prevented from making, and also that there was neither fault nor negligence on his part. *Thomas* v. *Marvins Credit, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 773).

A default judgment by the court upon an amended complaint not served upon the defendant, though erroneous, is not void. *Thomas* v. *Marvins Credit, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 773).

Motion for summary judgment cannot be granted if the record discloses the existence of a genuine and material factual issue. *Rosenberg* v. *Ichcovitz* (D. C. Mun. App. 1950, 72 A. 2d 466).

Allowance or refusal of a motion to set aside a default is within the sound discretion of trial court. *Huff* v. *Kraft* (D. C. Mun. App. 1949, 63 A. 2d 667).

Mere denial of a preliminary injunction is not a final order and does not dispose of a case on its merits unless the order possesses sufficient attributes of finality or is in a form of an interlocutory order from which appeal lies. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 63 A. 2d 671).

It is clear that orders staying proceedings are not appealable. However, the reviewability of a final judgment or order is not affected by any consideration of form and a holding by a court that it is without jurisdiction to try a case is obviously final in its effect. *Mondell* v. *Glenn* (D. C. Mun. App. 1949, 65 A. 2d 340; as aff'd 74 A. 2d 835).

Parties, Right to Appeal

Where landlord sued for possession of office occupied by tenant, and tenant opposed the action but sought no affirmative relief, tenant was not an "aggrieved party" so as to be entitled to appeal from denial of his motion to dismiss notwithstanding court in dismissing without prejudice did not sustain all of tenant's contentions. *Koehne* v. *Harvey* (D. C. Mun. App. 1945, 39 A. 2d 871).

The successful party below cannot appeal. *Koehne* v. *Harvey* (D. C. Mun. App. 1945, 39 A. 2d 871).

Appellant cannot question a ruling made by trial court favorable to him. *Glassman* v. *Graver* (D. C. Mun. App. 1948, 56 A. 2d 160).

Persons Entitled to Appeal

In landlord's actions against tenant for possession of rented building, subtenant, who was not a party, was not represented by amicus curiae and could not appeal from judgment for landlord to complain that parties failed to carry out stipulation with amicus curiae respecting trial. *Klein* v. *Liss* (D. C. Mun. App. 1945, 43 A. 2d 757).

An amicus curiae cannot take over management or control of a case, and cannot except to rulings of court or take an appeal. *Klein* v. *Liss* (D. C. Mun. App. 1945, 43 A. 2d 757).

An amicus curiae must take case as he finds it, with issues made by the principal parties, and cannot raise new issues not made by parties litigant. *Givens* v. *Goldstein* (D. C. Mun. App. 1947, 52 A. 2d 725).

The general rule is that a person in a representative capacity, when prosecuting or defending an appeal, should be properly described in that capacity, but such rule is subject to the limitation that a designation is sufficient where the records show the representative capacity of the party, even if he is not so designated. *Niosi* v. *Aiello* (D. C. Mun. App. 1949, 69 A. 2d 57).

Postponement of Time

A motion to vacate judgment postponed running of time for appeal until final action on the motion. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

Presumption

In absence of congressional regulation of relations between laundries and their customers in District of Columbia, Municipal Court of Appeals would not assume right to prescribe terms upon which they may contract, since determination of public policy is primarily a legislative matter. *Manhattan Co.* v. *Goldberg* (D. C. Mun. App. 1944, 38 A. 2d 172).

In considering correctness of verdict for buyer who sued for seller's breach of warranty, appellate court must assume the truth of buyer's testimony regarding alleged statement by seller's representative. *Mars* v. *Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

On appeal from judgment for plaintiff, evidence was accepted in light most favorable to plaintiff. *Shapiro* v. *Vautier* (D. C. Mun. App. 1944, 36 A. 2d 349).

In determining whether wife was entitled to payment under a separation agreement, appellate court would assume that trial court, in determining amount to award as alimony and counsel fees, was influenced by the surrounding circumstances presented by the pleadings and evidence. *Cooper* v. *Cooper* (D. C. Mun. App. 1944, 35 A. 2d 921).

Error will not be presumed on appeal and must be shown affirmatively by party asserting it. *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

The Municipal Court of Appeals takes judicial notice that many hundreds of petitions for adjustment of rent have been filed with and decided by Administrator under sections 45–1601 to 45–1611. *Gould* v. *Delsnider* (D. C. Mun. App. 1945, 42 A. 2d 140, 81 U. S. App. D. C. 54).

Discrepancies in plaintiff's testimony affected only weight of evidence, and reviewing court must assume that trial judge gave it such consideration as it deserved. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

Judicial notice may not be extended to supply element of specific intent of depriving automobile owner of his property rights in mental processes of 3½-year-old child who entered unlocked automobile and caused it to start down hill. *Unkelsbee* v. *Homestead Fire Ins. Co. of Baltimore* (D. C. Mun. App. 1945, 41 A. 2d 168).

On plaintiff's appeal from trial court's decision on findings for defendant made by court sua sponte, plaintiff's evidence must be taken as true. *Merriam* v. *Sugrue* (D. C. Mun. App. 1945, 41 A. 2d 166).

Where trial court's charge was not included in record, Municipal Court of Appeals was required to assume that issues were properly submitted to jury. *Davis* v. *Bruno* (D. C. Mun. App. 1948, 57 A. 2d 828).

If a party has it within his power to produce witnesses whose testimony would elucidate transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable. But failure to produce such evidence can always be explained. *Woolard* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 640).

There is a strong presumption in the constitutionality of a statute, but where Supreme Court has spoken and found a statute unconstitutional, the presumption should be to the contrary. *Henderson* v. *E Street Theatre Corporation* (D. C. Mun. App. 1948, 63 A. 2d 649).

Trial court had the right to waive the presumption against the testimony of defendant, an interested party, and in its discretion to conclude that the presumption outweighed the evidentiary value of the testimony. *Koehne* v. *Price* (D. C. Mun. App. 1949, 68 A. 2d 806).

If the bailee fails to explain the damage, it leaves the trier of the facts free to draw an inference unfavorable to him upon the bailor's establishing the unexplained failure to deliver the goods safely. *Columbia Operating Corp.* v. *Kettler* (D. C. Mun. App. 1949, 67 A. 2d 267).

When a statutory presumption is met by some credible evidence, it becomes like an inference and when more than a single inference may be drawn from the evidence, then a question of fact is presented for jury determination. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company and Bonded Taxi Company* v. *Bill's Auto Rental, Inc.* (D. C. Mun. App. 1950, 72 A. 2d 254).

Questions Not Raised Below

In action between brokers for division of commission for sale of realty, contention urged by defendant for first time on appeal that plaintiff did not allege and prove that he was a duly licensed broker or salesman and that such failure was jurisdictional as relating to plaintiff's want of capacity to sue was unavailing for failure to raise contention in trial court. *McDevett* v. *Waple & James* (D. C. Mun. App. 1943, 34 A. 2d 39).

Counsel after gambling on jury's verdict and losing may not use motion for new trial as vehicle for asserting objections retroactively or for grounding an appeal on theory not presented during trial. *District Hauling & Construction Co.* v. *Argerakis* (D. C. Mun. App. 1943, 34 A. 2d 31).

Where defendant in automobile collision case made no motion for an instructed verdict and did not object to charge, questions as to sufficiency of evidence to support verdict and as to whether case was submitted on an erroneous theory of damages raised for first time in motion for new trial, could not be considered on appeal. *District Hauling & Construction Co.* v. *Argerakis* (D. C. Mun. App. 1943, 34 A. 2d 31).

Point which was not raised by the parties would not be considered on appeal. *Bedrosian* v. *Wong Kok Chung* (D. C. Mun. App. 1943, 33 A. 2d 811).

Questions neither raised nor considered in trial court and not presented or argued on appeal would not be passed on. *Kincade* v. *Wah* (D. C. Mun. App. 1944, 38 A. 2d 112).

The Municipal Court of Appeals cannot order reopening of case for consideration of point not made at trial in court below. *Group Health Ass'n* v. *Shepherd* (D. C. Mun. App. 1944, 37 A. 2d 749).

Where tenant holding over after expiration of lease did not challenge purchaser's title at trial of suit to recover possession of dwelling for personal use by purchaser as a residence nor object to plaintiff's testimony that she had purchased the dwelling or to various exhibits offered in support of such statements, tenant could not urge for the first time on appeal that plaintiff's deed should have been produced to prove ownership and that title of her grantor should have been established. *Miller* v. *Prophet* (D. C. Mun. App. 1944, 37 A. 2d 450).

A judgment should not be reversed and a new trial ordered to permit unsuccessful party to object to evidence received without objection at first trial or to try case upon some new and different theory. *Miller* v. *Prophet* (D. C. Mun. App. 1944, 37 A. 2d 450).

Objection, made for first time on appeal, that trial judge erred in causing or permitting trial to continue on without a recess past the dinner hour, was too late. *Shapiro* v. *Vautier* (D. C. Mun. App. 1944, 36 A. 2d 349).

Municipal Court of Appeals was not required to pass upon the validity of an interpretative order of the Administrator under the Emergency Rent Act, § 45–1601 et seq., where neither tenant nor landlord had sought a court review of such order. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

The Municipal Court of Appeals for the District of Columbia must limit review to appealable orders or judgments though no objection is made. *Atlas Van Lines* v. *Austin* (D. C. Mun. App. 1945, 44 A. 2d 696).

Where appellant acquiesced in ruling respecting interrogatories, appellant could not thereafter complain that there was an inconsistency because of jury's answer to an interrogatory which was mere surplusage. *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

An objection to form of verdict which was not presented in trial court could not be advanced in appellate court, *Henderson* v. *Allison* (D. C. Mun. App. 1945, 44 A. 2d 220).

Where litigant acquiesced in charge when it was given, correctness of charge could not be questioned for first time on appeal. *Watwood* v. *Potomac Chemical Co.* (D. C. Mun. App. 1945, 42 A. 728).

Where plaintiff's counterclaim in amount of $3,000 was beyond jurisdiction of small claims branch of municipal court, Municipal Court of Appeals took cognizance of absence of jurisdiction even though question had not been raised before it or in the trial court and reversed case with instructions to vacate judgment and strike the counterclaim. *1425 F St. Corp.* v. *Jardin* (D. C. Mun. App. 1947, 53 A. 2d 278).

Where defendants did not allege contributory negligence and did not request trial court to instruct jury on that subject, assignment that trial court erred in refusing to sustain contention of defendants that evidence conclusively showed that any damage suffered by plaintiffs was due entirely to negligence of plaintiff came too late. *Gittleson* v. *Robinson* (D. C. Mun. App. 1948, 61 A. 2d 635).

An assignment of error in refusing to allow plaintiff to amend complaint cannot be considered, where record shows neither a request by plaintiff to amend nor denial by court of such request. *Higgins* v. *Dail* (D. C. Mun. App. 1948, 61 A. 2d 38).

Where defendant made no request for instructions and, in response to trial judge's inquiry upon completion of charge, did not object to those given, she could not complain on appeal of the instructions given. *Snyder* v. *Thorniley* (D. C. Mun. App. 1948, 62 A. 2d 316).

Where appellant made no request in the trial court for leave to amend, it cannot be said that the trial court was in error in not granting that which was not asked. *Watwood* v. *Credit Bureau, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 905).

Counsel at jury trials must make their objections known while there is still opportunity for the trial judge to correct any apparent error. *Brown* v. *Haas* (D. C. Mun. App. 1950, 72 A. 2d 39).

Matters not raised and passed upon in the trial court afford no basis for review on appeal. *Brooks* v. *Jensen* (D. C. Mun. App. 1950, 73 A. 2d 32).

Where the record nowhere shows that the point was made before or at the time of trial, but seems to have been first advanced in the motion for new trial, it cannot be considered on appeal. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

Where appellant's answer did not raise an issue and no evidence in respect thereof is offered at the trial, such issue could not be raised upon appeal. *Dawson* v. *Fox* (D. C. Mun. App. 1949, 64 A. 2d 102).

The rule that points not raised in a trial court will not be considered on appeal is subject to the equally well recognized rule that if error vital to a defendant has been committed, it may be noted and corrected on appeal, notwithstanding the absence of objection and exception

in the trial court. *Varrella* v. *United States* (D. C. Mun. App. 1949, 64 A. 2d 310).

It is fundamental that appellate courts sit to correct errors of trial courts, and that, save in exceptional cases, questions not presented to the trial court will not be considered on appeal. *Germaine* v. *Cramer* (D. C. Mun. App. 1949, 65 A. 2d 573).

Counsel cannot be permitted to make the motion for new trial a vehicle for asserting objections retroactively, or for grounding an appeal on a theory never presented during the trial. *Germaine* v. *Cramer* (D. C. Mun. App. 1949, 65 A. 2d 573).

Where the defense of the statute of limitations was not made at the trial and appeared to have been raised for the first time in the motion for new trial, such defense was asserted too late. *Turner* v. *Bowman* (D. C. Mun. App. 1949, 68 A. 2d 231).

Questions of Fact

Only in exceptional cases will questions of negligence, contributory negligence and proximate cause pass from the realm of fact to one of law. Unless the evidence is so clear and undisputed that fair-minded men can draw only one conclusion, the questions are factual and not legal. *Lewis* v. *Shiffers* (D. C. Mun. App. 1949, 67 A. 2d 269).

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan* v. *Farmer* (D. C. Mun. App. 1948, 62 A. 2d 367).

If a conflict appears as to a material fact, the summary procedure does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true. *Messall* v. *Efron* (D. C. Mun. App. 1950, 72 A. 2d 694).

Factual issues are not to be tried or resolved by summary judgment procedure. Only the existence of a genuine and material factual issue is to be determined and once it is determined that there is such an issue, summary judgment may not be granted. *Messall* v. *Efron* (D. C. Mun. App. 1950, 72 A. 2d 694).

Where broker contended that he secured suitable accommodations and seller arbitrarily refused to accept such accommodations a question of fact was presented. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

Record

The reviewing court could not consider plaintiff's objections or particulars of objections to statement of proceedings and evidence or objections to substituted statement of proceedings and evidence, since they had no place in record and court was required to base its decision upon statement of proceedings and evidence as approved by trial judge. *District Hauling & Construction Co.* v. *Argerakis* (D. C. Mun. App. 1943, 34 A. 2d 31).

On review of ruling on motion for instructed verdict, court will not consider questions of mere weight or credibility of evidence, but will decide only its sufficiency to make a case for jury. *Yellow Cab Co. of D. C.* v. *Griffith* (D. C. Mun. App. 1944, 40 A. 2d 340).

Where, at time statement of evidence was prepared and approved, there was before trial court only specific assignment of error relating to admission of evidence, but thereafter supplemental statement of errors was filed claiming that verdict was contrary to the evidence and contrary to the law, appellate court would confine review to the specific error asserted in admission of evidence. *Lee* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 250).

Record failed to sustain defendants' contention that they were denied the privilege of argument of the case on the merits. *Zis* v. *Herman* (D. C. Mun. App. 1944, 39 A. 2d 65).

Where judgment, under rule that record imports absolute verity, would not have been disturbed upon showing made if attacked directly, judgment could not be disturbed on collateral attack predicated on errors in record. *Scholl* v. *Tibbs* (D. C. Mun. App. 1944, 36 A. 2d 352).

Appellate court could not hold as matter of law that trial court's refusal to compel streetcar company to produce motorman's report of accident in action against company for injuries sustained by passenger was not prejudicial to passenger, where contents of report were not disclosed. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

Where statement of proceedings and evidence did not set out substance of plaintiff's opening statement but on argument on appeal counsel had stenographic transcript thereof at counsel table and at instance of court filed it with clerk, it was properly before court for consideration. *Horne* v. *Ostmann* (D. C. Mun. App. 1944, 35 A. 2d 174).

In detinue in 1943 for household goods conditionally sold in 1934, where defendant pleaded limitations and discharge in bankruptcy in 1941, but record did not show terms of contract, price of goods, payments made, or dates when defendant abandoned part of goods, record was so inadequate that court could not say there was error in judgment for plaintiff, and hence judgment must be affirmed. *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

Appellate court may not reweigh conflicting evidence or override findings, except where it clearly appears they are manifestly wrong. *Pegues* v. *Wray* (D. C. Mun. App. 1945, 41 A. 2d 299).

Municipal Court of Appeals must accept record as it comes to court and cannot attempt to exercise functions of trial judge or reconstruct happenings at trial. *Levy* v. *Bryce* (D. C. Mun. App. 1946, 46 A. 2d 765).

The Municipal Court of Appeals could not consider as part of the record a birth certificate which was attached to defendant's brief on appeal, but was not in evidence in trial court. *Gray* v. *Droze* (D. C. Mun. App. 1947, 55 A. 2d 340).

Where trial judge rendered no formal opinion upon motion of defendant for jury trial but in a later case, when the same question was before the same judge, he rendered an exhaustive opinion, in which he recited his course of action in the first case, the Court of Appeals could not consider the opinion as part of the record in the first case but could consider it as a statement of the court's understanding of the law upon the point. *Kass* v. *Baskin* (App. D. C. 1948, 164 F. 2d 513).

In determining meaning and effect of municipal court's finding that plaintiff failed to prove amount of damages to which he was entitled, but might supply sufficient evidence to substantiate his claim on new trial, appellate court is confined to record on appeal from subsequent order denying plaintiff's motion to reopen and retry case after dismissal thereof without prejudice. *Wade* v. *Union Storage & Transfer Co.* (D. C. Mun. App. 1948, 58 A. 2d 493).

Copies of a contract and a release appearing apparently as exhibits to a pleading, and copies of the contract and of a chattel mortgage attached to brief, could not be considered by reviewing court where it did not appear in the record that such papers were received in evidence. *Fabrizio* v. *Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

Where a note appended to the statement of proceedings and evidence by trial court was in substance nothing more than a note addressed to appellate court reciting and interpreting some, but not necessarily all, of the reasoning process of the trial court, it is not a part of the record in the case below nor a part of the statement of the proceedings and evidence. Such a note has no place in the record on appeal and thus will be disregarded. *Martin* v. *Schlein* (D. C. Mun. App. 1950, 71 A. 2d 614).

Where assignment of error relates to the trial court's statement in the course of the trial that the interpretation of the contract would be left to the jury, court cannot say that this was error when the record does not make plain what the court meant by this ruling. Since the record does not contain the charge to the jury, it is impossible to tell whether the question was left to the jury, or, if so, in what manner this was done. *Ellis* v. *Morgan* (D. C. Mun. App. 1949, 65 A. 2d 797).

Where the record does not contain a transcript of testimony or a statement of proceedings in evidence or an agreed statement on appeal, appeal must be dismissed since an appeal must be decided on the record and not on the briefs. *Jaffe* v. *Sterrett Operating Services, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 780).

REMAND

The remand for further proceedings is always made when the record does not enable the reviewing court to determine the rights for the parties. *Price* v. *Daime* (D. C. Mun. App. 1950, 71 A. 2d 608).

Where a judgment previously entered for a defendant is reversed without further order, the mandate to that effect does not preclude any other affirmative action unless specificaly directed by the Appellate Court. *Price* v. *Daime,* (D. C. Mun. App. 1950, 71 A. 2d 608).

REMARKS OF COURT

Where claimant assigns as error, alleged statements made by trial court which he believed reflected on him as a lawyer, but which were made out of the presence of the jury and could not have affected the jury, it was harmless; moreover, since the case properly terminated in a directed verdict, it is doubly clear that even if the remarks were erroneous they were not prejudical. *Glover* v. *Jewish War Veterans of United States* (D. C. Mun. App. 1949, 68 A. 2d 233).

REMITTITUR

Urging an appeal that appellate court should reinstate the first verdict and order such remittitur as it deemed proper to remove the excess of the verdict is without merit. In federal jurisdictions, the practice seems to be limited to contract cases and the like where the excess amount of the verdict can be fairly well determined. No case in the federal jurisdiction has been called to court's attention where an appellate court undertook to cure by remittitur an excessive verdict rendered in a court action for unliquidated damages. *Munsey* v. *Safeway Stores* (D. C. Mun. App. 1949, 65 A. 2d 598).

REVERSAL

Where overtaking streetcar struck automobile which had been stopped because way was obstructed by motorist making left turn, in action against streetcar company for damage to the overtaken automobile finding that streetcar was not negligently operated was plainly wrong, requiring reversal of judgment. *MacDonald, to Use of Emmco Ins. Co.* v. *Capital Transit Co.* (D. C. 1943, 31 A. 2d 862).

Where under evidence nominal damages only could be allowed, failure to award such damages was no ground for reversal. *Lee* v. *Dunbar* (D. C. Mun. App. 1944, 37 A. 2d 178).

A reversal benefits only those who have appealed. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

Statement of proceedings and evidence is not necessary on appeal where a question of law arises upon the face of the record, but where parties are properly before the court, pleadings state a case, and judgment conforms to pleadings, matters which arise during progress of trial cannot be reviewed unless record includes such portion of the evidence and proceedings as must be considered in determining whether trial court's rulings were correct. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

Exclusion of testimony of a witness who did not hear the entire conversation was reversible error, where it appeared that such testimony, according to the proffer of proof went to the heart of the controversy and the witness should have been permitted to testify as to how much of the conversation he heard. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

Question of whether accident was proximately caused by negligence of appellee's driver, and of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D. C. Mun. App. 1948, 62 A. 2d 797).

Ordinarily appellate court must accept as correct the statement properly settled and approved by a trial judge. Appeals court cannot undertake to settle disputes between court and counsel as to what happened in court below. However, where there are inadequacies and inconsistencies plainly apparent in the transcript and where the judge himself acknowledged on the record that he has deleted substantial portions of defendant's evidence on the merits of the case from the narrative statement, the defendant is entitled to a reversal. *Smith* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 766).

The Court of Appeals is reluctant to overrule a decision of a Trial Court resting in the field of discretion but where it interferes with a trial on the merits, slight abuse of discretion in refusing to set aside a default judgment is sufficient to justify a reversal of the order. *Manos* v. *Fickenscher* (D. C. Mun. App. 1948, 62 A. 2d 791).

It was reversible error to exclude entries made in the accounts receivable ledger regarding credit transactions of a client to prove that such client was operating as a partnership since such ledger sheet was admissible under the Federal Shop Book Rule as a record made in the regular course of business. *Orndorff* v. *Cohen* (D. C. Mun. App. 1948, 62 A. 2d 794).

RIGHT TO NONSUIT

Under rule 37 (a) of the Municipal Court, plaintiffs have lost their right to a nonsuit or voluntary dismissal after defendant's answer has been filed, since beyond that point an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. *Mercer* v. *Equitable Life Insurance Society* (D. C. Mun. App. 1949, 65 A. 2d 207).

SCOPE OF REVIEW

In action to recover balance due under rent assignment contract, where issue was whether defendant or corporation of which he was an officer was liable, and evidence was such that either one of the two different conclusions might reasonably have been drawn from it, Municipal Court of Appeals did not have appellate jurisdiction to substitute its own findings and to reverse judgment for defendant. *Nolan* v. *Werth,* 1944 (142 F. 2d 9, 79 U. S. App. D. C. 33, reversing 32 A. 2d 386).

Where evidence is such that either one of two different conclusions might reasonably be drawn from it, the decision is for the trial court and its judgment must stand, and appellate court may not reweigh the evidence or override the findings, except where it clearly appears that they are manifestly wrong. *Nolan* v. *Werth,* 1944 (142 F. 2d 9, 79 U. S. App. D. C. 33, reversing 32 A. 2d 386).

Tenants' surrender of possession constituted a voluntary compliance with the judgment for landlord in landlord and tenant proceeding, rendering case moot and leaving no question for determination on appeal. *Baugh* v. *Young* (D. C. Mun. App. 1944, 39 A. 2d 478).

The Municipal Court of Appeals cannot weigh evidence or pass upon the credibility of witnesses or override trial court findings which are supported by substantial evidence. *Zis* v. *Herman* (D. C. Mun. App. 1944, 39 A. 2d 65); *Rossiter* v. *National Sav. & Trust Co.* (D. C. Mun. App 1946, 46 A. 2d 540).

Where evidence is such that either one of two different conclusions might reasonably have been drawn from it, the decision is for the Municipal Court, and the Municipal Court of Appeals cannot reweigh the evidence or override findings of Municipal Court unless manifestly wrong. *Weimann* v. *Sheppard* (D. C. Mun. App. 1944, 37 A. 2d 847).

In broker's action for commissions, where the evidence was conflicting and would support a judgment for either party, the Municipal Court of Appeals could not override decision of Municipal Court who saw and heard the witnesses, although more witnesses testified for defendants than for plaintiff. *Weimann* v. *Sheppard* (D. C. Mun. App. 1944, 37 A. 2d 847).

The Municipal Court of Appeals for the District of Columbia cannot act as triers of fact, but must leave to the trial court questions of weight of evidence and credibility of witnesses. *Yellow Cab Co. of District of Columbia, Inc.* v. *Sutton* (D. C. Mun. App. 1944, 37 A. 2d 655).

An appellate court may not reweigh the evidence or override the trial court's findings except where it clearly appears they are manifestly wrong. *Yellow Cab Co. of District of Columbia, Inc.* v. *Sutton* (D. C. Mun. App. 1944, 37 A. 2d 655).

Municipal Court of Appeals, on reviewing a case, does not try the facts and will not choose among uncertain and conflicting inferences or direct contradictions in the evidence. *Mead* v. *Kane Transfer Co.* (D. C. Mun. App. 1944, 36 A. 2d 567).

A judgment as result of an erroneous exercise of power is reversible only by an appellate court, while a judgment as result of usurpation of power may be declared a nullity collaterally. *Scholl* v. *Tibbs* (D. C. Mun. App. 1944, 36 A. 2d 352).

Where separate actions by depositor's widow and brother against bank were consolidated for trial, on brother's appeal from judgment for bank, merely on basis of such consolidation, Municipal Court of Appeals could not review judgment for widow against bank from which bank did not appeal. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

In determining whether there was probable cause justifying issuance of a warrant of arrest in a disorderly house case, reviewing court was not called upon to determine whether the offense charged had in fact been committed but was concerned only with question whether the affiant had reasonable ground at the time of the affidavit and issuance of the warrant for belief that the law was being violated. *U. S.* v. *Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

The District of Columbia Municipal Court of Appeals cannot reweigh evidence to resolve doubts arising from question of credibility of witnesses. *Perlman* v. *Chal-Bro., Inc.* (D. C. Mun. App. 1945, 43 A. 2d 755).

Where evidence was such that in statutory proceeding for trial of right of property either one of two different conclusions might reasonably be drawn therefrom, trial court's judgment could not be disturbed by Municipal Court of Appeals. *Perlman* v. *Chal-Bro., Inc.* (D. C. Mun. App. 1945, 43 A. 2d 755).

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

The Municipal Court of Appeals cannot reweigh evidence or override findings. *Lindquist* v. *Steele* (D. C. Mun. App. 1945, 42 A. 2d 925).

Municipal Court of Appeals cannot weigh the evidence, and in jury cases is limited in its review to matters of law. *Watwood* v. *Potomac Chemical Co.* (D. C. Mun. App. 1945, 42 A. 2d 728).

The decision of Municipal Court on conflicting evidence cannot be disturbed. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309).

On appeal from municipal court's order denying plaintiffs' motion to reopen and retry case after dismissal thereof without prejudice pursuant to finding that plaintiffs failed to prove amount of damages to which they were entitled, but might supply sufficient evidence to substantiate their claim on new trial, appellate court need not determine whether record discloses adequate evidence of damages. *Wade* v. *Union Storage & Transfer Co.* (D. C. Mun. App. 1948, 58 A. 2d 493).

Defendant's oral statement of intention to appeal in open court within time limited by Municipal Court Rule 27 (b) for filing notice of intention to appeal would not be construed as notice of intention to appeal from sentences imposed on pleas of guilty in addition to sentences imposed on pleas of not guilty. *Slaughter* v. *District of Columbia* (D. C. Mun. App. 1948, 58 A. 2d 309).

Qualification of an expert is primarily for trial court and will not ordinarily be reviewed on appeal, but where facts are not in dispute, a reviewable question of law is presented. *Fraser* v. *Crounse* (D. C. Mun. App. 1948, 56 A. 2d 54).

From a study of the record, appellate court was satisfied it had no right to say that the judgment below was plainly wrong, for it was obvious that evidence supported such judgment. Since this is the standard fixed by the statute creating the court, rule must be followed and appellate court had no right to reweight evidence or to override findings of the trial court. *Watwood* v. *Bradford* (D. C. Mun. App. 1950, 72 A. 2d 41).

Appellate court unable to say as matter of law that trial court, which tried the case without a jury, was plainly wrong in holding that the accident was caused by the negligence of defendant or his employee and that plaintiff was not guilty of contributory negligence. While court might have reached a contrary conclusion had it been the triers of the facts, appellate court could not say that the conclusion of the trial court was not supported by substantial evidence. *Columbia Operating Corp.* v. *Kettler* (D. C. Mun. App. 1949, 67 A. 2d 267).

An argument that a verdict is not supported by the evidence raises no question for an appellate court when it brings up for review no ruling by the trial court. As defendants did not object to the case going to the jury or to the instructions under which it was submitted, they cannot now assert that there was no case for the jury's consideration or that the jury should have been instructed otherwise. *Johnson* v. *Kupper* (D. C. Mun. App. 1949, 67 A. 2d 265).

One cannot take his chance on a favorable verdict, reserving a right to impeach it if it happens to go the other way. Where the point now made was raised in the motion for a new trial, such motion cannot be used as a vehicle for asserting objections retroactively or for grounding an appeal on a theory not advanced at trial. *Johnson* v. *Kupper* (D. C. Mun. App. 1949, 67 A. 2d 265).

Appellant's criticism of the method of computing interest adopted by the judge is unfounded, where such method was more favorable to appellant than the method for which his counsel contends. *Sloan* v. *Sloan* (D. C. Mun. App. 1949, 66 A. 2d 799).

Review by this court is limited to final orders or judgments and interlocutory orders whereby the possession of property is changed or affected, and a stay order was not final because it did not determine the merits of the controversy. *Bradley* v. *Triplex Shoe Company* (D. C. Mun. App. 1949, 66 A. 2d 208).

The rule is well established that where no controversy remains except as to costs, an appellate court will not pass upon the merits. *Holmes* v. *Floyd E. Davis Company* (D. C. Mun. App. 1949, 66 A. 2d 212).

If counsel had other questions he wished to ask witnesses, or another line of inquiry he wished to pursue, he should have indicated to the trial court the nature of the questions or inquiry in order that the court make a specific ruling. In the absence of such ruling, there is no showing of prejudicial error. *Munsey* v. *Safeway Stores* (D. C. Mun. App. 1949, 65 A. 2d 598).

On the merits there was ample evidence to support the general finding of the trial court and therefore trial court was correct in making no ruling as to the applicability of the principle of res ipsa loquitur. *Endy* v. *Baltimore and Ohio Railroad Company* (D. C. Mun. App. 1950, 73 A. 2d 514).

The rule is that the inquirying party is concluded by the witness' answer when cross-examination relates to a matter collateral to the issue, and he may not later rebut it for purposes of impeachment. The test of whether or not a matter of fact inquired of in cross-examination is collaterial is: Would the cross-examining party be entitled to prove it as a part of his case? If so, it is not collateral, otherwise it is. *Kelly* v. *United States* (D. C. Mun. App. 1950, 73 A. 2d 232).

Trial Court's finding of fact is conclusive on this appeal in view of conflicting evidence, but it will not be conclusive in the new trial which will be necessary because of an error as to a matter of law. *Keith* v. *Berry* (D. C. Mun. App. 1949, 64 A. 2d 300).

Where no showing of fraud, duress, or mistake is made at the trial, courts have no right to relieve parties to contracts merely because certain provisions may operate disadvantageously to them. *Simm* v. *Bovee* (D. C. Mun. App. 1949, 68 A. 2d 800).

Where the parties are properly before the court, and pleadings state a cause of action, and the trial court's judgment conforms to the pleadings, it must be assumed, in the absence of a statement of proceedings and evidence, that the evidence presented was sufficient to support the verdict and judgment. *Wilkins* v. *Woodruff* (D. C. Mun. App. 1950, 74 A. 2d 59).

The finality of an order depends not upon its name, its propriety or its normal function, but upon whether it disposes of the whole case on its merits so that nothing remains to be done except execution of a judgment or decree. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 63 A. 2d 671).

Appellate court has no power to weigh the evidence and therefore cannot consider that the verdict was contrary to the evidence or weight of the evidence. *Hooper* v. *Smith* (D. C. Mun. App. 1950, 72 A. 2d 466).

Action on a discretionary matter, such as motion for continuance as a result of illness, is reversible where the error in its exercise is plainly shown, and worked material hardship and injustice. *Etty* v. *Middleton* (D. C. Mun. App. 1948, 62 A. 2d 371).

Where purchaser sought no judgment against the third party defendant and broker, the broker could not appeal from the judgment against the seller. Therefore on appeal from the judgment of the seller against the broker, the court has no authority to review the judgment of the purchaser against the seller from which no appeal was taken. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

Jurisdiction of the subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and objection thereto may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E. Street Theatre Corporation* (D. C. Mun. App. 1948, 63 A. 2d 649).

Statement of Proceedings and Evidence

The reviewing court cannot decide disagreements between trial court and counsel as to occurrences at trial, but must generally accept as correct the statement of proceedings and evidence, properly settled and approved by trial judge. *District Hauling & Construction Co.* v. *Argerakis* (D. C. Mun. App. 1943, 34 A. 2d 31).

An appeal from conviction was not dismissible because notice of appeal was prematurely filed before motion for new trial was disposed of, where the motion was thereafter overruled and appellant filed a statement of errors claimed which assigned as one error the denial of the motion. *Hamilton* v. *U. S.*, 1944 (140 F. 2d 679, 78 U. S. App. D. C. 316, reversing 31 A. 2d 887).

When statement of proceedings and evidence is submitted to trial court, the court must approve statement if accurate or, if not, must assist in making it accurately reflect the trial proceedings, and should not approve an incomplete or inaccurate statement. *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

Appellate court could not pass on alleged error of trial court in holding that evidence did not establish the authority of an agent in absence of a statement of proceedings and evidence. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

District Court of Appeals cannot decide cases on basis of disputed facts as they appear in briefs of the parties but must be governed by recitals in statement of proceedings and evidence approved by trial court. *King* v. *McKnight* (D. C. Mun. App. 1948, 61 A. 2d 714).

Where appellant apparently had a stenographic report made of evidence at trial in municipal court but did not bring it before reviewing court as permitted by rules, reviewing court was required to rely on statement of proceedings and evidence certified by trial judge. *De Bobula* v. *Winston* (D. C. Mun. App. 1948, 57 A. 2d 742).

Where the record is not a stenographic transcript of testimony but is a narrative statement of proceedings and evidence approved by the trial court, appellate court and the parties are bound by that statement. Counsel has no right and ought not to attempt to supplement or contradict the record by statements in a brief. *Povello* v. *Falvey Granite Co.* (D. C. Mun. App. 1950, 71 A. 2d 536).

The contention that the trial court erred in not granting new trial on account of newly discovered evidence is without foundation where the only reference to such evidence is in the statement made in the motion for new trial. This is not sufficient to justify trial court in granting new trial and certainly does not warrant appellate court in so holding. *Turner* v. *Bowman* (D. C. Mun. App. 1949, 68 A. 2d 231).

A transcript of the proceedings below or a statement of proceedings and evidence are not required where an error of law is shown to exist upon the face of the record. *Mindell* v. *Glenn* (D. C. Mun. App. 1949, 65 A. 2d 340, as aff'd 74 A. 2d 835).

Facts agreed to by the petitioner's counsel, which did not appear in the examiner's statement of evidence or any other evidentiary form in the record and bearing no approval or certification of the rent administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D. C. Mun. App. 1948, 63 A. 2d 333).

Summary Judgment

In an action for malicious prosecution, even if supporting affidavits are true and complete statements relating to defendant's connection with the criminal proceeding, it may be that plaintiff has no cause of action, but on motion for summary judgment, court cannot indulge in such an assumption. Moreover, a party cannot be compelled to try his case on affidavits without the benefit of cross-examinations. *Milstead* v. *W. P. Ballard and Company, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 589).

Supersedeas Bond

In action to recover rented premises for breach of condition, failure of tenant to furnish a supersedeas bond did not waive the right of appeal. *Quick* v. *Paregol* (D. C. Mun. App. 1948, 61 A. 2d 407, 1949, 68 A. 2d 211).

Third Party Practice

Where third party defendants were not served with notices of the motion for summary judgment, such a defendant was deprived of no rights by such failure to serve notice and cannot complain; and court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

Time for Appeal

An order denying motion to set aside judgment was not appealable where the motion was filed more than two months after the judgment and the appeal was taken more than four months after the judgment. *Union Provision & Distributing Corp.* v. *Thomas J. Fisher & Co.* (D. C. Mun. App. 1946, 49 A. 2d 85).

The reviewing court cannot extend time for appeal from Municipal Court beyond 10 days after judgment. *Brooks* v. *Trigg* (D. C. Mun. App. 1947, 51 A. 2d 302).

Where appeal on face of record appeared to be too late but trial court certified a supplemental record showing that on appellant's motion to correct the record by having it show that judgment purporting to be entered on certain date was not in fact entered until a subsequent date, trial court found that date of entry of judgment was within 10 days of filing of notice of appeal, appeal would not be dismissed. *Corbett* v. *Urciolo* (D. C. Mun. App. 1947, 54 A. 2d 577).

The time for filing notice of appeal is jurisdictional and cannot be extended by trial or appellate court. *Corbett* v. *Urciolo* (D. C. Mun. App. 1947, 54 A. 2d 577).

A motion, filed long after expiration of time for appeal from judgment, to strike or vacate judgment, must be considered as unseasonably filed and treated as collateral attack on judgment. *Wade* v. *Union Storage & Transfer Co.* (D. C. Mun. App. 1948, 58 A. 2d 493); *Slaughter* v. *District of Columbia* (D. C. Mun. App. 1948, 58 A. 2d 309, 60 A. 2d 700, C. A., D. C. 1949, 172 F. 2d 281, 84 U. S. App. D. C. 232, certiorari denied 70 S. Ct. 135, 338 U. S. 874, 94 L. Ed. 115, rehearing denied 70 S. Ct. 245, 338 U. S. 901, 94 L. Ed. 200, D. C. Mun. App. 1949, 65 A. 2d 570).

Where defendant failed to file written notice of appeal within time limited therefor by Municipal Court Rule 27 (b) but did within such period give oral notice of intention to appeal in open court, the oral notice would be held to be a substantial compliance with such rule, so that defendant's right of appeal from conviction on charges to which he had pleaded not guilty, was not lost. *Slaughter* v. *District of Columbia* (D. C. Mun. App. 1948, 58 A. 2d 309, 60 A. 2d 700, C. A., D. C. 1949, 172 F. 2d 281, 84 U. S. App. D. C. 232, certiorari denied 70 S. Ct. 135, 338 U. S. 874, 94 L. Ed. 115, rehearing denied 70 S. Ct. 245,

338 U. S. 901, 94 L. Ed. 200, D. C. Mun. App. 1949, 65 A. 2d 570).

UNASSIGNED ERRORS

A point not made in defendant's motion for new trial or assigned as error on appeal presented nothing for review. *Sherman* v. *U. S.* (D. C. Mun. App. 1944, 36 A. 2d 556).

WAIVER OF ERRORS

Any error in refusing to grant defendant's motion for a directed verdict at close of Government's case was waived when defendant proceeded to offer evidence in his behalf. *Boyer* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U. S. App. D. C. 202, 166 A. L. R. 209).

The rule in class B actions requires that any person desiring a jury trial shall file an answer accompanied by a jury demand, and where appellant filed neither an answer nor a demand for jury trial, such right was waived. *Clark* v. *General Electric Credit Corp.* (D. C. Mun. App. 1950, 72 A. 2d 43).

Where motion was made at close of plaintiff's evidence for a directed verdict and, upon its denial, defendants proceeded to present evidence on their behalf, they thereby waived benefit of their motion. Since the motion was not renewed at the close of all the evidence there is no basis for this claim of error. *Brooks* v. *Jensen* (D. C. Mun. App. 1950, 73 A. 2d 32).

Where the explanation of plaintiff's counsel was that he forgot to strike two names from the jury panel and after the trial court refused to remove these two jurors on the ground that the objection came too late, and opposing counsel offered to consent to the removal of the two jurors and try the case with a jury of ten, which was refused, the objection, even if valid, came too late. *Glover* v. *Jewish War Veterans of United States* (D. C. Mun. App. 1949, 68 A. 2d 233).

When the motion to dismiss was heard and appellant argued the merits of the motion and did not object to proceeding with the hearing because of the pendency of another motion to set aside the default, such conduct constituted a consent to the hearing of the motion to dismiss and a waiver of the right to insist that the motion to set aside the default be disposed of first. *Raimonde* v. *Purcell* (D. C. Mun. App. 1949, 68 A. 2d 678).

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. *Gross* v. *Utilities Engineering Institute* (D. C. Mun. App. 1950, 75 A. 2d 363).

WITHHOLDING ENTRY PENDING APPEAL

To avoid the labor and expense of filing application for allowance of an appeal in all of several cases, which were controlled by one common question of law, resort could be had to the practice of filing application for appeal in one case, and withholding entry of final judgment in the others upon stipulation that action therein abide the results of the single appeal. *Yeager* v. *District of Columbia* (D. C. 1943, 33 A. 2d 629).

WITNESS, COMPETENCY

The question as to competency of a child as a witness is one primarily for trial judge, whose decision will not be disturbed on appeal unless shown to be clearly erroneous. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

The testimony of an infant may be excluded in toto on grounds of incompetency, but once he is allowed to testify, the uncertainty of his evidence goes only to its weight and does not disqualify such testimony. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

WRIT OF MANDAMUS

The traditional use of the writ of mandamus in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Where, if an order is not promptly and effectively rescinded, petitioner may lose his security and suffer irreparable damage, the situation justifies a writ of mandamus requiring trial court to vacate its order setting aside a judgment. *Mike's Mfg. Company* v. *Zimoris* (D. C. Mun. App. 1949, 66 A. 2d 414).

WRIT OF PROHIBITION

Though the act creating the Municipal Court of Appeals does not expressly give the court power to issue a writ of prohibition or any of the extraordinary writs, since the court is expressly authorized to hear and determine appeals and to regulate all matters relating to such appeals, it has implied an inherent power to issue extraordinary writs in aid of its appellate jurisdiction and such a writ may issue even though no appeal has been noted or is pending. *Mike's Mfg. Company* v. *Zimoris* (D. C. Mun. App. 1949, 66 A. 2d 414).

§ 11–773. Review of judgments in United States Court of Appeals for the District of Columbia—Procedure.

Any party aggrieved by any judgment of The Municipal Court of Appeals for the District of Columbia may seek a review thereof by the United States Court of Appeals for the District of Columbia by petition for the allowance of an appeal. The petition shall be in writing and shall be filed with the clerk of said United States Court of Appeals within ten days after the entry of such judgment, the contents of the petition to conform to the requirements which said United States Court of Appeals may by rule prescribe. Said Court of Appeals may prescribe rules governing the practice and procedure on such applications, the preparation of and the time for filing the transcript of the record in such cases, and generally to regulate all matters relating to appeals in such cases. If said Court of Appeals shall allow an appeal, the court shall review the record on appeal and shall affirm, reverse, or modify the order or judgment in accordance with law. (Apr. 1, 1942, 56 Stat. 196, ch. 207, § 8.)

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

NOTES TO DECISIONS

DISMISSAL

Where plaintiffs appealed to Municipal Court of Appeals from order denying motion for clarification of order dismissing their action for want of prosecution and, after affirmance petitioned United States Court of Appeals for allowance of appeal on question of whether a dismissal for nonappearance in municipal court is with or without prejudice, dismissal of petition for appeal was required, since only question involved in case was right to clarification of order of dismissal. *Taylor* v. *Yellow Cab Co. of D. C.* (C. A., D. C. 1948, 169 F. 2d 299).

§ 11–774. Rules for procedure—Service of process—Punishment for contempt.

(a) The Municipal Court of Appeals for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure in such court, to provide for the efficient administration of justice, and the same shall conform as nearly as may be practicable to the forms, practice, and procedure now obtaining under the Federal Rules of Civil Procedure (U. S. C., title 28, following § 723c). Said rules shall not abridge, enlarge, or modify the substantive rights of any litigant. After September 16, 1938, all laws in conflict therewith shall be of no further force or effect.

Service of process shall be made by the United States Marshal for the District of Columbia.

(b) The Municipal Court of Appeals for the District of Columbia, or any judge thereof, shall have the power to punish for disobedience of any order or contempt committed in the presence of the court by a fine not exceeding $50, or imprisonment not exceeding thirty days. (Apr. 1, 1942, 56 Stat. 196, ch. 207, § 9.)

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

NOTES TO DECISIONS

COSTS

Where it was held that party attempting to appeal had no right to do so and judgment was affirmed, cost of stenographic record included in record on appeal could not be taxed against appellant by Municipal Court of Appeals, but could only be taxed by trial court. *Klein* v. *Liss* (D. C. Mun. App. 1945, 43 A. 2d 757).

Successful appellant was not entitled to tax against appellee the cost of a reporter's transcript of testimony which was made part of the record on appeal. *Fraser* v. *Crounse* (D. C. Mun. App. 1946, 47 A. 2d 96).

In prescribing in rule 41 (c) that, on reversal, cost of transcript of record shall be taxable as costs, the usual transcript on appeal, consisting of copies of pleadings and statement of proceedings and evidence which is ordinarily prepared by counsel and settled and approved by trial judge, was contemplated and not the unusual items of expense such as the cost of a reporter's transcript. *Fraser* v. *Crounse* (D. C. Mun. App. 1946, 47 A. 2d 96).

DUTY OF APPELLANT

The primary responsibility for prosecuting an appeal rests upon an appellant and he must guard against time lapses which may result in dismissal. *Bowers* v. *Basiliko* (D. C. Mun. App. 1944, 38 A. 2d 623).

It is duty of the parties and primarily of appellant to present a record complete and adequate for purposes of all questions to be argued on appeal. *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

In the absence of a statute or rule requiring the giving of notice of trial, a party litigant who has appeared in court is required to keep himself informed of the time his case is set for trial. An allegation of fraud in obtaining judgment based on lack of notice is without merit. *Rosenberg* v. *Ichcovitz* (D. C. Mun. App. 1950, 72 A. 2d 466).

EXTENSION OF TIME

An appeal to Municipal Court of Appeals for District of Columbia is perfected by filing a notice of appeal with clerk, and time therefor may not be extended and thereafter trial court has no power to grant extensions except one ten-day extension for filing statement of proceedings and evidence or reporter's transcript and one extension of five days for filing objections thereto, and other extensions must be obtained from Court of Appeals. *Tendler* v. *L. E. Massey, Inc.* (D. C. Mun. App. 1943, 34 A. 2d 33).

Where Municipal Court without authority extended for five days time for hearing appellee's objections to reporter's transcript because of absence from city of appellee's counsel, and transcript was thereafter approved, Court of Appeals, in its discretion, within time for filing transcript of record on appeal, extended time for approval of transcript to include date on which it was approved. *Tendler* v. *L. E. Massey, Inc.* (D. C. Mun. App. 1943, 34 A. 2d 33).

The prohibition against enlarging time for taking appeal is absolute. *Crowley* v. *Wood* (D. C. 1943, 31 A. 2d 861).

Counsel could not by their consent to application for extension of time for filing brief render inoperative court rule fixing time limit or fix new limitations of time not contemplated by court rules or specifically sanctioned by court orders. *Werth* v. *Nolan* (D. C. 1943, 31 A. 2d 679).

Alleged fact that appellants' counsel had been engaged in other court work and other legal practice to such extent that he had not had sufficient time to prepare brief did not constitute sufficient cause for failure to file brief within time limited by court rules and extended by court order, and did not justify failure to seek extension of time within prescribed period and therefore an out of time application for extension of time for filing brief was required to be denied even though appellee consented to the application. *Werth* v. *Nolan* (D. C. 1943, 31 A. 2d 679).

That appellant miscalculated the time within which to file the designation of record and statement of errors was not an "extraordinary reason" for granting leave to file after the expiration of time fixed by court rule, particularly where extension was sought after expiration of the time fixed. *Bowers* v. *Basiliko* (D. C. Mun. App. 1944, 38 A. 2d 623).

Counsel could not by their consent to application for leave to file designation of record and statement of errors after expiration of time render inoperative court rule fixing time limit for filing, or by withholding consent prevent the court from granting relief in a proper case. *Bowers* v. *Basiliko* (D. C. Mun. App. 1944, 38 A. 2d 623).

Court's discretion in matter of permitting extension of time for filing record and statement of errors will be exercised very sparingly and only upon substantial justification. *Bowers* v. *Basiliko* (D. C. Mun. App. 1944, 38 A. 2d 623); *Graves* v. *MacDonald* (D. C. Mun. App. 1946, 47 A. 2d 91).

The timely filing of notice of appeal is jurisdictional and, unless such notice is timely filed, court has no power to extend or to review case. *Beach* v. *District of Columbia* (D. C. Mun. App. 1945, 44 A. 2d 926).

The purpose of Municipal Court of Appeals rule 27 (p) that there shall be no extensions of time for filing notice of appeal, reserving power in court to enlarge time for taking any step after notice of appeal is filed, is to set a definite point of time when litigation shall be at an end unless, within the time limited, an appeal is initiated in the prescribed manner. *Beach* v. *District of Columbia* (D. C. Mun. App. 1945, 44 A. 2d 926).

Appellant, filing no brief or application for extension of time to do so before last day for filing thereof, was not entitled to extension of time therefor on oral motion, made by his counsel after case was placed on next month's calendar, solely on ground that counsel had been busy with other matters. *Nash* v. *District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 469).

Tenant in landlord's action for possession of business property, was not entitled to additional time for completing appeal which was not perfected in time allegedly because pressure of business had prevented tenant's attorney from perfecting appeal, attorney was out of town, and attorney had no idea that landlord's attorney would seek enforcement of rules dealing with time limits for various steps on appeal. *Graves* v. *MacDonald* (D. C. Mun. App. 1946, 47 A. 2d 91).

The reason given in support of motion for leave to file in the trial court a statement of proceedings and evidence, time for so doing having expired, that counsel had been engaged in other courts and had overlooked the date statement of proceedings and evidence was due, was not an "extraordinary reason" within rule, which would justify granting relief. *Cunningham* v. *Dade* (D. C. Mun. App. 1947, 52 A. 2d 894).

FEDERAL RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure, 28 U. S. C., are inapplicable to Municipal Court of Appeals for District of Columbia. *Taylor* v. *United Broadcasting Co.* (D. C. Mun. App. 1948, 61 A. 2d 480).

PRESUMPTIONS

Error will not be presumed on appeal and must be shown affirmatively by party asserting it. *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

QUESTIONS CONSIDERED

Where case was never submitted to jury, there could be no complaint, on appeal, of trial court's refusal to grant

certain instructions. *National Life Ins. Co.* v. *White* (D. C. Mun. App. 1944, 38 A. 2d 663).

Where plaintiff made no motion for an instructed verdict and did not object to submission of case to jury, claim that court erred in not directing a verdict could not be considered. *Abbott* v. *Fant* (D. C. Mun. App. 1944, 38 A. 2d 618).

Where no objection or motion for a mistrial was made before the return of the verdict, and court instructed jurors that it was their duty to disregard any remarks of counsel tending to arouse their sympathy, claim that court should have declared a mistrial because counsel referred to appellee as American citizen whose son was overseas fighting for his country would be overruled. *Abbott* v. *Fant* (D. C. Mun. App. 1944, 38 A. 2d 618).

Record

Stenographic transcript of former trial of case before a different judge was not properly part of record. *Mee* v. *Marlyn Apartment Co.* (D. C. 1943, 31 A. 2d 864).

The responsibility for a complete record rests primarily on the parties and not on the trial court or appellate court. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

A suggestion by losing party, after case has been briefed, argued, and decided, that there are omissions in the record, come too late. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

It is duty of parties coming to appellate court to bring a record complete and adequate for purposes of all questions to be argued, since appellate court cannot consider matter outside record. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

Where appellees' request to have record corrected was made for first time in motion for rehearing after appellate court had reversed judgment, the request was not in time. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

If anything material to either party is omitted from record, omission should be called to attention of appellate court timely in order that omission may be supplied and supplemental record, if necessary, filed. *Zweig* v. *Schwartz* (D. C. 1943, 31 A. 2d 857).

If record before Municipal Court of Appeals for the District of Columbia is inadequate to present questions raised, court cannot review the proceedings. *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

Appellate court can consider only what the record discloses. *Heslop* v. *Robert A. Grahame, Inc.* (D. C. 1943, 31 A. 2d 856); *Barrett* v. *Adkins Furniture Co.* (D. C. Mun. App. 1945, 43 A. 2d 44).

Where copies of letters were attached to defendant's brief but they did not appear in record and counsel had not taken witness stand to identify them nor to recite circumstances of their being written, they were not properly before court on appeal. *McHugh* v. *Duane* (D. C. Mun. App. 1947, 53 A. 2d 282).

Rules of Court

Time limitations in court rules governing appeals to Municipal Court of Appeals for District of Columbia were designed to prevent unnecessary delay, and Court of Appeals, in its discretion, may decline to accept as sufficient excuses for failure to comply with limitations. *Tendler* v. *L. E. Massey, Inc.* (D. C. Mun. App. 1943, 34 A. 2d 33).

The Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., and the Rules of Municipal Court of Appeals for District of Columbia are intended to avoid harshness of the old rules. *Tendler* v. *L. E. Massey, Inc.* (D. C. Mun. App. 1943, 34 A. 2d 33).

Where there has not been a compliance with requirements of rules governing appeals, court may, either upon appropriate motion, or sua sponte, dismiss appeal. *Lloyd* v. *U. S. Fidelity & Guaranty Co.* (D. C. 1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U. S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U. S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U. S. 770, 88 L. Ed. 1595).

Where appellant did not submit to trial judge nor to opposing counsel a "Statement of Proceedings and Evidence" as required by court rules, nor was such a statement or agreed statement in lieu thereof filed, a motion to have the appeal docketed and dismissed could have been filed by appellee. *Lloyd* v. *U. S. Fidelity & Guaranty Co.* (D. C. 1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U. S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U. S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U. S. 770, 88 L. Ed. 1595).

Where appellant did not submit to trial judge nor to opposing counsel a "Statement of Proceedings and Evidence" but there was set forth in brief for appellant a statement of case and appellee's brief contained a section entitled "Restatement of the Case," the statements would be treated as part of record on appeal and appeal would be entertained, but such action was not to be construed as a precedent for pending or future cases. *Lloyd* v. *U. S. Fidelity & Guaranty Co.* (D. C. 1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U. S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U. S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U. S. 770, 88 L. Ed. 1595).

That appellant filed notice of appeal the next day after judgment rather than waiting the full ten days did not excuse unexplained failure to follow up with filing designation of record and assignment of errors within five days required by rule. *Bowers* v. *Basiliko* (D. C. Mun. App. 1944, 38 A. 2d 623).

Where appellant failed to file designation of record and statement of errors within five days from date of filing notice of appeal as required by court rule and no extraordinary reason for granting relief was shown, appellee's motion to docket and dismiss was granted. *Bowers* v. *Basiliko* (D. C. Mun. App. 1944, 38 A. 2d 623).

The rules of Municipal Court of Appeals contemplate that assignments of error shall be specific and definite for the reason that many cases in trial court are not stenographically reported and statements of proceedings and evidence in those cases are prepared in view of errors claimed. *Watwood* v. *Potomac Chemical Co.* (D. C. Mun. App. 1945, 42 A. 2d 728).

The rules of the Municipal Court of Appeals providing how an appeal should be taken and fixing time for filing notice of appeal are in conformity with mandate of this section to follow the Federal Rules of Civil Procedure, 28 U. S. C. foll. § 723c, except as to time limits which conform to the Rules of Practice and Procedure in Criminal Cases, 18 U. S. C. foll. § 687, adopted by the Supreme Court. *Beach* v. *District of Columbia* (D. C. Mun. App. 1945, 44 A. 2d 926).

On appeal from judgment of Municipal Court, the Municipal Court of Appeals will not apply a Federal Rule of Civil Procedure, 28 U. S. C. foll. § 723c, which the Municipal Court has not adopted.' *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

Appellants' failure to file a statement of errors was a breach of rules. *Hoover* v. *Babcock* (D. C. Mun. App. 1947, 53 A. 2d 591).

The court rule providing that judgment if no motion is filed, shall be entered on fifth day after verdict or finding, does not mean that judgment is to be dated as of the fifth day even though entered later. *Corbett* v. *Urciolo* (D. C. Mun. App. 1947, 54 A. 2d 577).

The purpose of the rules of the Municipal Court of Appeals is the orderly and prompt disposition of appeals. *Cunningham* v. *Dade* (D. C. Mun. App. 1947, 52 A. 2d 894).

Rule permitting Municipal Court of Appeals to call for further statement of evidence, approved by trial court, if such is necessary to determine application for leave to appeal, contemplates such action only when there is at least a prima facie showing of merit in the application. *Ionescue* v. *Dettmers* (D. C. Mun. App. 1947, 53 A. 2d 287).

Rules of the appellate court permit the use of original papers on appeal, and the statute itself provides that there shall be no requirement for printed records or briefs. Rules make it possible for counsel and parties to expedite the hearing of appeals, but they still have the responsibility for calling to our attention the need for emergency actions. *Hill* v. *United States* (D. C. Mun. App. 1950, 75 A. 2d 138).

The purpose of the rules is the orderly and prompt disposition of appeals. Rules are not made for the convenience of the court but for the benefit of litigants, and counsel who have the right to rely on them, ought to

comply with them. The court will not condone either wilful or negligent disregard of court rules or orders. *Phucas* v. *Washington-Virginia-Maryland Coach Company* (D. C. Mun. App. 1950, 76 A. 2d 59).

Where counsel for appellant has given no explanation of how an inadvertence could have occurred in not filing the brief, court is obliged to conclude that counsel, after receiving two extensions of time totaling twenty-eight days, simply failed to comply with the rules and order of this court. *Phucas* v. *Washington-Virginia-Maryland Coach Company* (D. C. Mun. App. 1950, 76 A. 2d 59).

Where the so-called brief in no manner complied with rules, consisted of three pages with an obviously incomplete statement of the case in the first page, seven claims of error in the third, and containing some general statements under the heading "Conclusion" with no index, no citations of authority and no arguments; such a document is not entitled to be called a brief and appeal must be dismissed. *Phucas* v. *Washington-Virginia-Maryland Coach Company* (D. C. Mun. App. 1950, 76 A. 2d 59).

STATEMENT OF PROCFEDINGS AND EVIDENCE

Where only explanation for failure to file statement of proceedings and evidence within time or failure to apply for extension of time was that appellant's counsel was occupied with trial of cases, appellee's motion to docket and dismiss would be granted. *Stroup* v. *Howe* (D. C. 1943, 32 A. 2d 297).

Where statement of proceedings and evidence is prepared by counsel for one of interested parties, with or without suggestions or instructions from court, counsel for other side is entitled to be served with copy and afforded an opportunity of making objections prior to final action thereon. *Franklin* v. *Chas. C. Schulman Co.* (D. C. 1943, 31 A. 2d 871).

The settling and approval of statement of proceedings and evidence is a "judicial function", and trial judge should not delegate the duty to counsel for one of the parties. *Franklin* v. *Chas. C. Schulman Co.* (D. C. 1943, 31 A. 2d 871).

A properly authenticated statement of proceedings and evidence must be accepted by appellate court as conclusive. *Franklin* v. *Chas. C. Schulman Co.* (D. C. 1943, 31 A. 2d 871).

Where appellee's counsel filed objections to statement of proceedings and evidence prepared by appellant's counsel and after conference trial judge directed appellee's counsel to prepare statement, approval of statement prepared by appellee's counsel without notice to appellant a new trial. *Heslop* v. *Robert A. Grahame, Inc.* (D. C. 1943, 31 A. 2d 856).

A statement of proceedings and evidence properly settled and approved by trial judge must be accepted by appellate court as correct. *Heslop* v. *Robert A. Grahame, Inc.* (D. C. 1943, 31 A. 2d 856).

Where trial judge did not settle statement, but instead approved two conflicting statements, appellate court could not pass on the merits and would remand case to trial court to approve and send to appellate court one correct statement of proceedings and evidence, or, if it was impossible to do so, to set aside judgment and order a new trial. *Heslop v. Robert A. Grahame, Inc.* (D. C. 1943, 31 A. 2d 856).

Where appellant submitted a statement of proceedings and evidence to the trial judge and appellees filed objections thereto and both the statements and objections were approved by the trial judge and separately incorporated into the record, such procedure was confusing and proper procedure was to have statements of proceedings and evidence reflect in one document a complete and continuous narrative statement of what happened at the trial. *Washington Nat. Ins. Co.* v. *Stanton* (D. C. 1943, 31 A. 2d 680).

Testimony in trial court may be presented to the Municipal Court of Appeals by an agreed statement on appeal, by a narrative statement of proceedings and evidence prepared by counsel and approved by the trial judge, and through the medium of a reporter's transcript of the testimony. *Fraser* v. *Crounse* (D. C. Mun. App. 1946, 47 A. 2d 96).

Rules contemplate that in preparing a statement of proceedings and evidence, both parties be given an opportunity to assist in the preparation, and when disagreement arises as to what actually occurred at the trial, it is the function of the trial judge to confer with the parties and settle the dispute since the appellate court must accept as conclusive the statement properly settled and approved. *Edmonston* v. *Stanley* (D. C. Mun. App. 1950, 76 A. 2d 778).

TIME FOR MOTIONS

Where finding is made out of presence of counsel or parties, notice of such action shall be given by mail, and in such a situation the time for filing a motion for new trial is enlarged by one day. *United Retail Cleaners and Tailors Ass'n of D. C.* v. *Denahan* (D. C. Mun. App. 1945, 44 A. 2d 69).

Motion of appellant's counsel for leave to file brief almost a month after it was due, on ground that because of the pressure of other cases he had not been able to concentrate on the preparation of the brief sought to be filed, was denied and appeal was dismissed. *Karika* v. *District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 93).

§ 11–775. Disbarment of attorney—Charges.

The Municipal Court for the District of Columbia, and The Municipal Court of Appeals for the District of Columbia as established by this subchapter, shall have full power and authority to censure, suspend, or expel from practice, at their respective bars, any attorney for any crime involving moral turpitude, or professional misconduct, or any conduct prejudicial to the administration of justice. Before any such attorney is censured, suspended, or expelled, written charges under oath against him must be presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the attorney personally by the marshal or such other person as the court may designate, or in case it is established to the satisfaction of the court that personal service cannot be had, a certified copy of such charges and order shall be served upon him by mail, publication, or otherwise, as the court may direct. At any time after the filing of said written charges, the court shall have the power, pending the trial thereof, to suspend from practice at its bar the person charged. (Apr. 1, 1942, 56 Stat. 196, ch. 207, § 10.)

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

§ 11–776. Retirement of judges—Length of service—Salary—Definitions—Recall to service.

(a) Any judge of The Municipal Court for the District of Columbia, any judge of The Municipal Court of Appeals for the District of Columbia, as established by subchapter II and this subchapter, or any judge of the Juvenile Court of the District of Columbia, may hereafter retire after having served as a judge of such court for a period or periods aggregating twenty years or more, whether continuously or not. Any judge who so retires shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years

of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge. In no event shall the sum received by any such judge hereunder be in excess of the salary of such judge at the date of such retirement. In computing the years of service under this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, as heretofore constituted, shall be included whether or not such service be continuous. The terms "retire" and "retirement" as used in this section shall mean and include retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent.

(b) Any judge receiving retirement salary under the provisions of this section may be called upon by the chief judge of The Municipal Court for the District of Columbia or the chief judge of The Municipal Court of Appeals for the District of Columbia to perform such judicial duties as may be requested of him in either of said courts, or in the Juvenile Court of the District of Columbia, but in any event no such retired judge shall be required to render such service for more than ninety days in any calendar year after such retirement. In case of illness or disability precluding the rendering of such service such retired judge shall be fully relieved of any such duty during such illness or disability. (Apr. 1, 1942, 56 Stat. 197, ch. 207, § 11.)

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

§ 11–777. Appropriations.

The appropriations in the 1942 District of Columbia Appropriation Act, approved July 1, 1941, for the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, are hereby continued available for the purposes specified therein, and for the expenditures authorized by subchapter II and this subchapter. And there is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such funds as may be necessary to carry out the provisions of subchapter II and this subchapter. (Apr. 1, 1942, 56 Stat. 197, ch. 207, § 13.)

REFERENCES IN TEXT

1942 District of Columbia Appropriation Act referred to in text is set out in full in act July 1, 1941, ch. 271, 55 Stat. 499.

EFFECTIVE DATE

See note preceding § 11–771.

SEPARABILITY CLAUSE

See note under § 11–771.

Chapter 8.—SMALL CLAIMS AND CONCILIATION BRANCH OF MUNICIPAL COURT

Sec.
11–801. Establishment.
11–802. Definitions.
11–803. Judges—Tenure—Rotation.
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11–805. Commencement of action—Form of statement of claim—Preparation by clerk—Notice—How served, cost, form—Judgment by default—Memorandum to plaintiff.
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§ 11–801 [18: 241]. Establishment.

There is hereby established in the municipal court of the District of Columbia a small claims and conciliation branch. (Mar. 5, 1938, 52 Stat. 103, ch. 43, § 1.)

NOTES TO DECISIONS

PURPOSE

The principal purpose of legislation establishing Small Claims Branch of Municipal Court for the District of Columbia was to provide informality and the kind of friendly atmosphere not found in ordinary procedure, and to accomplish this purpose conciliation procedure was prescribed in every case. *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

The purpose of legislation establishing small claims court was to secure prompt and inexpensive adjudication of small claims free from technicalities of procedural law, and Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

In creating the small claims branch of the trial court, Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Universal Jewelry Company, Inc. v. McIver* (D. C. Mun. App. 1949, 68 A. 2d 226).

§ 11–802 [18: 241a]. Definitions.

Whenever used in this chapter—

(a) "Branch" means the small claims and conciliation branch of the municipal court, herein created.

(b) "Judge" means the judge or judges presiding in said branch.

(c) "Clerk" means the clerk or any assistant clerk of said municipal court assigned to said branch.

(d) "Court" means the municipal court of the District of Columbia and the several judges thereof. (Mar. 5, 1938, 52 Stat. 103, ch. 43, § 2.)

§ 11–803 [18: 241b]. Judges—Tenure—Rotation.

One or more judges of the municipal court shall serve in said branch for such periods and in such order of rotation as the judges of the court may determine. (Mar. 5, 1938, 52 Stat. 103, ch. 43, § 3.)

§ 11–804 [18: 241c]. Jurisdiction—Limited — Exclusive in certain actions—Authority of judges—Compensation.

(a) Said branch shall have exclusive jurisdiction over all cases within the jurisdiction of the court in which the amount of the plaintiff's claim or the claimed value of personal property in controversy does not exceed $50 exclusive of interest, attorneys' fees, protest fees, and costs. Said jurisdiction shall not include actions for recovery of the possession of real estate, whether or not such actions include a claim for arrears of rent, or personalty, or both arrears of rent and personalty.

(b) In order to effect the speedy settlement of controversies said branch shall also have authority with the consent of all parties to settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. The judges of said branch may also act as referees or arbitrators, either alone or in conjunction with other persons, under sections 16–1701 to 16–1719, or under the United States Arbitration Act of February 12, 1925 (U. S. C., 1934 ed., title 9, sections 1 to 15), or otherwise. No judge, officer, or other employee of the municipal court shall receive or accept any fee or compensation in addition to his salary for services performed under this subsection. (Mar. 5, 1938, 52 Stat. 103, ch. 43, § 4.)

NOTES TO DECISIONS

AMOUNT OF CLAIM AS CONTROLLING

The amount of plaintiff's claim and not amount of his possible or even probable ultimate recovery determines forum within the Municipal Court in which a plaintiff's action is to be lodged. *Goldberg* v. *Roumel* (D. C. Mun. App. 1944, 40 A 2d 253).

DEFENSES

An improvident or extravagant purchase may not be rescinded simply because it is contrary to the dictates of good judgment and a court has no basis for relieving one party from contract provisions to which he has agreed, merely because they operate disadvantageously as to him. *Universal Jewelry Company, Inc.* v. *McIver* (D. C. Mun. App. 1949, 68, A. 2d 226).

EMERGENCY PRICE CONTROL ACT

The small claims branch of the Municipal Court for the District of Columbia had jurisdiction to entertain action by customer to recover $50 for alleged violation of price regulation promulgated under the Price Control Act, 50 U. S. C. App., § 925 (e). *Hall* v. *Chaltis* (D. C. 1943, 31 A. 2d 699).

JURISDICTION

In an action brought to recover a balance on a sale of a pair of shoes for $15.00, the court not only had jurisdiction, but had exclusive jurisdiction and it was error to hold otherwise. *Universal Jewelry Company, Inc.* v. *McIver* (D. C. Mun. App. 1949, 68 A. 2d 226).

§ 11–805 [18: 241d]. Commencement of action—Form of statement of claim—Preparation by clerk—Notice—How served, cost, form—Judgment by default—Memorandum to plaintiff.

(a) Actions shall be commenced in said branch by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The clerk of said branch shall, at the request of any individual, prepare the statement of claim and other papers required to be filed in an action in this branch, but his services shall not be available to any corporation, partnership, or association in the preparation of such statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law; or by registered mail with return receipt; or by any person not a party to or otherwise interested in the suit, especially appointed by the judge for that purpose.

(b) When notice is to be served by registered mail, the clerk shall inclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the same forthwith, noting on the records the day and hour of mailing. When such receipt is returned, the clerk shall attach the same to the original statement of claim, and it shall constitute prima facie evidence of service upon the defendant.

(c) When served by a private individual, as above provided, he shall make proof of service by affidavit before the clerk, showing the time and place of such service.

(d) When served by the marshal, or by registered mail, the actual cost of service shall be taxable as costs. When served by an individual, as above provided, the cost of service, if any, shall not be taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form, and shall be in lieu of any forms now employed and of any form of summons now provided by law:

MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA

SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in courthouse) (Address of court)

Washington, D. C.

_____
Plaintiff

_____
Address
vs.
_____
Defendant

No. _____

STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:)

DISTRICT OF COLUMBIA, *ss:*

_____ being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

_____.
Plaintiff (or agent)

Subscribed and sworn to before me this —— day of _____, 19——.

_____.
Clerk (or notary public)

NOTICE

To: _____
Defendant

_____
Home address

_____
Business address

You are hereby notified that _____ has made a claim and is requesting judgment against you in the sum of _____ dollars ($_____), as shown by the foregoing statement. The court will hold a hearing upon this claim on _____ at _____ m. in the small claims and conciliation branch (address of court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL] _____
Clerk of the small claims and conciliation branch, municipal court.

(f) The foregoing verification shall entitle the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, when the claim of the plaintiff is for a liquidated amount; when the amount is unliquidated, plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, which time shall be not less than 5 nor more than 15 days from the date of the filing of the action. All actions filed in this branch shall be made returnable herein. (Mar. 5, 1938, 52 Stat. 103, ch. 43, § 5.)

NOTES TO DECISIONS

SERVICE BY MAIL

The presumption must be that Congress intended service by registered mail to be so made as to insure due process of law. *Wise* v. *Herzog* (72 App. D. C. 335, 114 Fed. (2d) 486).

APPEARANCE TO QUASH SERVICE

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance", and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D. C. Mun. App. 1948, 60 A. 2d 282).

PRACTICE OF LAW

Filling out and filing of blank forms necessary to commence an action in the small claims court by lay employees of an automobile association for its members does not constitute the unauthorized "practice of law", this section being intended to help layman in presenting small claims informally and providing that complaint may be verified by the plaintiff or his agent, who is not required to be an attorney. *American Automobile Ass'n* v. *Merrick*, 1940 (117 F. 2d 23, 73 App. D. C. 151, modifying *Merrick* v. *American Automobile Ass'n*, D. C., D. C., 1940, 31 F. Supp. 876).

PURPOSE

The purpose of legislation establishing small claims court was to secure prompt and inexpensive adjudication of small claims free from technicalities of procedural law, and Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

Process can only be served as provided by this section or by rules adopted pursuant to this section and registered mail may only be employed as a means of serving process when specifically authorized by law. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

SERVICE, SUFFICIENCY OF

Where record showed that registered letter intended to constitute service of process under rule of Small Claims and Conciliation Branch of Municipal Court was delivered by postman to defendant's wife, service was valid and justified a refusal to vacate default judgment, notwithstanding that defendant testified that his wife failed to either deliver or inform him of the registered letter. *Maktos* v. *Hill* (D. C. 1943, 32 A. 2d 706).

Notice by registered mail delivered to wife of defendant, who was then serving in United States Army in time of war and who had been out of country for four months prior thereto, was not calculated to give reasonable notice or any notice to defendant, and attempted service was invalid and should have been quashed. *Ellerbe* v. *Goldberg* (D. C. Mun. App. 1948, 60 A. 2d 232).

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

The Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. § 520, does not exempt defendant soldier from service of civil process. *Ellerbe v. Goldberg* (D. C. Mun. App. 1948, 60 A. 2d 232.)

WHO MAY SERVE

The act permits service by persons designated for that purpose by the court. *Wise* v. *Herzog* (72 App. D. C. 335, 114 Fed. (2d) 486).

§ 11–806 [18: 241e]. Separate docket.

A separate small claims and conciliation docket shall be maintained in said branch, in which shall be indicated every proceeding and ruling had in each case. (Mar. 5, 1938, 52 Stat. 105, ch. 43, § 6.)

§ 11–807 [18: 241f]. Fees and costs—Waiver—Discretion of court.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in said branch shall be not more than $1. Other fees shall be as the court shall prescribe. The judge sitting in said branch shall have full discretionary power to waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay such costs. When costs are so waived the notation to be made on the records of said branch shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "informa pauperis" shall not be employed in said branch. If a party shall fail to pay accrued costs, though able to do so, the judge of said branch shall have power to deny said party the right to file any new case in said branch while such costs remain unpaid, and likewise to deny such litigant the right to proceed further in any case pending in said branch. The award of costs shall be according to

the discretion of the judge who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the suit, incurred by either party. (Mar. 5, 1938, 52 Stat. 105, ch. 43, § 7.)

CROSS REFERENCES

General provisions concerning costs do not apply to municipal courts, §§ 11–722, 11–1509.

Other provisions concerning deposit of costs by poor persons, § 11–1508.

§ 11–808 [18: 241g]. Trial—Procedure—Pretrial settlement—Default—Disposal.

(a) On the return day mentioned in section 11–805, or such later time as the judge may set, the trial shall be had. Immediately prior to the trial of any case, the judge shall make an earnest effort to settle the controversy by conciliation. If the judge fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits pursuant to paragraph (b) of this section.

(b) The parties and witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except such provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as above provided, or under any rule or rules of the municipal court now existing or hereafter promulgated, or on ex-parte proof. If the plaintiff fails to appear, the suit may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the judge may direct. If both parties fail to appear, the judge may return the case to the files, or order the same dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice may require. (Mar. 5, 1938, 52 Stat. 105, ch. 43, § 8.)

NOTES TO DECISIONS

GENERALLY

In small claims branch of Municipal Court, trial judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence except those relating to privileged communications. *Hodgkins* v. *Beckner* (D. C. 1943, 32 A. 2d 113).

DEFAULT JUDGMENT, SETTING ASIDE

Where at time plaintiff obtained default judgment for purchase price of a fur coat, there was withheld from the court the information that purchaser's action in Small Claims Court against plaintiff to recover payments made on the coat had been continued that same day, setting aside the default judgment even after expiration of the term was proper. *Marvin's Credit* v. *Kitching* (D. C. Mun. App. 1944, 34 A. 2d 866).

The determination of a motion to vacate a default judgment on basis of affidavits instead of taking testimony in open court is a matter resting largely in the discretion of the trial court. *Marvin's Credit* v. *Kitching* (D. C. Mun. App. 1944, 34 A. 2d 866).

DISCRETION

In action in Small Claims Branch of Municipal Court, presiding judge abused his discretion in refusing to grant counsel for plaintiff a 30-minute continuance to obtain attendance of witness and dismissing action for want of prosecution upon refusal of counsel to take a nonsuit. *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

DISMISSAL

Summary dismissals in the small claims branch of Municipal Court without a full hearing from both sides are not justified save in exceptional cases. *Hodgkins* v. *Beckner* (D. C. 1943, 32 A. 2d 113).

Where each plaintiff sought recovery of $50 on theory that each had delivered $50 to defendant on his undertaking to acquire title to an apartment house, and that defendant's resale of apartment house obligated him to return the sums received from plaintiffs, dismissal of the action by small claims branch of Municipal Court without hearing defendant's testimony was not justified by record. *Hodgkins* v. *Beckner* (D. C. 1943, 32 A. 2d 113).

DUTY OF JUDGE

The trial judge of small claims branch of Municipal Court is required, prior to trial, to make earnest effort to settle controversy by conciliation, and to elicit from defendant or his attorney a statement regarding nature of defense, but, if such effort fails judge must conduct trial in manner as to do substantial justice. *Hodgkins* v. *Beckner* (D. C. 1943, 32 A. 2d 113).

Small Claims Court, by ordering action on a note for trial without ascertaining whether defendants claimed a defense, and without making any effort to settle controversy by conciliation, violated § 11–801 et seq. establishing and prescribing procedure in such court and Small Claims Rule 14c. *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

Conciliation procedure in small claims cases is made mandatory by this section and court rules, and, before ordering any such case for trial, presiding judge is required to elicit from defendant the nature of his defense, and make a real, and not merely a perfunctory, effort to settle controversy by conciliation. *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

EVIDENCE, ADMISSIBILITY

Where tenant was compelled to pay water bill which accrued during a prior tenancy, and thereafter sought reimbursement from prior tenant, water bill prepared by official charged with duty of keeping records and collecting charges for water services was admissible under this section providing for conduct of trial in small claims and conciliation branch of Municipal Court so as to do substantial justice, and made a prima facie case. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

SUBSTANTIAL JUSTICE

Under this section providing that judge of small claims conciliation branch of Municipal Court should conduct trial so as to administer substantial justice between the parties, "substantial justice" is justice administered according to the rules of substantive law, notwithstanding errors of procedure which do not deprive litigants of substantive rights. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

Under this section providing for conduct of trial so as to do "substantial justice" in small claims and conciliation branch of Municipal Court, where payee on note given for horseback riding instructions failed to perform, in action on notes judge of small claims court could not limit recovery by holders in due course to unpaid balance less discount charged by holders for purchase of notes, by ignoring substantive law rule that holder in due course of negotiable instrument was entitled to payment of full amount. *Interstate Bankers Corporation* v. *Kennedy* (D. C. 1943, 33 A. 2d 165).

An order of the Municipal Court for the District of Columbia, Civil Division, dismissing plaintiff's second amended particulars of demand on ground that relief demanded was less than minimum jurisdiction of court, was improper, where amount claimed by plaintiff in good faith in bill of particulars exceeded jurisdictional amount. *Goldberg* v. *Roumel* (D. C. Mun. App. 1944, 40 A. 2d 253).

Summary dismissal by Municipal Court of Class B debt actions, which are claims for more than $50 but not more than $500, and which may be brought by filing a bill of particulars, is not to be encouraged. *Goldberg* v. *Roumel* (D. C. Mun. App. 1944, 40 A. 2d 253).

§ 11–809 [18: 241h]. Set-off or counterclaim—Pleading—Retention of jurisdiction.

If the defendant asserts a set-off or counterclaim, the judge may, in his discretion, require a formal plea of set-off to be filed, or may waive the same. If plaintiff requires time to prepare his defense against such counterclaim or set-off, the judge may, in his discretion, continue the case for such purpose. If the set-off or counterclaim be for more than the jurisdictional limit of said branch but within the jurisdictional limit of this court, the action shall nevertheless remain in said branch and be tried therein in its entirety. (Mar. 5, 1938, 52 Stat. 105, ch. 43, § 9.)

NOTES TO DECISIONS

MOTION TO STRIKE

Where plaintiff in action on wage claim in small claims branch of Municipal Court filed a counterclaim seeking damages of $3,000 for libel and slander, counterclaim became subject to motion to strike for want of jurisdiction, or court on its own motion should have noticed its lack of jurisdiction and should have stricken the counterclaim. *1425 F St. Corp.* v. *Jardin* (D. C. Mun. App. 1947, 53 A. 2d 278).

§ 11–810 [18: 241i]. Cases may be certified by any judge of the municipal court—Recertification.

Whenever the interests of justice shall seem to require it, and all parties consent thereto, any judge of the municipal court may certify any case to said branch for conciliation, or to endeavor to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. The trial of any such case if all parties consent may be completed in said branch or in the absence of such consent shall be recertified to another judge of the court for trial. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 10.)

§ 11–811 [18: 241j]. Judgment—Stay of entry and execution—Instalment payment.

When judgment is to be rendered and the party against whom it is to be entered requests it, the judge shall inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay the entry of judgment, and to stay execution, except in cases involving wage claims, and to order partial payments in such amounts, over such periods, and upon such terms, as shall seem just under the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that such party has failed to meet any instalment payment without just excuse, the stay of execution shall be vacated. When no stay of execution has been ordered or when such stay of execution has been vacated as provided herein, the party in whose favor the judgment has been entered shall have the right to avail himself of all remedies otherwise available in said municipal court for the enforcement of such judgment. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 11.)

§ 11–812 [18: 241k]. Judgment for wages—Examination—Payment.

In all cases where the judgment is founded in whole or in part on a claim for wages or personal services the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom such judgment has been entered, but not more often than once each four weeks for oral examination under oath as to his financial status and his ability to pay such judgment, and the judge shall make such supplementary orders as may seem just and proper to effectuate the payment of the judgment upon reasonable terms. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 12.)

NOTES TO DECISIONS

PERSONAL SERVICES

Under rule 19 of the small claims branch of Municipal Court that the judge shall, upon motion, order the appearance of judgment debtor for examination as to financial ability to pay judgment based on claim for wages or personal services, the expression "personal services" should not be given a wider meaning than the word "wages" and does not include professional services rendered by a dentist, a physician, or an attorney at law. *Price* v. *Quill* (D. C. Mun. App. 1946, 46 A. 2d 311).

§ 11–813 [18: 241*l*]. Clerk to keep record and report.

The clerk of said branch shall maintain an accurate daily record of all transactions had therein and shall prepare and transmit to the Attorney-General of the United States a monthly report in detail showing the number and nature of all such transactions. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 13.)

§ 11–814 [18: 241m]. Practice—Rules of municipal court to apply.

All provisions of law relating to the municipal court and the rules of the municipal court shall apply to the practice herein so far as they may be made applicable and are not in conflict with the provisions of this chapter or with the rules hereunder promulgated. In case of conflict the provisions of this chapter and the rules hereunder promulgated shall control. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 14.)

§ 11–815 [18: 241n]. Rules of procedure.

The judges of the municipal court shall forthwith make rules to provide for a simple, inexpensive, and speedy procedure to effectuate the purposes of this chapter and shall have power to prescribe, modify, and improve the forms to be used therein, from time to time, to insure the proper administration of justice and to accomplish the purposes of this chapter. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 15.)

NOTES TO DECISIONS

GENERALLY

The procedure in Small Claims Branch of District of Columbia Municipal Court is of simplified nature and strict rules of pleading and practice do not apply. *Ellerbe* v. *Goldberg* (D. C. Mun. App. 1948, 60 A. 2d 232).

CONCILIATION

Small Claims Rule 14c prescribing conciliation procedure in every case has the force and effect of law. *Potomac Small Loan Co.* v. *Myles* (D. C. Mun. App. 1944, 34 A. 2d 609).

DISMISSAL

Where each plaintiff sought recovery of $50 on theory that each had delivered $50 to defendant on his undertaking to acquire title to an apartment house, and that defendant's resale of apartment house obligated him to return the sums received from plaintiffs, dismissal of the action by small claims branch of Municipal Court without hearing defendant's testimony was not justified by record. *Hodgkins* v. *Beckner* (D. C. 1943, 32 A. 2d 113).

Summary dismissals in the small claims branch of Municipal Court without a full hearing from both sides are not justified save in exceptional cases. *Hodgkins* v. *Beckner* (D. C. 1943, 32 A. 2d 113).

RULES—VALIDITY—DUE PROCESS

The requirements of due process can be satisfied by compliance with the provisions of the statute as construed in Rule 9 (Rules for the Small Claims and Conciliation Branch of the Municipal Court of the District of Columbia), the latter constituting a reasonable exercise of the rule-making power delegated by the statute to the court, and which, when properly construed, neither abridges nor extends the jurisdiction of the court beyond the limits of the act itself, and therefore, has the force and effect of law. *Wise* v. *Herzog* (72 App. D. C. 335, 114 Fed. (2d) 486).

§ 11-816 [18: 241o]. Sessions.

The small-claims branch with a judge in attendance shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall also hold at least one night session during each week. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 16.)

§ 11-817 [18: 241p]. Review—Writ of error.

Nothing in this chapter contained shall deprive any party of the right now existing to petition the United States Court of Appeals for the District of Columbia for a writ of error to review any judgment rendered in said branch of said municipal court. (Mar. 5, 1938, 52 Stat. 106, ch. 43, § 17.)

§ 11-818 [18: 241q]. Jury trial—Assignment to regular branch.

In any case filed or pending in said branch in which any party is entitled to demand a trial by jury and files such demand, the case shall be assigned to and tried in one of the regular branches of the court under the procedure provided for such trials. (Mar. 5, 1938, 52 Stat. 107, ch. 43, § 18.)

§ 11-819 [18: 241r]. Judgment—Enforcement.

Except as otherwise provided in this chapter, or in the rules promulgated hereunder, a party obtaining a judgment in said branch shall be entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in said municipal court. (Mar. 5, 1938, 52 Stat. 107, ch. 43, § 19.)

REPEAL

Section 20, of act of March 5, 1938, 52 Stat. 107, ch. 43, read as follows: "All acts and parts of acts inconsistent with this chapter are hereby repealed."

§ 11-820 [18: 241t]. Saving clause.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Mar. 5, 1938, 52 Stat. 107, ch. 43, § 21.)

Chapter 9.—JUVENILE COURT

Sec.

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11-903. Construction of this chapter.
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11-949. Same—Application of proceeds of forfeited bond for support.
11-950. Concurrent jurisdiction with district court in bastardy and nonsupport cases.

§ 11-901 [18: 251]. Establishment.

There is hereby created and established in and for the District of Columbia a court, to be known as "The juvenile court of the District of Columbia." (Mar. 19, 1906, 34 Stat. 73, ch. 960, § 1.)

COMPILER'S NOTES

The numbers carried in brackets in the black-letter lines are, except in the case of the first section, from the Fifth Supplement to the 1929 Code. The act of June 1, 1938, was entitled an act to amend "An Act to create a juvenile court in and for the District of Columbia, and for other purposes." The subject-matter of the sections of the new act carries the same section numbers as the act of March 19, 1906, 34 Stat. 73, ch. 960, which it purports to amend. The act of 1938 was both superseding and amendatory in character. Similar or corresponding sections of the 1929 Code will be referred to in a note whenever the context of the sections warrant that this be done.

The act of June 1, 1938, 52 Stat. 605, ch. 309, § 43, provided as follows: "This chapter may be cited as the 'Juvenile Court Act of the District of Columbia.'"

NOTES TO DECISIONS

CONSTITUTIONALITY

The social considerations underlying this chapter and the informality of procedure permitted under it are not incompatible with according to one accused of crime the rights guaranteed him by the Constitution. *Evans* v. *Rives,* 1942 (126 F. 2d 633, 75 U. S. App. D. C. 242).

§ 11–902 [18: 251a]. Purpose and basic aims.

The purpose of this chapter is to secure for each child under its jurisdiction such care and guidance, preferably in his own home, as will serve the child's welfare and the best interests of the state; to conserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only when his welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; and, when such child is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. (June 1, 1938, 52 Stat. 596, ch. 309, § 1.)

COMPILER'S NOTE

The words of this section were set out in the initial paragraph of the 1938 act.

NOTES TO DECISIONS

ADEQUATE PARENTAL CARE

A judgment of the juvenile court of the District of Columbia adjudging that a 15 year old girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her was inconsistent with constitutional principles concerning inherent right of parents to custody of their children and this chapter, where evidence established that the girl's mother had given the girl continuous and devoted care which had resulted in a well developed, well educated, healthy child. *In re Stuart,* 1940 (114 F. 2d 825, 72 App. D. C. 389).

"Adequate parental case," as used in this chapter means such care as is necessary to accomplish purpose thereof. *In re Stuart,* 1940 (114 F. 2d 825, 72 App. D. C. 389).

CONSTRUCTION

This chapter is not rendered ambiguous by use of the disjunctive and conjunctive in this section, and this chapter cannot be construed in the disjunctive throughout so as to authorize the court to remove a child from custody of its parents either when child's welfare requires such removal or when safety and protection of public demands it. *In re Stuart,* 1940 (114 F. 2d 825, 72 App. D. C. 389).

REHABILITATION

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

§ 11–903 [18: 252]. Construction of this chapter.

This chapter shall be liberally construed to accomplish the purpose herein sought. (June 1, 1938, 52 Stat. 596, ch. 309, § 2.)

CROSS REFERENCE

See note to § 11–901.

§ 11–904 [18: 253]. Court of record—Seal—Oaths.

Said court shall be a court of record. The court shall have a seal, and the judge or acting judge thereof shall have power to administer oaths and affirmations. (June 1, 1938, 52 Stat. 596, ch. 309, § 3.)

COMPILER'S NOTE

This section contains in substance the provisions of title 18, § 268 of the Code of 1929.

§ 11–905 [18: 254]. Terms.

The said court shall hold a term on the first Monday of every month and continue the same from day to day as long as it may be necessary for the transaction of its business. (June 1, 1938, 52 Stat. 596, ch. 309, § 4.)

COMPILER'S NOTE

This section reads the same as title 18, § 269 of the Code of 1929.

NOTES TO DECISIONS

DECISIONS UNDER FORMER LAW

Court may extend term. *Young* v. *Hesse* (58 App. D. C. 362, 30 Fed. (2d) 986).

§ 11–906 [18: 255]. Application of chapter and definitions.

(a) This chapter shall apply to any person under the age of 18 years—

(1) Who has violated any law; or who has violated any ordinance or regulation of the District of Columbia; or

(2) Who is habitually beyond the control of his parent, custodian, or guardian; or

(3) Who is habitually truant from school or home; or

(4) Who habitually so deports himself as to injure or endanger himself or the morals or safety of himself or others; or

(5) Who is abandoned by his parent, guardian, or custodian; or

(6) Who is homeless or without adequate parental support or care, or whose parent, guardian, or custodian neglects or refuses to provide support and care necessary for his health or welfare; or

(7) Whose parent, guardian, or custodian neglects or refuses to provide or avail himself of the special care made necessary by his mental condition; or

(8) Who associates with vagrants, vicious, or immoral persons; or

(9) Who engages in an occupation or is in a situation dangerous to life or limb or injurious to the health or morals of himself or others; or

(b) When used in this chapter—

(1) The words "the court" means the juvenile court of the District of Columbia;

(2) The word "judge" means the judge of the juvenile court.

(3) The word "child" means a person under the age of 18 years;

(4) The word "adult" means a person 18 years of age or older. (June 1, 1938, 52 Stat. 596, ch. 309, § 5.)

§ 11–907 [18: 256]. Jurisdiction—Original and exclusive.

1. *Children.*—Except as herein otherwise provided, the court shall have original and exclusive jurisdiction of all cases and in proceedings:

(a) Concerning any child coming within the terms and provisions of this chapter.

(b) Concerning any person under 21 years of age charged with having violated any law, or violated any ordinance or regulation of the District of Columbia, prior to having become 18 years of age, subject to appropriate statutes of limitation.

(c) To determine the paternity of any child alleged to have been born out of wedlock and to provide for his support in accordance with the provisions of sections 11–943 to 11–950; in which cases the respondent shall be entitled to jury trial unless he shall voluntarily waive such right and request trial by the court.

(d) To determine the custody or guardianship of the person of any child coming within the provisions of this chapter.

Nothing contained herein shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when such custody is incidental to the determination of causes pending in such courts.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes 21 years of age unless discharged prior thereto: *Provided, however,* That nothing herein contained shall affect the jurisdiction of other courts over offenses committed by such child after he reaches the age of 18.

2. *Adults.*—The court shall have original and exclusive jurisdiction to determine cases of adults charged with wilfully contributing to, encouraging, or tending to cause by any act or omission any condition which would bring a child within the provisions of this chapter. The court shall have concurrent jurisdiction with the District Court of the United States for the District of Columbia in all cases arising under sections 22–902 to 22–905. Nothing herein shall be construed as having the effect of limiting the jurisdiction of said court in matters arising under sections 36–201 to 36–227. (June 1, 1938, 52 Stat. 596, ch. 309, § 6; July 2, 1940, 54 Stat. 735, ch. 525.)

COMPILER'S NOTE

This section is somewhat similar to title 18, § 258 of the 1929 Code.

AMENDMENT

The act of 1940 added the last sentence to subsection "2. Adults."

CROSS REFERENCES

Commitment as feeble-minded person, § 32–620.

Designation of officers to take bonds and collateral, § 23–610.

Enforcement of laws for compulsory school attendance, § 31–213.

Enforcement of laws governing professional bondsmen, § 23–612.

Jurisdiction of prosecutions for nonsupport of wife and minor children, § 22–903.

Provisions concerning jurisdiction, § 11–306 and notes.

NOTES TO DECISIONS

BASTARDY

Juvenile court of District of Columbia has jurisdiction of bastardy proceedings. *Fillipone* v. *United States* (55 App. D. C. 126, 2 Fed. (2d) 928).

In bastardy proceedings in juvenile court, failure to pay for support of child is not punishable with commitment to jail. *Peak* v. *Calhoun* (63 App. D. C. 113, 69 Fed. (2d) 989).

The juvenile court, which has exclusive jurisdiction of action to determine parentage of illegitimate child and fix putative father's responsibility for child's support may not entertain complaint filed by mother over two years after child's birth. *Williams* v. *Amann* (D. C. 1943, 33 A. 2d 633).

CONTRACT REGARDING ILLEGITIMATE CHILD

An action by illegitimate child's mother against putative father for amount due under his contract to pay mother weekly sum for child's support in consideration of her agreement not to assert her statutory right of action for child's maintenance is not a "bastardy proceeding" within juvenile court's exclusive jurisdiction, but an action for damages from breach of promise made on good and valid "consideration" and hence within Municipal Court's jurisdiction. *Williams* v. *Amann* (D. C. 1943, 33 A. 2d 633).

HISTORICAL

This act was limited by the Compulsory Education Act of June 8, 1906, and the juvenile court's jurisdiction was limited to persons between the ages of 14 and 17 years. *Brown* v. *Sellers* (53 App. D. C. 378, 292 Fed. 655).

INFANTS

The terms of the statute are not limited in application to persons of any given class, but for the purpose of declaring that persons standing in loco parentis should be included within the provisions of the act. *Frizzell* v. *United States* (55 App. D. C. 103, 2 Fed. (2d) 398).

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

The police court and the juvenile court have concurrent jurisdiction to examine, commit, or admit to bail, minors under 17 years, charged with felonies. *Peak* v. *Reed* (58 App. D. C. 44, 24 Fed. (2d) 619).

Courts do not look with favor on the construction of a law, if not unavoidable, which declares children illegitimate. *Thomas* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

This section fully defines jurisdiction of the juvenile court for the District of Columbia, and such jurisdiction relates only to cases which involve children. *In re Wilson* (D. C., D. C. 1948, 79 F. Supp. 816).

NATURE OF PROCEEDINGS

The fundamental philosophy of juvenile court laws is that a delinquent child should be considered and treated not as a criminal but as a person requiring care, education, and protection, and the primary function of juvenile courts, properly considered, is not conviction or punishment for crime but crime prevention and delinquency rehabilitation, and hence procedures before such courts may not become the basis for criminal records. *Thomas* v. *U. S.*, 1941 (121 F. 2d 905, 74 App. D. C. 167).

NONSUPPORT

Since the jurisdiction conferred upon the juvenile court for the District of Columbia relates only to cases involving children arising under this chapter, the juvenile court exceeded its jurisdiction in attempting to hold defendant for nonsupport of his wife only; the welfare of no children being involved. *In re Wilson* (D. C., D. C. 1948, 79 F. Supp. 816).

POWERS

Juvenile court of the District has jurisdiction of an incorrigible girl, in proceedings to commit her to the National Training School. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

The court has inherent power to pass on a motion for new trial. *Young* v. *Hesse* (58 App. D. C. 362, 30 Fed. (2d) 986).

SEPARATE PROCEEDING

Where commitment in truancy case had been set aside and the case dismissed, jurisdiction of infant could not be based thereon in a separate proceeding against infant. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

§ 11–908 [18: 257]. Information—Investigation — Petition—Contents.

Whenever any person shall give to the director of social work of the court, or other officer of the court duly designated as his representative, information in his possession that a child is within the provisions of this chapter, it shall be the duty of a duly designated officer of the court to make preliminary investigation to determine whether the interests of the public or of the child require that further action be taken and report his finding, together with a statement of the facts, to the director of social work. Whenever practicable such inquiry shall include a preliminary investigation of the home and environmental situation of the child, his previous history, and the circumstances which were the subject of the information. If the director of social work finds that jurisdiction should be acquired, he shall, after consultation with and approval by the corporation counsel or assistant corporation counsel assigned to the court, authorize a petition to be filed. In any case in which said director fails to so find, the person giving information to the director may present the facts to the corporation counsel or his assistant, who, after investigation by an officer of the court as herein provided, may authorize a petition to be filed. The proceedings shall be entitled, "In the matter of ———, a child under eighteen years of age."

The petition shall be verified by the officer making the investigation, or some other person having personal knowledge of the case, and shall allege briefly the facts which bring said child within the provisions of this chapter, and stating the name, age, and residence (1) of the child; (2) of his parents; (3) of his legal guardian, if there be one; (4) of the person or persons having custody or control of the child; and (5) of the nearest known relative, if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner the petition shall so state. (June 1, 1938, 52 Stat. 597, ch. 309, § 7.)

§ 11–909 [18: 258]. Summons—Notice—Custody of the child.

After a petition shall have been filed, unless the parties hereinafter named shall voluntarily appear, the court shall issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. If the person so summoned shall be other than the parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, except as hereinafter provided: *Provided,* That if the child is married then the other spouse shall also be so notified. Summons may be issued requiring the appearance of any other person whose presence is necessary.

If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may cause to be endorsed upon the summons an order that the officer serving the same shall at once take the child into custody. (June 1, 1938, 52 Stat. 598, ch. 309, § 8.)

§ 11–910 [18: 259]. Service of summons.

Service of summons shall be made personally by the delivery of a true and attested copy to the person summoned: *Provided,* That where reasonable but unsuccessful efforts have been made to make personal service of summons or notice and if it shall appear that it is impracticable to do so, the court may make an order providing for service of summons or notice by registered mail to the last-known address or by publication, or both, as may be deemed necessary. It shall be sufficient to confer jurisdiction if service is effected at any time before the date fixed in the summons for the return thereof: *Provided,* That on request of the parent or guardian or person having custody of the child, the hearing on the petition shall not take place until three days subsequent to service of said summons.

The United States marshal for the District of Columbia or his deputy shall execute the orders and processes of the court in the same manner as he executes those of the District Court of the United States for the District of Columbia, and shall designate at least one of his deputies to serve at the court, where he shall perform such services as are required by the judge. (June 1, 1938, 52 Stat. 598, ch. 309, § 9.)

RULES OF CIVIL PROCEDURE

Service of process, Rule 4.

§ 11–911 [18: 260]. Failure to obey summons—Contempt—Warrant.

If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the summons can not be served, or the parties served fail to obey the same, or the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued against the parent or guardian or against the child himself. (June 1, 1938, 52 Stat. 598, ch. 309, § 10.)

§ 11–912 [18: 261]. Taking child into custody—Release to parent, guardian, custodian, or probation officer.

Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon such child may be released in the custody of a parent, guardian, or custodian. If not so released, such child shall be placed in the custody of a probation officer

or other person designated by the court, or taken immediately to the court or to a place of detention provided by the Board of Public Welfare, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court.

In the case of any child whose custody has been assumed by the court and pending the final disposition of the case, the child may be released in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as shall be provided by the Board of Public Welfare, subject to further order of the court.

Nothing in this chapter shall be construed as forbidding any peace officer, police officer, or probation officer from immediately taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or safety, unless immediate action is taken. In every such case the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this chapter. (June 1, 1938, 52 Stat. 598, ch. 309, § 11.)

NOTES TO DECISIONS

DETENTION WITHOUT ARREST RECORD

The arrest of a juvenile by officers having reasonable grounds for belief that the juvenile had committed a felony, and the detention of the juvenile at police station for three hours without making any record of the arrest, was not a violation of this section. *Harper* v. *Strange* (App. D. C. 1946, 158 F. 2d 408).

§ 11–913 [18: 262]. Transfer from other courts.

If during the pendency of a criminal or quasi-criminal charge against any person under 21 years of age, in any other court, it shall be ascertained that said person was under the age of 18 years at the time of committing the alleged offense, it shall be the duty of such court to transfer such other case immediately, together with all the papers, documents, and testimony connected therewith, to the juvenile court. Such other court making such transfer shall order the child to be taken forthwith to the place of detention designated by the court or to that court itself, or release such child in the custody of some suitable person to appear before the juvenile court at a time designated. The court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance. (June 1, 1938, 52 Stat. 599, ch. 309, § 12.)

§ 11–914 [18: 263]. Waiver of jurisdiction in case of felony—Transfer of case.

If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this Act in conducting and disposing of such cases. (June 1, 1938, 52 Stat. 599, ch. 309, § 13; May 15, 1947, 61 Stat. 92, ch. 57.)

AMENDMENTS

Act May 15, 1947, cited to text, inserted the clause "or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment."

NOTES TO DECISIONS

DELAY OF PROCEEDINGS

Proceedings against a child should not be delayed in order that it may become possible to try him as adults are tried. *Williams* v. *Huff,* 1944 (142 F. 2d 91, 79 U. S. App. D. C. 31).

§ 11–915 [18: 264]. Hearing—Informal, general public excluded, right to jury trial—Disposal of child—Parent—Right to be heard—Order of commitment—Protection of child—Effect of evidence.

The court may conduct the hearing in an informal manner, and may adjourn the hearing from time to time. In the hearing of any case the general public shall be excluded and only such persons as have a direct interest in the case and their representatives admitted. All cases involving children may be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury unless a jury be demanded by the child, his parent, or guardian or the court.

If the court shall find that the child comes within the provisions of this chapter, it may by order duly entered proceed as follows:

(1) Place the child on probation or under supervision in his own home or in the custody of a relative or other fit person, upon such terms as the court shall determine.

(2) Commit the child to the Board of Public Welfare; or to the National Training School for Girls or the National Training School for Boys if in need of such care as is given in such schools; or to a qualified suitable private institution or agency willing and able to assume the education, care, and maintenance of such child without expense to the public.

(3) Make such further disposition of the child as may be provided by law and as the court may deem to be best for the best interests of the child: *Provided,* That nothing herein shall be construed as authorizing the removal of the child from the custody of his parents unless his welfare and the safety and protection of the public can not be adequately safeguarded without such removal.

Whenever a child is committed by the court to custody other than that of its parent, the court may, after giving the parent a reasonable opportunity to be heard, adjudge that such parent shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and if such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence.

Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction of a crime, nor shall any child be charged with or convicted of a crime in any court, except as provided in section 11–914. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition, or evidence or adjudication operate to disqualify a child in any future civil-service examination, appointment, or application for public service under either the Government of the United States or of the District of Columbia. (June 1, 1938, 52 Stat. 599, ch. 309, § 14.)

CROSS REFERENCE

Notice from National Training School when no accommodations are available, § 32–817.

NOTES TO DECISIONS

ISSUE ON APPEAL

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

JURISDICTION

That evidence failed to support petition in proceeding before juvenile court of District of Columbia involving a question of adequate parental care of a 15 year old girl did not affect the court's "jurisdiction" to hear the proceeding and to make an order adjudging that the girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her, although evidence made the court's action erroneous and subject to reversal on appeal. *In re Stuart,* 1940 (114 F. 2d 825, 72 App. D. C. 389).

The juvenile court of the District of Columbia had "jurisdiction" to make an order adjudging that a 15 year old girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her where parties were before the court, and case described in petition was within class of cases which this chapter gave the court power to deal with, and petition on its face stated a cause of action. *In re Stuart,* 1940 (114 F. 2d 825, 72 App. D. C. 389).

SUFFICIENCY OF FINDINGS

A finding that infant's welfare and the safety and protection of the public could not be adequately safeguarded without removing infant from his home and parents was not sustained by the evidence. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

§ 11–916 [18: 265]. Modification of judgment—Return of child to parents—Petition of parent.

An order of commitment or probation made by the court in the case of a child shall be subject to modification or revocation from time to time.

A parent, guardian, or next friend of a child who has been committed by the court to the custody of an institution, agency, or person, may at any time file with the court a verified petition, making application for modification or revocation of an order of commitment or probation, stating that such institution, agency, or person has denied application for the release of the child or has failed to act upon such application within a reasonable time. If the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that such child be restored to the custody of its parent or guardian or be retained in the custody of the institution, agency, or person; and may direct such institution, agency, or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require; or the court may make a further order or commitment. (June 1, 1938, 52 Stat. 600, ch. 309, § 15.)

§ 11–917 [18: 266]. Appointment of guardian.

Whenever in the course of a proceeding instituted under this chapter it shall appear to the court that the welfare of a child will be promoted by the appointment of a relative or other suitable individual as guardian of its person, when such child is not committed to an institution or to the custody of an incorporated society, the court shall have jurisdiction to make such appointment either upon the application of the child or some relative or next friend or upon the court's own motion, and in that event an order to show cause may be made by the court to be served upon the parent or parents or custodian of said child in such manner and for such time prior to the hearing as the court may deem reasonable. In a case arising under this chapter the court may also determine as between parents whether the father or the mother shall have the custody and control of said child. (June 1, 1938, 52 Stat. 601, ch. 309, § 16.)

§ 11–918 [18: 267]. Selection of custodial agency—Religious faith.

In placing a child under any guardianship or custody other than that of its parent, the court shall, when practicable, select a person, or an institution or agency governed by persons of like religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents. (June 1, 1938, 52 Stat. 601, ch. 309, § 17.)

CROSS REFERENCE

Approval of custody of girls under 18 by the Association for Works of Mercy, appointment as guardian, §§ 32–101, 32–104.

§ 11–919 [18: 268]. Procedure in adult cases—"Offense" defined—Penalty—Right to jury trial.

All provisions of this chapter relative to procedure in cases of children so far as practicable shall be construed as applying also to cases against adults arising under section 11–907 with the consent of the defendant or when not inconsistent with other provisions of law relating to the conduct of adult cases. Proceedings may be instituted upon complaint of an interested party or upon the court's own motion, and a reasonable opportunity to appear

shall be afforded the respondent. The court may issue a summons, a warrant of arrest, or other process in order to secure or to compel the attendance of any necessary person. Any person who by act or omission willfully causes, encourages, or contributes to any condition which would bring a child within the provisions of this chapter, or who by such act or omission tends to cause such a condition, shall be guilty of a misdemeanor and punished by a fine not exceeding $200 or imprisoned not exceeding 12 months, or by both fine and imprisonment. Upon the trial of such cases the court shall have power to impose such sentence as the law provides, or may suspend sentence and place on probation, and by order impose upon such adult such duty as shall be deemed to be for the best interests of the child or other persons concerned. If an adult is charged with an offense for which he is entitled to a trial by jury, he shall be so tried unless he shall expressly waive his right to such a trial. (June 1, 1938, 52 Stat. 601, ch. 309, § 18.)

§ 11–920 [18: 269]. Appointment, qualifications, oath, and salary of judge.

The judge of the court shall be appointed by the President of the United States, by and with the consent of the Senate, for a term of 6 years, or until his successor is appointed and confirmed. To be eligible for appointment as judge a person must be a member of the bar, preferably of the District of Columbia, and have a knowledge of social problems and procedure and an understanding of child psychology. The judge shall, before entering upon the duties of his office, take the oath prescribed for judges of courts of the United States. The salary of the judge shall be fixed in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, § 673). (June 1, 1938, 52 Stat. 601, ch. 309, § 19.)

COMPILER'S NOTE

The section contains in substance the provisions of title 18, § 252 of the Code of 1929.

TEMPORARY ADDITIONAL JUDGE

The act of June 20, 1949 (63 Stat. 214, ch. 231), provided: "That the President is authorized to appoint, by and with the consent of the Senate, for a term of six years, or until his successor is appointed and confirmed, one additional judge for the juvenile court of the District of Columbia, who shall at the time of appointment be a resident of the District of Columbia. The position occupied by the present judge of said juvenile court shall be abolished when a vacancy shall occur in said position or at the expiration of the present six-year term of said judge, whichever shall first occur."

§ 11–921 [18: 270]. Filling vacancy in judgeship.

In cases of sickness, absence, disability, or death of the judge of the juvenile court, the chief justice or acting chief justice of the District Court of the United States for the District of Columbia shall designate one of the judges of the municipal court of said District to discharge the duties of said judge of the juvenile court until such disability be removed or vacancy filled. (June 1, 1938, 52 Stat. 601, ch. 309, § 20.)

COMPILER'S NOTE

This section corresponds to title 18, § 253 of the 1929 Code.

§ 11–922 [18: 271]. Appointment of director of social work, supervisor of probation, probation officers and other employees.

The judge shall appoint from eligible lists of the Civil Service Commission a director of social work, a supervisor of probation, probation officers, a clerk, a deputy clerk, and such other employees as may be necessary, at such salaries as may be fixed in accordance with the Classification Act of 1923, as amended (U. S. C., title 5, § 673), and with such qualifications as may be prescribed by the Civil Service Commission pursuant to said act or acts. (June 1, 1938, 52 Stat. 602, ch. 309, § 21.)

CROSS REFERENCES

Advances to chief probation officer of juvenile court, § 47–116.

Probation department for District Court and police court, § 24–101 et seq.

§ 11–923 [18: 272]. Duties and powers of the director of social work.

Under the administrative direction of the judge, the director of social work shall have charge of all the social work of the court; and shall, in association with other social agencies of the District of Columbia, study sources and causes of delinquency and assist in developing and correlating community-wide plans for the prevention and treatment of delinquency. (June 1, 1938, 52 Stat. 602, ch. 309, § 22.)

§ 11–924 [18: 273]. Duties and powers of the department of probation.

The supervisor of probation, under the direction of the director of social work, shall organize, direct, and develop the work of the probation department of the court.

The probation department of the court shall make such investigations as the court may direct, keep a written record of such investigations and submit the same to the judge or deal with them as he may direct. The probation department shall use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition; keep informed concerning the conduct and condition of each person under its supervision and report thereon to the judge as he may direct and keep full records of its work. The probation officers shall have such duties as may be assigned to them in the course of performing the functions of the probation department. Probation officers for the purpose of this chapter shall have the power of police officers. (June 1, 1938, 52 Stat. 602, ch. 309, § 23.)

COMPILER'S NOTE—RETURN OF ABSCONDING PROBATIONERS

The Appropriation Act of June 12, 1940, 54 Stat. 307, ch. 333, § 1, provides: "The disbursing officer of the District of Columbia is authorized to advance to the chief probation officer of the juvenile court upon requisition previously approved by the judge of the juvenile court and the auditor of the District of Columbia, sums of money not to exceed $50 at any one time, to be expended for transportation and traveling expenses to secure the return of absconding probationers, and to be accounted for monthly on itemized vouchers to the accounting officer of the District of Columbia."

Act June 19, 1948, 62 Stat. 545, ch. 555, § 1, contained a similar provision to Act June 12, 1940, except that prior stipulation for accounting monthly on itemized vouchers to the accounting officer of the District of Columbia was

not included. To the same effect: Act June 29, 1949, 63 Stat. 303, ch. 279, § 1; Act July 18, 1950, 64 Stat. 347, ch. 467, § 1.

§ 11–925 [18: 274]. Duties of the clerk.

The clerk shall give bond, with surety, and take the oath of office prescribed by law for clerks of District Courts of the United States. He shall have power to administer oaths and affirmations; shall keep accurate and complete accounts of money collected from persons under the supervision of the probation department, give receipts therefor, and make reports thereon as the judge may direct; and shall perform such duties and keep such records as may be prescribed by the judge of said court. (June 1, 1938, 52 Stat. 602, ch. 309, § 24.)

COMPILER'S NOTE

This section is similar, in substance, to title 18, § 256 of the 1929 Code.

§ 11–926 [18: 275]. Physical and mental examinations and treatment of child.

The court may cause any child coming under its jurisdiction to be examined by a physician, psychiatrist, or psychologist appointed by the court. (June 1, 1938, 52 Stat. 602, ch. 309, § 25.)

§ 11–927 [18: 276]. Place of detention of child.

No child under 18 years of age shall be placed in or committed to any prison, jail, or lock-up, nor shall such child be taken into custody, detained, or transferred from place to place, where he may be brought in contact or communication with any adult convicted of crime or under arrest and charged with crime: *Provided,* That a child 16 years of age or older, whose habits or conduct are deemed such as to constitute a menace to other children, may, with the consent of the judge or director of social work, be placed in a jail or other place of detention for adults, but in a room or ward separate from adults.

The Board of Public Welfare of the District of Columbia shall make adequate provision for the temporary detention of children within its jurisdiction in a detention home or in boarding homes selected for purposes of such detention. (June 1, 1938, 52 Stat. 602, ch. 309, § 26.)

NOTES TO DECISIONS

TERM AND PLACE OF DETENTION

Under this chapter, the term of commitment, the nature of commitment, and place thereof, within statutory limitations, are all within exclusive jurisdiction of the juvenile court. *Huff* v. *O'Bryant,* 1941 (121 F. 2d 890, 74 App. D. C. 19).

§ 11–928 [18: 277]. Court quarters.

Suitable quarters shall be provided by the commissioners for the District of Columbia, for the hearing of cases and for the use of the judge and the probation department and employees of the court. (June 1, 1938, 52 Stat. 603, ch. 309, § 27.)

§ 11–929 [18: 278]. Records—Inspection limited—Forms.

The court shall maintain records of all cases brought before it. Such records shall be open to inspection by respondents, their parents or guardians, or their duly-authorized attorneys, but otherwise only by order of the District Court of the United States for the District of Columbia. The court shall devise and cause to be printed such forms for records and such other papers as may be required. (June 1, 1938, 52 Stat. 603, ch. 309, § 28.)

§ 11–930 [18: 279]. Power to issue orders and writs—Rules—Procedure, conduct of officers.

The court shall have power to issue all necessary orders and writs in aid of the jurdisdiction hereby vested in it; and to frame and publish rules and regulate the procedure for cases arising within the provisions of this chapter and for the conduct of its officers and employees and such rules shall be enforced and construed beneficially for the remedial purposes embraced herein. (June 1, 1938, 52 Stat. 603, ch. 309, § 29.)

CROSS REFERENCE

Rules and regulations governing professional bondsmen, § 23–608.

§ 11–931 [18: 280]. Cooperation—Duty of other officers and departments, societies, and organizations.

It is hereby made the duty of every official of the District of Columbia or department thereof to render all assistance and cooperation within his or its jurisdictional power which may further the objects of this chapter. All institutions or agencies to which the court sends any child are hereby required to give to the court or to any officer appointed by it such information or reports concerning such child as said court or officer may require. The court is authorized to seek the co-operation of all societies or organizations having for their object the protection or aid of children. (June 1, 1938, 52 Stat. 603, ch. 309, § 30.)

§ 11–932 [18: 281]. Corporation counsel—Duties.

The corporation counsel of the District of Columbia or his assistant shall assist the court upon request in hearings to determine delinquency, dependency, or neglect, and shall prosecute all cases within the jurisdiction of the court in which an adult is charged with crime. (June 1, 1938, 52 Stat. 603, ch. 309, § 31.)

§ 11–933 [18: 282]. Contempt—Penalty.

Any person who wilfully violates, neglects, or refuses to obey or perform any order of the court may be declared in contempt and be punished by a fine not exceeding $200 or imprisonment for not more than 6 months, or both. (June 1, 1938, 52 Stat. 603, ch. 309, § 32.)

§ 11–934 [18: 283]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to appeals from the Juvenile Court was based on Act June 1, 1938, 52 Stat. 603, ch. 309, § 33 and is now covered by D. C. Code, sections 11–771, 11–772.

§ 11–935 [18: 284]. Fees prohibited.

No fee shall be charged for any service rendered by the clerk or by any officers of the court. (June 1, 1938, 52 Stat. 604, ch. 309, § 34.)

COMPILER'S NOTE

This section is similar to title 18, § 261, of the 1929 Code.

§ 11–936 [18: 285]. Jury—Term of service.

The jury for service in said court shall consist of twelve persons, who shall have the legal qualifications necessary for jurors in the District Court of the United States for the District of Columbia, and shall receive a like compensation for their services, and such jurors shall be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in said court. The term of service of jurors drawn for service in said juvenile court shall be for three successive monthly terms of said court, and in any case on trial at the expiration of such time until a verdict shall have been rendered or the jury shall be discharged. The said jury terms shall begin on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, and shall terminate, subject to the foregoing provisions, on the Saturday prior to the beginning of the following term. When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury as if said term had not commenced. (June 1, 1938, 52 Stat. 604, ch. 309, § 35.)

COMPILER'S NOTE

This section corresponds to title 18, § 264 of the 1929 Code.

§ 11–937 [18: 286]. Impaneling the jury.

At least ten days before the term of service of said jurors shall begin, as herein provided for, such jurors shall be drawn as hereinbefore directed, and at least twenty-six names so drawn shall be certified by the clerk of the District Court of the United States for the District of Columbia to the said juvenile court for service as jurors for the then ensuing term. Deficiencies in any panel of any such jury may be filled according to the law applicable to jurors in said Supreme Court, and for this purpose the judge of said juvenile court shall possess all the powers of a judge of said Supreme Court and of said court sitting as a special term. No person shall be eligible for service on a jury in said juvenile court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins. The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose. (June 1, 1938, 52 Stat. 604, ch. 309, § 36.)

COMPILER'S NOTES

This section corresponds to title 18, § 265, of the 1929 Code.

The words "Supreme Court" probably were intended to mean the "District Court."

§ 11–938 [18: 287]. Judgments to be final.

In all cases tried before said court the judgment of the court shall be final, except as provided in section 11–934. (June 1, 1938, 52 Stat. 604, ch. 309, § 37.)

COMPILER'S NOTE

This section is similar to title 18, § 266, of the 1929 Code.

The act of June 1, 1938, did not contain a section numbered 38.

§ 11–939 [18: 288]. Fines to be paid to clerk—Deposit of receipts—Statements.

All fines, penalties, costs, and forfeitures imposed or taxed by the said juvenile court shall be paid to the clerk of said court, either with or without process, or on process ordered by said court. The clerk of said court shall, on the first secular day of each week, deposit with the collector of taxes the total amount of all fines, penalties, costs, and forfeitures collected by him during the week next preceding the date of such deposit, to be covered into the treasury to the credit of the District of Columbia. The said clerk shall render an itemized statement of each deposit aforesaid to the auditor of the District of Columbia. (June 1, 1938, 52 Stat. 604, ch. 309, § 39.)

COMPILER'S NOTE

This section corresponds to title 18, § 270, of the 1929 Code.

§ 11–940 [18: 289]. Audit of accounts.

It shall be the duty of the auditor of the District of Columbia, and he is hereby required, to audit the accounts of the clerk of the juvenile court at the end of every quarter and to make prompt report thereof in writing to the commissioners of the District of Columbia. The auditor of the District shall have free access to all books, papers, and records of the said court. (June 1, 1938, 52 Stat. 605, ch. 309, § 40.)

COMPILER'S NOTE

This section corresponds to title 18, § 271 of the 1929 Code.

§ 11–941 [18: 290]. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (June 1, 1938, 52 Stat. 605, ch. 309, § 41.)

§ 11–942 [18: 291]. Continuance in office.

The judge and other officers holding office on June 1, 1938, shall continue in office until the terms for which they were appointed shall expire and until their successors are duly appointed and qualified. (June 1, 1938, 52 Stat. 605, ch. 309, § 42.)

§ 11–943. Maintenance of bastards—Bastard defined.

Every child shall be deemed a bastard who shall be begotten and born out of lawful wedlock, but this shall not be deemed to repeal or modify section 18–106. (June 18, 1912, 37 Stat. 134, ch. 171, § 1.)

NOTES TO DECISIONS

CONSIDERATION FOR CONTRACT

A mother's agreement not to assert her statutory right of action against her illegitimate child's putative father for child's maintenance constituted sufficient "consideration" for putative father's contract to pay mother weekly sum for child's support. *Williams* v. *Amann* (D. C. 1943. 33 A. 2d 633).

CONTRACT TO SUPPORT

An illegitimate child's putative father's contract to pay mother weekly sum for child's support in consideration of mother's agreement not to assert her statutory right of action for child's maintenance is not void under rule of "public policy" condemning contracts grounded on promises to withhold commencement or prosecution of proceedings for criminal offenses. *Williams* v. *Amann* (D. C. 1943, 33 A. 2d 633).

EVIDENCE

When affidavits are submitted which tend to prove that one or more persons other than appellant may have been the father of the child, they are inadmissible when they do not state when the alleged act occurred. Evidence of intercourse by the mother with men other than appellant would not affect the issue of paternity unless such acts occurred at a time when, in a course of nature, they could have resulted in conception of the child. *Dicks* v. *United States* (D. C. Mun. App. 1950, 72 A. 2d 34).

JURISDICTION

Under the statute, jurisdiction is conferred on the Juvenile Court if the child was born in the District, or was born outside and the mother is a legal resident of the District. *Dicks* v. *United States* (D. C. Mun. App. 1950, 72 A. 2d 34).

PURPOSE

The object of the statute is not to punish the father for fornication but rather to provide support for the child and the moral obligation of the father to support his illegitimate child is thus converted by the statute into a legal obligation. There is no legal obstacle against enforcing that obligation against the father in the jurisdiction where he is found, if the statute so provides. *Dicks* v. *United States* (D. C. Mun. App. 1950, 72 A. 2d 34).

RATIFICATION OF CONTRACT

An illegitimate child's putative father's continuance of payments under contract with mother for child's support until after expiration of statutory time for mother's institution of action to determine child's parentage and fix father's responsibility for child's support constituted "ratification" of contract by putative father, so as to preclude him from maintaining defense of duress in mother's subsequent action for amount of overdue payments. *Williams* v. *Amann* (D. C. 1943, 33 A. 2d 633).

VOIDABLE CONTRACTS

An illegitimate child's putative father's contract to pay mother weekly sum for child's support was not "void," but only "voidable," for duress, though signed by him in order to continue as student at university and obtain degree, as duress, if any, was mental only and when it ceased to exist, it was incumbent on him to repudiate contract or let it stand as valid subsisting agreement. *Williams* v. *Amann* (D. C. 1943, 33 A. 2d 633).

§ 11–944. Same—Accusation by mother—Statement to clerk—Application by another than mother.

Any unmarried woman who is quick with child may go before the clerk of the juvenile court of the District of Columbia, or if therein she has been delivered of a bastard child, or (if that be her place of legal residence) if she was delivered thereof outside of the said District, at any time after becoming quick with child or within two years after the birth of the bastard, and accuse any person of being the father of the child. Before issuing a warrant, the clerk shall examine the mother of such bastard child, under oath, concerning her residence and her marriage or single condition when the child was begotten; where and when she was delivered of such child; and if she was delivered of the child outside of the District, the reason thereof, and reduce her statement to writing, and sign same as clerk. If, however, the clerk shall fail to reduce the statement to writing, or if it should be lost, such failure or loss shall be no cause for dismissing the warrant. Or such warrant may be applied for by the Board of Public Welfare of the District or any person as next friend of the said bastard under two years of age. (June 18, 1912, 37 Stat. 134, ch. 171, § 2; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENTS

The act of Mar. 16, 1926, cited to text, changed name of Board of Charities to "Board of Public Welfare".

NOTES TO DECISIONS

COMPLAINANT'S AFFIDAVITT

The defendant is not entitled to examine the unsigned and unsworn statement made by the complainant to the Juvenile Court Clerk, since these affidavits are confidential and defendant has no absolute right to examine statements made in confidence to a prosecuting officer. *Fuller* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 589).

JURISDICTION

Bastardy proceedings are purely statutory and statute is plain and unambiguous on its face. The statute clearly provides for jurisdiction under the circumstances outlined in this case, bestowing jurisdiction on the trial court where the complainant was delivered of her child in the district. *Fuller* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 589).

§ 11–945. Same—Warrant—Bond for appearance—Commitment on failure to give bond—Jury trials.

On such examination, if the woman be quick with child, or the child having been born and still under two years of age, a warrant shall be issued by the clerk, directed to the United States marshal, or to the major and superintendent or any member of the Metropolitan police force of the District of Columbia, requiring the person accused to be arrested and brought for preliminary examination before the judge of the juvenile court, District of Columbia, who, upon such preliminary examination, may require the accused to enter into bond, with good surety to the United States of America, in a sum to be fixed by such judge, not to exceed two thousand five hundred dollars, for his appearance and trial in the juvenile court, District of Columbia, on the first day of the next or any succeeding term thereof, and to perform the judgment of said court, but in the event that the woman be quick with child at the time of the arrest, final trial shall not take place until after the birth of the child. If the person accused shall fail to give bond required of him, the judge shall forthwith commit him to the Washington Asylum and Jail, there to remain until he enter into the required bond or otherwise be discharged by due process of law. In all prosecutions under sections 11–943 to 11–950 the accused shall, upon his demand therefor, be entitled to a trial by jury; otherwise the trial shall be by the judge. (June 18, 1912, 37 Stat. 134, ch. 171, § 3.)

NOTES TO DECISIONS

EVIDENCE

It was not prejudicial error to allow the prosecution to introduce evidence tending to show that defendant was guilty of the crime of seduction. In such a proceedng it should be expected that the government would have to prove its allegation by evidence of a general nature and these circumstances are admitted for their probative

value. The limit and range of such evidence is largely within the discretion of the trial court. *Fuller* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 589).

Where sister of the complaining witness was permitted to testify that complaining witness never mentioned going with any other men, it was hearsay, but the value of such testimony from defendant's viewpoint was merely negative in nature. In view of other stronger evidence in the case, its probative value was so slight that it could not have affected the verdict of the jury. *Monday* v. *United States* (D. C. Mun. App. 1950, 76 A. 2d 68).

It was not error for the trial court to permit the complaining witness to testify that in February she contracted gonorrhea from the defendant since the witness had said that she had had no relations with any other man during the period involved, and moreover, the record does not show any objection to this testimony. *Monday* v. *United States* (D. C. Mun. App. 1950, 76 A. 2d 68).

Where on appeal in bastardy proceedings, testimony of complaining witness was that she learned of her pregnancy in the latter part of March, 1949 and had missed her menstrual period which was due March 14, 1949, and it was not disputed that the child was born on November 17, 1949—less than nine months thereafter—such testimony that she was pregnant in the latter part of March was admissible, since the witness was not venturing a medical opinion but was reporting an actuality. Courts may take judicial notice that the period of human gestation is about two hundred eighty days or nine calendar months. *Monday* v. *United States* (D. C. Mun. App. 1950, 76 A. 2d 68).

Documents which purported to show that defendant was free of gonorrhea in February, or specifically on February 28, when the complaining witness said defendant infected her, were properly excluded, since in view of the rapidity of modern methods of treatment it cannot be said that the absence of infection on the later dates established that there was no infection on the earlier date. *Monday* v. *Unied States* (D. C. Mun. App. 1950, 76 A. 2d 68).

RECORD

Where the record does not reveal what the judge told the jury, or what objections were made to the charge, appellate court cannot consider the objection, for it was given no basis on which to rule that the charge was erroneous or otherwise. *Fuller* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 589).

§ 11-946. Same—Proceedings at trial—Order for support of child—Disposition of forfeited bonds.

If the accused shall fail to appear, the bond for his appearance as aforesaid shall be forfeited and execution issued thereon; and the trial of, or other proceedings in, the cause shall, nevertheless, proceed as though he were present; and the court shall, upon the verdict of the jury, make all such orders as it shall deem proper as though the accused were in court. In any event, if the accused acknowledge in open court the paternity of such child, or if at the trial the finding of the jury be against the accused, the court, in rendering judgment thereon, shall make an order for the annual payment, until the child be fourteen years of age, of such sum of money, in such installments, monthly or otherwise, and in such manner, as shall to the court seem best, and shall also make such order for the keeping, maintenance, and education of the child as may be proper; and in case of forfeiture of the appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the accused; and if any balance remains after the payment of the said judgment, it shall be paid for each fiscal year through the collector of taxes into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (June 18, 1912, 37 Stat. 135, ch. 171, § 4; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENTS

The act of 1921, cited to text, amended provision of section which read "it shall be covered into the Treasury through the collector of taxes, to the credit, half and half, of the District of Columbia and the United States" to read as now set out.

NOTES TO DECISIONS

MOTHER AS PLAINTIFF

An illegitimate child's mother is "proper plaintiff" in suit on putative father's contract to pay mother weekly sum for child's support. *Williams* v. *Amann* (D. C. 1943, 33 A. 2d 633).

§ 11-947. Same—Bond after conviction—Death of child.

The accused who has failed to execute bond before judgment, if he shall be adjudged to be the father of the child, shall thereupon enter into bond, with or without sureties, in the discretion of the court, conditioned for the payment of the sums adjudged, in such installments and in such manner as the court shall direct. In case of his failure to enter into such bond, the court shall commit him to the Washington Asylum and Jail, there to remain until he shall give such bond or pay the total amount of the sums adjudged. If the child shall die before the expiration of the aforesaid bond, upon payment of the amount or amounts due to the death of the said child, or if all dues be paid under such bond, the person adjudged to be the father of the child and his sureties shall be discharged therefrom. (June 18, 1912, 37 Stat. 135, ch. 171, § 5.)

§ 11-948. Same—Application for release after six months' confinement—Oath—Effect of discharge.

When the defendant shall have been confined for six months, solely for failure to make the payments required or to enter into the bond as ordered, such defendant may make application in writing to the judge of the juvenile court, District of Columbia, setting forth his inability to make such payments, notwithstanding his desire to do so, or enter into such required bond, upon which application the judge of the juvenile court, District of Columbia, shall proceed to hear and determine the matter. If, on examination, it shall appear to the court that such defendant is unable to make such payments or to execute the required bond, and that he has no property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the judge shall administer the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil process for debt by the laws of the District of Columbia, and that I have no property in any way conveyed or concealed, or in any way disposed of for my future use or benefit. So help me, God." Upon taking such oath such prisoner shall be discharged from imprisonment only but not from his obligation as such putative

father to support his child; and the judge of the juvenile court, District of Columbia, shall give to the superintendent of the Washington Asylum and Jail a certificate setting forth the facts. (June 18, 1912, 37 Stat. 135, ch. 171, § 6.)

§ 11–949. Same—Application of proceeds of forfeited bond for support.

Should the accused fail to comply with any order of the court entered as aforesaid, the bond shall be forfeited, and the money collected upon the forfeiture shall be applied in payment in full of the judgment against the accused, and if any balance remains after the payment of the said judgment, it shall be paid for each fiscal year through the collector of taxes into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (June 18, 1912, 37 Stat. 136, ch. 171, § 7; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENTS

The act of 1921, cited to text, amended provision of section which read "it shall be covered into the Treasury, through the collector of taxes, to the credit, half and half, of the District of Columbia and the United States" to read as now set out.

§ 11–950. Concurrent jurisdiction with district court in bastardy and nonsupport cases.

The juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 11–943 to 11–950 as well as concurrent jurisdiction with the District Court of the United States for the District of Columbia in all cases arising under sections 22–903 to 22–906 making it a misdemeanor in the District of Columbia to abandon or willfully neglect to provide for the support and maintenance by any person of his wife or of his or her minor children in destitute and necessitous circumstances. And the court, in its discretion, may order payments to be made by delinquent fathers, at the precinct wherein they reside, through the Metropolitan Police of the District of Columbia. (June 18, 1912, 37 Stat. 136, ch. 171, § 8, June 25, 1936, 49 Stat. 1921, ch. 804.)

AMENDMENTS

The act of 1936, cited to text, changed name of Supreme Court to "District Court of the United States for the District of Columbia."

Chapter 10.—DISTRICT ATTORNEY

Sec.
11–1001. Repealed.
11–1002. May administer oaths—Penalty for false swearing.

§ 11–1001 [18: 301]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Mar. 3, 1901, 31 Stat. 1220, ch. 854, § 183; June 20, 1902, 32 Stat. 527, ch. 1329, relating to appointment of a district attorney for the District of Columbia is now covered by section 501 of title 28, U. S. C.

CROSS REFERENCES

Duties in administration of estates of absentees or absconders, § 20–701.

Duties in criminal court, § 11–323.

Duty to conduct criminal prosecutions, determination of duty by Court of Appeals, §§ 23–101, 23–102.

Duty to enforce Healing Arts Practice Act, § 2–137.

Duty to file information against witness refusing to appear in military court, § 39–707.

Duty to institute proceedings to revoke or suspend nurse's registration, § 2–407.

Duty to institute quo warranto proceedings, § 16–1602.

Duty to represent Unemployment Compensation Board and to prosecute violations thereof, § 46–321.

Enforcement of law concerning manufacture, renovation, and sale of mattresses, § 6–604.

Enforcing forfeiture of private detective's bond, § 4–171.

Enjoining use of premises for purposes of prostitution, § 22–2711 et seq.

Fees and costs, § 11–1501 et seq.

Granting immunity to witnesses in prostitution cases, § 22–2718.

Injunction proceedings to prevent violations of laws by fraternal benefit associations, § 35–914.

May not retain fees, § 11–1516.

Proceeding by Public Utilities Commission to enforce attendance of witnesses and production of documentary evidence, § 43–405.

Prosecution for adulteration of candy, § 33–203.

Prosecution for fraudulent advertising, § 22–1412.

Prosecution of proceedings to enjoin transaction of business not allowed by corporate charter and franchise, § 29–725.

Prosecution of quo warranto proceedings to forfeit corporate charter and franchise, § 29–719.

Prosecution of proceedings for a forfeiture of all rights and privileges of institutions of learning, § 29–413.

Prosecution of violations of Alcoholic Beverage Control Act, § 25–132.

NOTES TO DECISIONS

HISTORICAL

2 Stat. 103, ch. 15, § 7 provided for the appointment of a district attorney, who was to perform all the duties required of the district attorneys of the United States. *Levy Court* v. *Ringgold* (5 Pet. (30 U. S.) 451, 8 L. Ed. 188).

PRESENCE IN GRAND-JURY ROOM

Indictment was not vitiated by presence of assistant to Attorney General in grand-jury room in oil lease case. *United States* v. *Fall* (56 App. D. C. 83, 10 Fed. (2d) 648); *United States* v. *Doheny* (56 App. D. C. 86, 10 Fed. (2d) 651).

§ 11–1002 [18: 302]. May administer oaths—Penalty for false swearing.

The district attorney and every assistant or deputy duly appointed by him is empowered to administer oaths or affirmations to witnesses in criminal cases and in all cases where a judge of the municipal court is authorized to do so; and if any person to whom such oath or affirmation shall be administered shall wilfully and falsely swear or affirm touching any matter or thing material to the point in question whereto he shall be examined, he shall be deemed guilty of perjury, and upon conviction thereof shall be sentenced to suffer imprisonment at hard labor for the first offense for not less than two nor more than ten years, and for the second offense for not less than five nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1220, ch. 854, § 184; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of 1909 changed the name and jurisdiction of the inferior court, "justice of the peace" to the "municipal court."

Chapter 11.—MARSHAL

Sec.
11–1101. Repealed.
11–1102. Repealed.
11–1103. Repealed.
11–1104. Marshal to restore possession of United States property upon request of Director of National Park Service.

§ 11–1101 [18: 311]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Mar. 3, 1901, 31 Stat. 1220, ch. 854, § 186, relating to the appointment of a United States marshal for the District of Columbia is now covered by section 541 of title 28, U. S. C.

CROSS REFERENCES

Assignment of deputies to take charge of juries in municipal court, § 11–721.

Coroner to serve as marshal when marshal is unfit to serve, § 11–1208.

Custody of jury in juvenile court cases, § 11–937.

Duties in criminal court, § 11–323.

Duties under search warrant, § 23–301 et seq.

Execution of sentences of military court, § 39–708.

Execution of warrants or attachments issued by military court, § 39–709.

Fees, costs and expenses, § 11–1510.

Liability for improper bond in release of attachment or garnishment, § 16–311.

Notifying persons selected for jury to appear for service, §§ 11–1414, 11–1415.

Possession of property of absentees and absconders, § 20–702 et seq.

Salary of marshal, § 11–1001, note.

Service of charges to disbar attorneys, § 11–1304.

Service of executions, §§ 15–206 to 15–218.

Service of process, execution of orders of juvenile court, § 11–910.

Service of process issued by police court, § 11–612.

Service of process issued by small claim and conciliation branch of municipal court, § 11–805.

Service of process of municipal court, § 11–748.

Warrant for parole violators, § 24–205.

NOTES TO DECISIONS

APPOINTMENT OF DEPUTIES

Deputy marshals are appointed by the marshal and not the District Court. *Doherty* v. *Kalmbach* (66 App. D. C. 322, 87 Fed. (2d) 539).

HISTORICAL

It is declared, that the marshal shall be entitled to receive, for his services, the same fees, perquisites, and emoluments, which are by law allowed to the marshal of the United States for the district of Maryland. *United States* v. *Ringgold* (8 Pet. (33 U. S.) 150, 8 L. Ed. 899).

The act of February 27, 1801, ch. 15, § 7, p. 103, established the office of marshal which superseded that of sheriff under the laws of Maryland. *Levy Court* v. *Woodward, Coroner* (2 Wall. (69 U. S.) 501, 17 L. Ed. 851).

By 2 Stat. 103, ch. 15, § 7, the custody of the jails was entrusted to the marshal of the District, and he was made accountable for the safe-keeping of the prisoners. *United States* v. *Fitzpatrick* (13 Wall. (80 U. S.) 568, 20 L. Ed. 707).

MEASURE OF DAMAGES

Damages for wrongful levy are measured not by value of goods but by injuries occasioned from detention by officer from date of levy until the goods were taken from him. *Palmer* v. *United States ex rel. Lane* (41 App. D. C. 341).

REASONABLE CARE

After marshal takes possession of property, "the law makes it his duty to exercise reasonable care and diligence in protecting" it; "and it was not the duty of the plaintiff to direct the marshal as to the proper steps to be taken to that end." *Palmer* v. *Costello* (41 App. D. C. 165).

§ 11–1102 [18: 312]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Mar. 3, 1901, 31 Stat. 1220, ch. 854, § 187, relating to fees to be collected and covered into Treasury now covered by sections 551 and 1921 of title 28, U. S. C.

§ 11–1103 [18: 313]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Mar. 3, 1901, 31 Stat. 1220, ch. 854, § 189, relating to vacancies in the office of United States attorney or marshal is covered by sections 506 and 545 of title 28, U. S. C.

§ 11–1104 [18: 314]. Marshal to restore possession of United States property upon request of Director of National Park Service.

The marshal, upon notice in writing from the Director of the National Park Service or the officer under his direction having immediate charge of the public buildings and grounds that any person is in unlawful occupation of any portion of the public lands in the District of Columbia, shall thereupon cause the said trespasser or trespassers to be ejected from said lands, and shall restore possession of the same to the officer charged by law with the custody thereof. (R. S. § 1797; Apr. 28, 1902, 32 Stat. 152, ch. 594; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

COMPILER'S NOTE

Office of Public Buildings and Public Parks of National Capital was abolished and all functions and duties transferred to the office of National Parks, Buildings and Reservations of the Department of the Interior by Executive Order No. 6166, June 10, 1933, the name of which was later changed to National Park Service by the act of Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1. See compiler's note to § 8–101.

Chapter 12.—CORONER

Sec.
11–1201. Appointment.
11–1202. Bond—Provisions.
11–1203. Duties.
11–1204. Inquests dispensed with in certain cases.
11–1205. Witnesses—Testimony reduced to writing—Murder or manslaughter.
11–1206. Coroner's jury.
11–1207. Deputy coroners—Compensation, bond.
11–1208. To serve and execute process when marshal may not—Liability.

§ 11–1201 [18: 321]. Appointment.

There shall be a coroner of said District, who shall be appointed by the Commissioners of the District of Columbia. (Leg. Assem., Aug. 23, 1871, ch. 108, § 13; Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 190; June 30, 1902, 32 Stat. 527, ch. 1329.)

COMPILER'S NOTE

The code of 1901, which appears in 31 Stat. 1189–1436, ch. 854, §§ 1 to 1642, was the last code actually enacted by Congress, and it was original and independent legislation. Consequently, where a section of this code is set out and antecedent statutes are referred to in this history line, they have to do only with origins, and the 1901 code is not in fact amendatory of them, and no comment concerning them will ordinarily be found in the notes concerning amendments.

AMENDMENTS

The act of 1902 provided a salary of $1,800 per annum.

The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

§ 11–1202 [18: 322]. Bond—Provisions.

The coroner before he acts as such shall, within thirty days after his appointment, give bond to the United States, with security to be approved by the District Court of the United States for the District of Columbia and deposited with the clerk thereof, in the penalty of three thousand dollars, with a condition that he will well and truly execute the duties of his office, and well and faithfully execute and return all writs or other process to him directed, and will also pay and deliver to the person or persons entitled to receive the same all sums of money and all goods and chattels by him levied upon, seized, or taken, agreeably to the directions of the writ or process under which the same shall have been levied upon, seized, or taken, and shall also satisfy and pay all judgments which may be rendered against him as coroner. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 191.)

§ 11–1203 [18: 323]. Duties.

Except as provided in section 11–1204, it shall be the duty of the coroner to hold an inquest over any person found dead in the District when the manner and cause of death shall not already be known as accidental or in the course of nature. He shall make a monthly report to the commissioners of the District of all inquests held by him during the month last past before said report, with a description as far as may be of the age, sex, color, and nationality of persons and the causes of their death, with such particulars as may be necessary to their identification; and as soon as possible after holding such inquest he shall deliver to the property clerk of the police department all moneys and other property and effects found upon the person of anyone on whom he shall hold an inquest. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 192.)

CROSS REFERENCES

Countersigning permit to cremate or otherwise destroy human body, § 27–125.

Duties of coroner in cases of negligent homicide by operation of motor vehicles, § 40–606.

Permit to disinter human bodies, § 27–128.

Property clerk of police department, § 4–151 et seq.

§ 11–1204 [18: 324]. Inquests dispensed with in certain cases.

The coroner shall not summon or hold any jury of inquest over the body of any deceased person where it is known that the deceased came to his death by suicide, accident, mischance, or natural causes: *Provided,* That in cases where it is not known that the deceased came to his death by suicide the coroner may, in his discretion, summon such jury. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 193; Mar. 2, 1911, 36 Stat. 974, ch. 192; June 26, 1912, 37 Stat. 147, ch. 182, § 1.)

AMENDMENT

The acts of March 2, 1911, and June 26, 1912, added the proviso clause.

§ 11–1205 [18: 325]. Witnesses—Testimony reduced to writing—Murder or manslaughter.

Witnesses may be summoned and compelled by the coroner to attend before him and give evidence, and shall be liable in like manner as if the summons had been issued by the municipal court. And it shall be his duty, upon every inquisition taken before him, where any person is charged with having unlawfully caused the death of the person on whom the inquest is held, to reduce the testimony of the witnesses to writing, and if the jury find that murder or manslaughter has been committed on the deceased, he shall require such witnesses as he thinks proper to give a recognizance to appear and testify in the District Court of the United States for the District of Columbia, and shall return to said court the said inquisition and testimony and recognizance by him taken. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 194; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of 1909 changed the name of the inferior court known as "justice of peace" to the "municipal court."

NOTES TO DECISIONS

EVIDENCE ADMISSIBILITY

Statements, made by defendant at coroner's inquest after warning that any statements made could be used against him in any subsequent proceeding, were properly used at subsequent trial for impeachment purposes. *Neely* v. *U. S.*, 1944 (144 F. 2d 519, 79 U. S. App. D. C. 177, certiorari denied 65 S. Ct. 83, 323 U. S. 754, 89 L. Ed. 604).

FEES OF WITNESSES AND JURORS

When witnesses and jurors are summoned by a lawful officer they are compelled to obey the writ and are entitled to their fees, advanced by the coroner, even though the inquest was unlawful. *Levy Court* v. *Woodward* (2 Wall. (69 U. S.) 501, 17 L. Ed. 851).

POWER TO TAKE TESTIMONY

A coroner may take testimony of probable defendants if it is given voluntarily after advice as to their rights and, in so doing, coroner does not act as a prosecuting officer, but sits in a quasi-judicial capacity. *Neely* v. *U. S.*, 1944 (144 F. 2d 519, 79 U. S. App. D. C. 177, certiorari denied 65 S. Ct. 83, 323 U. S. 754, 89 L. Ed. 604).

§ 11–1206 [18: 326]. Coroner's jury.

A coroner's jury shall consist of six persons. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 195.)

§ 11–1207 [18: 327]. Deputy coroners — Compensation, bond.

The commissioners of said District shall have authority to appoint two deputy coroners, who shall assist the coroner in the performance of his duties aforesaid, and shall perform the same duties in case of the absence or disability of the coroner. The deputy coroners shall serve and receive pay only in case of the absence or disability of the coroner, and when serving, their duties shall be the same as the aforesaid duties of the coroner. The deputy coroners shall, while acting, receive compensation at a rate not exceeding $5 per day, to be paid as other expenses of said District, and each shall give bond in the penalty of $2,500, with security to be approved by the District Court of the United States for the District of Columbia, conditioned for the due performance of his duties. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 196; Dec. 13, 1924, 43 Stat. 713, ch. 8.)

AMENDMENT

The act of 1924 provided for the appointment of two deputy coroners instead of one, and added the second sentence.

§ 11–1208 [18: 328]. To serve and execute process when marshal may not—Liability.

Whenever the marshal is a party to any cause or interested therein, or it is unfit on other grounds that he should serve and execute the process to be issued therein, such process shall be issued to the coroner, and he shall be paid the same fees and compensation for serving and executing the same which would be payable to the marshal in similar cases, and shall account therefor to the treasury of the United States. And if he shall fail in the proper performance of his duties in the premises, like redress may be had against him, his sureties, and his and their heirs, devisees, and personal representatives, as could have been had against the marshal, his sureties, and his and their heirs, devisees, and personal representatives, for a like failure on the part of said marshal. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 197.)

Chapter 13.—ATTORNEYS

Sec.
11–1301. Admission to bar—Authority to make regulations—Oath.
11–1302. Power to censure, suspend, or disbar for cause.
11–1303. Disbarment upon conviction of crime.
11–1304. Procedure for disbarment.

§ 11–1301 [18: 52]. Admission to bar—Authority to make regulations—Oath.

The District Court of the United States for the District of Columbia in general term shall have full power and authority from time to time to make such rules as it may deem proper respecting the examination, qualification, and admission of persons to membership in its bar and their censure, suspension, and expulsion; and every person so admitted, before he shall be at liberty to practice therein, shall take and subscribe the following oath: "I, ———, do solemnly swear (or affirm) that I will demean myself as a member of the bar of this court uprightly and according to law; and that I will support the Constitution of the United States." (Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 218; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

The act of April 19, 1920, struck out this section as originally enacted and substituted the above in lieu thereof.

CROSS REFERENCES

Advance information of arrest or raid to attorneys or bondsmen unlawful, § 23–609.

Exempted from operation of law requiring license to deal in real estate, § 45–1402.

Fees, § 11–1501 et seq.

Fees under Money Lenders' Law, § 26–608.

NOTES TO DECISIONS

BAR EXAMINATION PAPERS

Bar examination papers are not part of records of court but belong exclusively to Committee on Admissions and Grievances, which may destroy memoranda after lapse of time subject only to appeal to judges' discretion. *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

COMMITTEE ON ADMISSIONS AND GRIEVANCES

In exercising right under this section and inherent right to promulgate rules with respect to admissions of attorneys, District Court had right to call to its assistance a committee of lawyers on admissions and grievances, and to compensate members of such committee for their services. *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

COMMON LAW

Summary proceeding provided by this section is "at least as broad as the rule of the common law." *Diggs* v. *Thurston* (39 App. D. C. 267).

DUTY OF COURT

Court has duty to exercise and regulate admission of applicants to the bar by sound and just judicial discretion. *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

FUNDS

A fund controlled by Committee on Admissions and Grievances was rightfully accumulated to make effective the rules promulgated by District Court, and such fund did not belong to United States but to the court and was to be administered as outlined by court. *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

Fund resulting from fees paid by applicants for admission to bar, to be distributed by Committee on Admissions and Grievances as it should decide, is not a "tax." *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

HISTORICAL

An order by the Criminal Court of the District of Columbia, made in 1867, disbarring an attorney from practice in that court, did not remove the attorney from the bar of the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), the criminal court at that time being an independent court. The act of June 21, 1870 (16 Stat. 160, ch. 141), making the criminal court a part of the Supreme Court did not affect that order. *Bradley* v. *Fisher* (13 Wall. (80 U. S.) 335, 20 L. Ed. 646).

JURISDICTION

District Court had no jurisdiction of action under informer's statutes, 31 U. S. C. §§ 231, 232, against Committee on Admissions and Grievances, based on their alleged misconduct in distributing among themselves fees collected from applicants for admission to bar, and in destroying bar examination papers and excluding Negroes from membership on the committee. *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

POWER OF COURT

Within very wide limits, standards of fitness for membership in the bar of the District Court of the United States for the District of Columbia are for the District Court itself to establish and maintain. *Carver* v. *Clephane,* 1943 (137 F. 2d 685, 78 U. S. App. D. C. 91).

To admit applicants to practice law is judicial, not legislative, and vested in courts only. *Laughlin* v. *Clephane* (D. C., D. C. 1948, 77 F. Supp. 103).

UNAUTHORIZED LAW PRACTICE

Attempt of association to settle by arbitration automobile damage claims of less than $100 for and against its members constitutes the unauthorized practice of law. *Merrick* v. *American Automobile Assn.* ((D. C.–D. C.), 31 Fed. Supp. 876).

Attempt of association to adjust without court action claims for property damage to automobiles of less than $100 constitutes the unauthorized practice of law. *Merrick* v. *American Automobile Assn.* ((D. C.-D. C.), 31 Fed. Supp. 876).

Filling out of blank complaints to be filed in the small claims court constitutes the practice of law. *Merrick* v. *American Automobile Assn.* ((D. C.-D. C.), 31 Fed. Supp. 876).

Conducting of a department of claims and adjustment by an automobile association constitutes the practice of law. *Merrick* v. *American Automobile Assn.* ((D. C.-D. C.), 31 Fed. Supp. 876).

§ 11–1302 [18: 53]. Power to censure, suspend, or disbar for cause.

Said District Court of the United States for the District of Columbia, in general term, shall have full power and authority to censure, suspend from practice, or expel any member of its bar for any crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or any conduct prejudicial to the administration of justice. Any fraudulent act or misrepresentation by an applicant in connection with his application or admission shall be sufficient cause for the revocation by said court of such admission. (Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 219; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

NOTES TO DECISIONS

LIABILITY OF JUSTICES

Chief Justice and Associate Justice when affixing their signature to an order for disbarment act within scope of their official authority and within jurisdiction of the court, and they are not liable for damages therefrom. *Fletcher* v. *Wheat* (69 App. D. C. 259, 100 Fed. (2d) 432).

MANDAMUS PROPER REMEDY

The petition for mandamus is the proper remedy to test the question of the right of the District Court without notice to suspend an attorney from practice during the period prior to the hearing on a motion for disbarment. *Laughlin* v. *Wheat* (68 App. D. C. 190, 95 Fed. (2d) 101).

MISCONDUCT

Court may order attorney to pay to client money collected for the latter, and retained or paid out without lawful authority, and this authority is not affected by the common-law action available to the client. *Diggs* v. *Thurston* (39 App. D. C. 267).

When attorney entered in transaction with clients with no deliberate intention of fraudulently profiting at their expense, such misconduct warranted suspension but not disbarment. *Costigan* v. *Adkins* (57 App. D. C. 153, 18 Fed. (2d) 803).

On the evidence defendant's failure to disclose loss of money to client held to be unprofessional conduct, which could be adequately punished by his suspension rather than disbarment. *Costigan* v. *Adkins* (57 App. D. C. 153, 18 Fed. (2d) 803, cert. den. 274 U. S. 760, 71 L. Ed. 1338, 47 Sup. Ct. 769).

Conduct by an attorney in his professional capacity prejudicial to the administration of justice would necessarily constitute professional misconduct in preparation of pleadings and affidavit. *Curtis* v. *Whiteford* (59 App. D. C. 330, 41 Fed. (2d) 302).

Order disbarring defendant affirmed on evidence that he filed a false affidavit of merit in suit to recover fees for legal services, stating that he had received no compensation, whereas, in fact he had received two separate payments on account. *Curtis* v. *Whiteford* (59 App. D. C. 330, 41 Fed. (2d) 302).

An attorney is properly disbarred who deceives the court by false statements and misappropriates client's money. *Thomas* v. *Ogilby* (59 App. D. C. 382, 44 Fed. (2d) 890).

Evidence establishing professional misconduct of attorney and character of the misconduct justified order censuring attorney and suspending him from practice of law for six months. *Halpern* v. *Committee on Admissions and Grievances of the District Court,* 1944 (139 F. 2d 361, 78 U. S. App. D. C. 220).

REPRESENTING CONFLICTING INTERESTS

In negotiating the sale, the interests of the prospective seller and buyer were adverse, but once the terms of sale were agreed upon, the parties were jointly interested in having steps taken to complete the sale promptly and we see no reason why the purchaser could not agree to pay the attorney for his services in accomplishing the results desired. *Kreis* v. *Block* (D. C. Mun. App. 1950, 75 A. 2d 523).

§ 11–1303 [18: 54]. Disbarment upon conviction of crime.

Whenever any member of the bar of said court shall be convicted of any offense involving moral turpitude, and a duly certified copy of the final judgment of such conviction shall be presented to said court, the name of the member so convicted may thereupon, by order of said court, be stricken from the roll of the members of said bar, and he shall thereafter cease to be a member thereof. In the event of appeal from any such judgment of conviction as aforesaid, and pending the final determination of such appeal, the said court may order the suspension from practice of such convicted member of the bar; and upon a reversal of such conviction, or the granting of a pardon, said court shall have power to vacate or modify such order of disbarment or suspension. (Apr. 19, 1920, 41 Stat. 561, ch. 153.)

§ 11–1304 [18: 55]. Procedure for disbarment.

Before any such member of the bar is censured, suspended, or expelled as provided by section 11–1302, written charges, under oath, against him must be presented to said court, stating distinctly the grounds of complaint. Said court in general term may order said charges to be filed in the office of the clerk of said court and shall fix a time for hearing thereon. Thereupon a certified copy of said charges and order shall be served upon such member personally by the marshal or such other person as the court may designate, or in case it is established to the satisfaction of the court that personal service can not be had, a certified copy of such charges and order shall be served upon him by mail, publication, or otherwise as the court may direct. At any time after the filing of said written charges the court shall have power, pending the trial thereof, to suspend from practice the person charged. (Mar. 3, 1863, 12 Stat. 762, ch. 91; Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 220; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

The act of April 19, 1920, amended the above section by striking it out and inserting in lieu thereof the above.

NOTES TO DECISIONS

CONDUCT OF TRIAL

Record in disbarment proceeding did not sustain assignment that court erred in refusing to direct a continuance to enable attorney to procure counsel and character witnesses, where record disclosed that attorney prepared and filed his answer pro se and at trial refused offer of court to appoint counsel, and that, although attorney sought continuance because of absence of character witnesses, trial counsel for grievance committee conceded that each witness would, if present, testify to attorney's good character, and on that understanding case proceeded. *Tulman* v. *Committee on Admissions and Grievances,* 1943 (135 F. 2d 268, 77 U. S. App. D. C. 357).

REVIEW

In disbarment proceeding, attorney's explanation in palliation was for trial court's consideration, and the trial court, in denying effect thereto, exercised its judicial discretion, which was not subject to review on appeal. *Tulman* v. *Committee on Admissions and Grievances,* 1943 (135 F. 2d 268, 77 U. S. App. D. C. 357).

Chapter 14.—JURIES AND JURY COMMISSIONERS

Sec.
11–1401. Jury commission—Qualifications and appointment—Duties—Compensation—Removal.
11–1402. Selection of jurors.
11–1403. Jury box.
11–1404. Sealing and custody of jury box.
11–1405. Term of service of petit jurors.
11–1406. Term of service of grand jury.
11–1407. Impaneling jury—Procedure.
11–1408. Additional grand jury—Procedure—Term.
11–1409. Substitution in case of vacancies—Procedure.
11–1410. Disposition of box after drawings—Jurors drawn excused from further service.
11–1411. Number of names required in box—Record of remaining names.
11–1412. Filling vacancies.
11–1413. Special venire in criminal cases.
11–1414. Repealed.
11–1415. Repealed.
11–1416. Penalty for failure to attend after notice.
11–1417. Qualifications of jurors.
11–1418. Women as jurors.
11–1419. Repealed.
11–1420. Exemption from jury service — Government employees qualified—Salary not diminished.
11–1421. District of Columbia employees—Service as jurors in state or United States courts—No deductions from salary or leave allowance.
11–1422. Compensation for giving service prohibited.
11–1423. Compensation received as juror credited against salary.

§ 11–1401 [18: 341]. Jury commission — Qualifications and appointment — Duties — Compensation — Removal.

There shall be, and there is hereby, constituted a jury commission for the District of Columbia, which shall be composed of three commissioners, who shall be citizens of the United States and actual residents of the District of Columbia, who have been domiciled therein for at least three years prior to their appointment, and shall be freeholders in the District of Columbia and not engaged in the practice of law, nor at the time of their appointment be a party to any cause then pending in the courts of the District of Columbia. Such commissioners shall be appointed by the District Court of the United States for the District of Columbia, in general term, and shall serve for a term of three years and until their successors are appointed and qualified; except that the members first appointed shall serve for one, two, and three years, respectively, as may be designated by said court. Before entering upon the discharge of their duties they shall each take an oath of office to be prescribed by the District Court of the United States for the District of Columbia. It shall be the duty of said jury commission to make and preserve a record of the list of names of jurors, both grand and petit, and of commissioners and jurors in condemnation proceedings for service in all the courts of the District of Columbia having cognizance of jury trials and of condemnation proceedings, to place the names in the jury box, and to have custody and control of said jury box, and to draw the names of said jurors and condemnation commissioners from time to time, as hereinafter provided. The compensation of said jury commissioners shall be $10 each per day for each day or fraction of a day when they are actually engaged in the performance of their duties, not to exceed five days in any one month (nor two hundred fifty dollars per annum), which shall be paid by the United States marshal for the District of Columbia out of the appropriation for pay of bailiffs, upon the certificate of said commissioners. The said District Court of the United States for the District of Columbia, in general term, shall have power summarily to remove any of said commissioners for absence, inability, or failure to perform his duties as such commissioner, or for any misfeasance or malfeasance, and to appoint another person for the unexpired term. In the event of the illness or other inability or absence from the District of Columbia of any one of said commissioners, the two other commissioners may perform the duties of said jury commission. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 198; Apr. 19, 1920, 41 Stat. 558, ch. 153; Aug. 8, 1946, 60 Stat. 931, ch. 881.)

Amendment

The 1920 amendment struck out the entire section of the 1901 act and inserted in lieu thereof the above. The 1901 act read as follows: "The clerk of the Supreme Court of the District of Columbia, the United States marshal, and the collector of taxes for said District are hereby constituted a commission to from time to time make the list of jurors for service in said court and fix the number of jurors to be listed therefor."

Amendments

Act of Aug. 8, 1946, cited to text, deleted sentence reading "No person who has served as such Commissioner shall be eligible for reappointment within three years of the date of the expiration of his term of service."

Cross References

Challenge of jurors in criminal cases, § 23–108.
Coroner's jury, § 11–1206.
Juries for proceedings in juvenile court, §§ 11–936, 11–937.
Juries in cases to condemn land for alleys and minor streets, §§ 7–315, 7–317, 7–322.
Juries in cases to condemn land for streets outside Washington and Georgetown, §§ 7–205, 7–206, 7–209, 7–213.
Juries in municipal court, §§ 11–715, 11–716.
Jury fees, §§ 11–1512, 11–1513, 11–1515.
Jury in lunacy proceedings, §§ 21–307, 21–314.
Jury in police court governed by same laws governing petit juries in District Courts, §§ 11–617, 11–618.
Jury of three in proceedings to condemn insanitary buildings, § 5–614.
Jury to determine sanity of person charged with or convicted of crime, § 24–301.
Jury trial in vagrancy proceedings, § 22–3301.
Peremptory challenges, § 23–107.
Special juries in proceedings to condemn land for United States, § 16–629 et seq.
Special jury for condemnation proceedings, § 16–603 et seq.
Struck juries, § 11–319.

Rules of Civil Procedure

Alternate jurors, see Rule 47.
Juries and jury trials, see Rules 38, 39, 47.

NOTES TO DECISIONS

Application

This section applies alike to grand and petit jurors. *United States* v. *Griffith* (55 App. D. C. 123, 2 Fed. (2d) 925).

Construction of Prior Law

A grand jury summoned prior to Jan. 1, 1902, could not be impaneled subsequent thereto when the new regulations went into effect and indictment found by such a grand jury is of no effect and void. *Clark* v. *United States* (19 App. D. C. 295).

If the code is silent as to the manner of procuring talesmen in capital cases when the regular panel is exhausted, one should then look to the common law or the law of Maryland prior to 1801. Sec. 1, D. C. Code 1901 (31 Stat. 1189, ch. 854). *Milano* v. *United States* (40 App. D. C. 379).

NEGROES, EXCLUSION OF

The Court could take judicial notice of the presence in the District of Columbia of members of the Negro race possessing the qualifications of jurors, but could not take judicial notice of their exclusion, systematic or otherwise, from grand jury returning indictment without proof or offer of proof to that effect. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

Fact that 19 members of jury panel selected in prosecution of three Negroes jointly indicted on charge of murder in perpetration of robbery were members of Negro race indicated that Negroes had not been systematically excluded from panel in violation of Fifth Amendment, and defendants could not complain that thereafter Government peremptorily challenged every Negro juror who had been called to sit in the panel. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U. S. 839, 93 L. Ed. 391).

§ 11–1402 [18: 342]. Selection of jurors.

The said jurors shall be selected, as nearly as may be, from the different parts of the District. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 199; Apr. 19, 1920, 41 Stat. 558, ch. 153.)

AMENDMENT

The 1920 amendment deleted the words "the citizens in" following the word "from."

CROSS REFERENCE

See note to § 11–1401. *United States* v. *Griffith* (55 App. D. C. 123, 2 Fed. (2d) 925).

§ 11–1403 [18: 343]. Jury box.

The jury commission shall write the names on separate and similar pieces of paper, which they shall so fold or roll that the names can not be seen, and shall place the same in a box to be provided for the purpose. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 200; Apr. 19, 1920, 41 Stat. 558, ch. 153.)

AMENDMENT

The 1920 amendment struck out the section of the 1901 act and inserted in lieu thereof the above. The former section read: "The names shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names can not be seen and placed in a box to be provided for the purpose."

CROSS REFERENCE

Fraudulently tampering with jury box, penalty, § 22–1414.

§ 11–1404 [18: 344]. Sealing and custody of jury box.

The jury commission shall thereupon seal said box and, after thoroughly shaking the same, shall deliver it to the clerk of the District Court of the United States for the District of Columbia for safe-keeping; and the same shall not be unsealed or opened except by said commission. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 201; Apr. 19, 1920, 41 Stat. 558, ch. 153.)

AMENDMENT

The 1920 amendment struck out the section of the 1901 act and inserted in lieu thereof the above. The former section read: "The box shall be sealed and, after being thoroughly shaken, shall be delivered to the clerk of the Supreme Court for safekeeping."

§ 11–1405 [18: 345]. Term of service of petit jurors.

The respective terms of service of petit jurors drawn for service in the District Court of the United States for the District of Columbia shall begin on the first Tuesday of October, November, December, January, February, March, April, May and June of each year and shall terminate on the Monday preceding the first Tuesday of the next month thereafter, except when the jury shall be discharged by the court at an earlier day, or when a jury shall be empaneled and it shall happen that no verdict shall have been found before the day appointed by law for the commencement of the next succeeding term, in which case the court shall proceed with the trial by the same jury in every respect as if its term of service had not ended; and all proceedings to final judgment, if such judgment shall be rendered, shall be entered and have legal effect and operation as of the term at which the jury shall have been empaneled: *Provided,* That the District Court of the United States for the District of Columbia in general term may direct petit jurors to be drawn for monthly service in said court during the months of July, August, and September, such service to begin and terminate as aforesaid. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 202; Apr. 19, 1920, 41 Stat. 559, ch. 153.)

AMENDMENT

The 1920 amendment struck out the section of the 1901 act and inserted in lieu thereof the above. The former section did not provide for the November, January, March, or May terms, but provided the terms should run two months, and did not contain the proviso.

CROSS REFERENCE

Jury fees, §§ 11–1512, 11–1513, 11–1515.

§ 11–1406 [18: 346]. Term of service of grand jury.

The term of service of the grand jury in the criminal court shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court. The foreman of the grand jury shall be selected by the justice presiding over the special term known as criminal division number one from among the jurors, grand and petit, in attendance upon the District Court of the United States for the District of Columbia; and, in the event that said foreman is not selected from among the twenty-three grand jurors in attendance, but is selected from among the petit jurors, one of said grand jurors shall be excused as such and transferred to the roll of petit jurors, and the term of service of the foreman so selected of the grand jury shall be concurrent with the term of service of the grand jury. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 203; Apr. 19, 1920, 41 Stat. 559, ch. 153.)

AMENDMENT

The 1920 amendment added all but the first sentence, which was contained in the 1901 Act.

CROSS REFERENCE

Jury fees, §§ 11–1512, 11–1513, 11–1515.

§ 11–1407 [18: 347]. Impaneling jury—Procedure.

At least ten days before the first Tuesday of each month specified in section 18–1405 when jury trials are to be had, said jury commission shall pub-

licly break the seal of the jury box and proceed to draw therefrom, by lot and without previous examination, the names of such number of persons as the general term of the District Court of the United States for the District of Columbia may from time to time direct to serve as grand and petit jurors in the District Court of the United States for the District of Columbia; and shall forthwith certify to the clerk of the District Court of the United States for the District of Columbia the names of the persons so drawn as jurors.

The distribution, assignment, reassignment, and attendance of said petit jurors among the special terms of the District Court of the United States for the District of Columbia shall be in accordance with rules to be prescribed by said court.

At least ten days before the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year the said jury commission shall likewise draw from the jury box the names of persons to serve as jurors in the police court and in the juvenile court of the District of Columbia in accordance with sections 11–617, 11–618, relating to the police court, and sections 11–915, 11–916, creating said juvenile court, and shall also draw from the jury box the names of persons to serve as jurors in any other court in the District of Columbia which hereafter may have cognizance of jury trials, and shall certify the respective list of jurors to the clerk of the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 204; Jan. 31, 1902, 32 Stat. 2, ch. 5, § 1; Apr. 19, 1920, 41 Stat. 559, ch. 153; Mar. 3, 1925, 43 Stat. 1120, ch. 443, § 5b; June 14, 1926, 44 Stat. 741, ch. 577; July 3, 1926, 44 Stat. 892, ch. 784.)

Amendments

The 1920 amendment amended the 1901 act by deleting the word "clerk" and inserting in lieu thereof the words "jury commission," and by deleting all the remainder of the 1901 section after the present word "therefrom" in the first sentence of the first paragraph, and inserting in lieu thereof the present remainder of the section except as it has been amended as hereafter shown.

The 1925 amendment recomposed the last paragraph to provide for a monthly drawing of jurors for criminal court.

The June 14, 1926 amendment, in effect, added the words "grand and" in the first paragraph.

The July 3, 1926 amendment restored the last paragraph to the 1920 form, and reenacted the entire section as it now reads, probably because of the wording of the June 14, 1926 amendment, which purported to delete the entire section except the first paragraph.

Cross Reference

See notes to § 11–1401.

NOTES TO DECISIONS

Irregularities

Where pleas in abatement filed four years after indictment which shows that clerk of jury commission, charged with duty of selecting persons, unlawfully abstracted names of prospective jurors so that other prospective jurors were not drawn, this constitutes a serious irregularity in organization of grand jury but is not sufficient to show that it is an illegal body; such pleas in abatement were also filed too late. *Hyde* v. *United States* (35 App. D. C. 451, aff'd 225 U. S. 347, 56 L. Ed. 1114, 32 Sup. Ct. 793).

Panel Exhausted

Where the list of jurors given to accused before trial contained the names of all jurors assigned to serve in the criminal division of the court, but after the panel was exhausted other jurors were called from the civil court, the statutory requirement was satisfied, there being no charge that the selected jury was disqualified. *Eagles* v. *United States* (58 App. D. C. 122, 25 Fed. (2d) 546, cert. den. 277 U. S. 609, 72 L. Ed. 1013, 48 Sup. Ct. 603)

Peremptory Challenge

The right of peremptory challenge is given to be exercised on the party's sole discretion, and the right is given to secure a fair and impartial jury, not for creating ground to claim partiality which but for its exercise would not exist. *Frazier* v. *United States,* 1948 (69 S. Ct. 201, 335 U. S. 497, 93 L. Ed. 187; reh. den. 336 U. S. 907, 69 S. Ct. 488, 93 L. Ed. 1072).

Publicly Break the Seal

Act of assistant clerk in breaking seal of jury box and drawing jury when in the presence of the clerk and witnesses is a sufficient compliance with D. C. Code 1901 Edit., § 204 (31 Stat. 1222, ch. 854). *Fletcher* v. *United States* (42 App. D. C. 53); *Patten* v. *United States* (42 App. D. C. 239).

Selecting the Panel

The well settled rule is that, given a lawfully selected panel, free from any taint of invalid exclusion or procedures in selection and from which all disqualified for cause have been excused, no cause for a complaint arises merely from the fact that the jury finally shows itself not to be representative of the panel or indeed of the community. *Frazier v. United States,* 1948 (69 S. Ct. 201, 335 U. S. 497, 93 L. Ed. 187; reh. den. 336 U. S. 907, 69 S. Ct. 488, 93 L. Ed. 1072).

No prejudicial error was shown where counsel stated to the jury, "Now, I have exhausted my ten challenges, and here I have twelve government jurors who are to decide this defendant's case, which is a violation of the Federal statute, being brought in a Federal Court, prosecuted by a Federal prosecutor, and the case is presented by Federal agents." Given ten arbitrary choices among twenty-two prospective jurors, not disqualified for cause, of whom thirteen were government employees and nine privately engaged, he knowingly rejected nine of the latter and accepted without challenge but one of the former. *Frazier v. United States,* 1948 (69 S. Ct. 201, 335 U. S. 497, 93 L. Ed. 187; reh. den. 336 U. S. 907, 69 S. Ct. 488, 93 L. Ed. 1072).

Venire

Issuance of a venire is unnecessary when after the names of the grand jurors had been drawn the clerk certified those names to the marshal, who notified them of their selection and when to appear in court. *Patten* v. *United States* (42 App. D. C. 239).

§ 11–1408 [18: 348]. Additional grand jury — Procedure—Term.

Whenever the United States attorney for the District of Columbia shall certify in writing to the chief justice of the District Court of the United States for said District, or, in his absence, to the senior associate justice of said court, that the exigencies of the public service require it, said chief justice or senior associate justice may, in his discretion, order an additional grand jury summoned, which additional grand jury shall be drawn at such time as he may designate in the manner provided by law for the drawing of grand jurors in the District of Columbia, and unless sooner discharged by order of said chief justice, or, in his absence, senior associate justice, said additional grand jury shall serve during and until the end of the term in and for which it shall have been drawn. (May 19, 1922, 42 Stat. 543, ch. 194.)

§ 11–1409 [18: 349]. Substitution in case of vacancies—Procedure.

If any person whose name is drawn from the box shall have died or removed from the District before or after being selected, or become otherwise disqualified or disabled, the jury commission shall destroy the slip containing the name of such person, and in such case the jury commission shall draw from the box the name of another person to serve in his stead. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 205; Apr. 19, 1920, 41 Stat. 560, ch. 153.)

AMENDMENT

The 1920 amendment rewrote this section to include the words "before or after being selected," to substitute "jury commission" for "clerk," and to rephrase the wording.

§ 11–1410 [18: 350]. Disposition of box after drawings — Jurors drawn excused from further service.

After the requisite number of jurors shall have been drawn the jury box shall be sealed and delivered to the clerk of the District Court of the United States for the District of Columbia for safekeeping, and the names of the persons drawn shall not be placed again in the box for one year, unless said jurors shall be excused or for other reasons shall fail to serve. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 206; Apr. 19, 1920, 41 Stat. 560, ch. 153.)

AMENDMENT

The 1920 amendment inserted the words "and delivered to the clerk of the Supreme Court of the District of Columbia for safe keeping" in lieu of the words "and remain in the custody of the clerk."

§ 11–1411 [18: 351]. Number of names required in box—Record of remaining names.

At the time of each drawing of jurors by said commission there shall be in the jury box the names of not less than six hundred persons possessing the qualifications hereinafter prescribed, which names shall have been placed therein by said jury commission. Said jury commission shall keep an accurate record, in alphabetical form, of all names remaining in the jury box from time to time, which record shall be kept sealed and deposited for safe-keeping in the office of the clerk of the District Court of the United States for the District of Columbia when the commission is not in session, and no person shall have access to said record except said commission. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 207; Apr. 19, 1920, 41 Stat. 560, ch. 153.)

AMENDMENT

The 1920 amendment deleted the section of the 1901 act and substituted therefor the above. The former section read: "Any person who shall have been regularly drawn as a juror and shall thereupon have served as such for the period of twenty days or more shall be exempt from further service as a juror in said court for the period of one year from the beginning of his said term of service; but nothing herein contained shall render said juror ineligible to serve during said year, except that no person shall serve as a juror for two consecutive terms."

§ 11–1412 [18: 352]. Filling vacancies.

If any persons drawn as grand or petit jurors can not be found, or shall prove to be incompetent, or shall be excused from service by the court, the jury commission, under the direction of the court, shall draw from the box the name of other persons to take their places, and if, after the organization of the jury, any vacancies occur therein, they shall be filled in like manner. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 208; Apr. 19, 1920, 41 Stat. 560, ch. 153.)

AMENDMENT

The 1920 amendment inserted the words "grand or petit" before the word "jurors," deleted the word "clerk" and inserted in lieu thereof the words "jury commission," and composed the paragraph into one sentence.

RULES OF CIVIL PROCEDURE

Alternate jurors, see Rule 47.

NOTES TO DECISIONS

PANEL EXHAUSTED

If any persons are incompetent, the clerk under court's direction shall draw from the box the names of others to take their places, and since this is the only method for procuring a jury in a capital case owing to the exception in § 353 (§ 11–1413), which provides that if during the impaneling, the court may in its discretion draw further names when the panel becomes exhausted, such jury is properly drawn consonant with intent of framers of the statute. *Milano* v. *United States* (40 App. D. C. 379).

§ 11–1413 [18: 353]. Special venire in criminal cases.

Whenever in any criminal case in the District Court of the United States for the District of Columbia it shall become impossible, on account of challenges or excuses, to impanel a trial jury from among the available petit jurors already in attendance on said District Court of the United States for the District of Columbia and distributed or assigned among the several special terms thereof, the justice presiding at such criminal trial shall order the marshal to summon as many talesmen as may be necessary to complete said jury. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 209; Apr. 19, 1920, 41 Stat. 560, ch. 153.)

AMENDMENT

The 1920 amendment deleted the section of the 1901 act and substituted therefor the above. The former section read: "If at any time during the impaneling of a jury, in any other than a capital case, the regular panel, by reason of challenge or otherwise, shall become exhausted before the jury is complete the court may in its discretion, direct the clerk to draw from the box the names of other persons to serve as jurors and cause them to be summoned, or order the marshal to summon as many talesmen as may be necessary to complete the jury."

CROSS REFERENCE

See note to § 11–1407. *Eagles* v. *United States* (58 App. D. C. 122, 25 Fed. (2d) 546, cert. den. 277 U. S. 609, 72 L. Ed. 1013, 48 Sup. Ct. 603).

NOTES TO DECISIONS

CONSTRUCTION OF PRIOR LAW

This section leaves it in the discretion of the trial judge, except in capital cases, to issue an open venire. *Milano* v. *United States* (40 App. D. C. 379).

It is proper to draw a number of grand jurors in excess of the number of vacancies. *Milano* v. *United States* (40 App. D. C. 379).

§ 11–1414 [18: 354]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section, relating to notification of prospective jurors by the marshal was based on Act Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 210 and is now covered by sections 547 (b) and 1867 of title 28, U. S. C.

§ 11–1415 [18: 355]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section, relating to return by marshal of notice to prospective jurors was based on act Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 211 and is now covered by sections 547 (b) and 1867 of title 28, U. S. C.

§ 11–1416 [18: 356]. Penalty for failure to attend after notice.

If any person selected as a juror and duly notified to attend shall, without sufficient cause, neglect to attend agreeably to notice he shall be fined by the court in a sum not exceeding twenty dollars for every day that he shall be absent during the sitting of the court. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 212.)

§ 11–1417 [18: 357]. Qualifications of jurors.

No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or a misdemeanor involving moral turpitude. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 215.)

CROSS REFERENCE

See notes to § 11–1420. *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177, rev'g 65 App. D. C. 330, 83 Fed. (2d) 587).

NOTES TO DECISIONS

GOVERNMENT EMPLOYEES

Qualifications here prescribed do not furnish only test of juror's competency. Common-law provision is still in force making a government employee ineligible in a criminal case. *Crawford* v. *United States* (212 U. S. 183, 53 L. Ed. 465, 29 Sup. Ct. 260, rev'g 30 App. D. C. 1).

§ 11–1418 [18: 358]. Women as jurors.

No person shall be disqualified for service as a juror or jury commissioner by reason of sex but the provisions of law relating to the qualifications of jurors and exemptions from jury duty shall in all cases apply to women as well as to men: *Provided,* That such service shall not be compulsory on any woman. (Feb. 26, 1927, 44 Stat. 1249, ch. 220.)

NOTES TO DECISIONS

EXCUSING AS JUROR

Where defendant had four peremptory challenges left, he can not claim prejudice because a woman juror was excused at her own request, after jury was accepted but not sworn. *Fall* v. *United States* (60 App. D. C. 124, 49 Fed. (2d) 506, cert. den. 283 U. S. 867, 75 L. Ed. 1471, 51 Sup. Ct. 657).

GOVERNMENT EMPLOYEES

Government employees and women are legally qualified for jury service, and bias is not to be implied to either class. *Smith* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 775).

QUESTIONS NOT RAISED IN LOWER COURT

Objection to validity of this section made for first time on appeal, held too late. *Howard* v. *United States* (58 App. D. C. 179, 26 Fed. (2d) 551).

§ 11–1419 [18: 359]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to excusing jurors from service was based on act Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 216 and is now covered by section 1863 of title 28, U. S. C.

§ 11–1420 [18: 360]. Exemption from jury service—Government employees qualified—Salary not diminished.

All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and fire departments of the United States and of the District of Columbia, counselors and attorneys-at-law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempt from jury duty, and their names shall not be placed on the jury lists.

All other persons, otherwise qualified according to law whether employed in the service of the government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men of the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service: *Provided,* That employees of Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law. (Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 217; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 73; Aug. 22, 1935, 49 Stat. 682, ch. 605.)

COMPILER'S NOTE

The last proviso of this section may be superseded by §§ 11–1421 to 11–1423.

AMENDMENTS

The 1909 amendment added the word "all officers and enlisted men of National Guard for the District of Columbia, both active and retired" after the words "District of Columbia" where they appear the first time.

The 1935 amendment transferred the provision concerning the National Guard to the second paragraph and inserted in the first paragraph in lieu thereof the exemption concerning the Army, Navy, Marine Corps and Coast Guard and added the second paragraph.

CROSS REFERENCE

See notes to § 11–1417.

NOTES TO DECISIONS

BIAS

Bias of a prospective juror may be actual or implied. *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177, rev'g 65 App. D. C. 330, 83 Fed. (2d) 587).

CONSTITUTIONALITY

This section as amended in 1935, qualifying government employees and pensioners for jury service in criminal cases, does not violate the sixth amendment to the United States Constitution providing for a trial by an "impartial jury." *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177, rev'g 65 App. D. C. 330, 83 Fed. (2d) 587).

The 1935 amendment did not render this section either arbitrary or capricious so as to render it violative of the due process clause of the fifth amendment. *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177, rev'g 65 App. D. C. 330, 83 Fed. (2d) 587).

The argument that the Code authorizing jury service by government employees is unconstitutional is without merit. Government employees are entitled to serve on juries. *Wright* v. *United States* (C. A. D. C. 1950, 183 F. 2d 821).

DUTY OF THE COURT

The trial court must be zealous to protect the right of an accused, and the court must do so without reference to an accused's political or religious beliefs however such beliefs may be received by a predominate segment of our population. Ideological status is not an appropriate gauge of the high standard of justice toward which our courts may not be content only to strive. *Dennis* v. *United States,* 1950 (70 S. Ct. 519, 339 U. S. 162, 94 L. Ed. 461).

GOVERNMENT EMPLOYEES

Even though at common law a disqualification as to government employees existed, Congress has power to remove it. *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177, rev'g 65 App. D. C. 330, 83 Fed. (2d) 587).

Four jurors, employed in Government service, but eligible by statute for jury service, were not subject to challenge for implied bias. *Great A. & P. Tea. Co.* v. *District of Columbia* (67 App. D. C. 30, 89 Fed. (2d) 502, cert. den. 301 U. S. 691, 81 L. Ed. 1347, 57 Sup. Ct. 794).

Government employees are eligible for jury service, and fact that grand jury as finally constituted contained 13 government employees did not render indictment invalid. *Romney* v. *U. S.* (App. D. C. 1948, 167 F. 2d 521, certiorari denied 68 S. Ct. 1512, 334 U. S. 849, 92 L. Ed. 1771).

In the absence of any basis for challenge, we do not see how a right to challenge a panel as a whole can arise from the mere fact that the jury chosen by proper procedure from a proper elected panel turns out to be composed wholly of government employees. *Frazier* v. *United States,* 1948 (69 S. Ct. 201, 335 U. S. 497, 93 L. Ed. 187; reh. den. 336 U. S. 907, 69 S. Ct. 488, 93 L. Ed. 1072).

A holding of implied bias to disqualify jurors because of their relationship with the government is no longer permissible. Employees of the federal government are not challengeable solely by reason of their employment. *Dennis* v. *United States,* 1950 (70 S. Ct. 519, 339 U. S. 162, 94 L. Ed. 461).

Government employees and women are legally qualified for jury service and bias is not to be implied to either class. *Smith* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 775).

IMPARTIALITY OF JURORS

Impartiality of a jury is not a technical conception. It is a state of mind, and for the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular test and procedure is not chained to any ancient and artificial formula. *Dennis* v. *United States,* 1950 (70 S. Ct. 519, 339 U. S. 162, 94 L. Ed. 461).

§ 11–1421. District of Columbia employees—Service as jurors in state or United States courts—No deductions from salary or leave allowance.

The compensation of any employee of the United States or of the District of Columbia who may be called upon for jury service in any state court or court of the United States shall not be diminished during the term of such jury service by reason of such absence, except as provided in section 11–1423 nor shall such period of service be deducted from the time allowed for any leave of absence authorized by law. (June 29, 1940, 54 Stat. 689, ch. 446, § 1.)

COMPILER'S NOTE

This section and §§ 11–1422, 11–1423 may supersede the last proviso of § 11–1420.

CROSS REFERENCE

Jury fees, §§ 11–1512, 11–1513.

§ 11–1422. Compensation for giving service prohibited.

Any employee specified in section 11–1421 who may be called upon for jury service in any court of the United States shall not receive any compensation for such service. (June 29, 1940, 54 Stat. 689, ch. 446, § 2.)

CROSS REFERENCE

See notes to § 11–1421.

§ 11–1423. Compensation received as juror credited against salary.

There shall be credited against the amount of compensation payable by the United States to any employee specified in section 11–1421 for such period as such employee may be absent on account of jury service in the court of any state any amounts which such employee may receive from such state on account of such jury service. (June 29, 1940, 54 Stat. 689, ch. 446, § 3.)

CROSS REFERENCE

See notes to § 11–1421.

Chapter 15.—FEES AND COSTS

Sec.
11–1501. Compensation taxed as costs—Attorneys' agreements with clients not prohibited.
11–1502. Attorneys, solicitors, and proctors—Docket fees.
11–1503. Fees appertaining to the probate court.
11–1504. Fees and emoluments of register of wills deposited with collector of taxes.
11–1505. Fees in probate court payable in advance—Deposit.
11–1506. Deposit for costs in District Court of the United States for the District of Columbia—Refunds—Security for costs by nonresidents.
11–1507. Costs in clerk's office and register of wills payable immediately—Exception—United States and District of Columbia.
11–1508. Poor persons allowed to plead and proceed without prepayment of fees and costs.
11–1509. Clerk's fees in District Court of the United States for the District of Columbia.
11–1510. Marshal's fees.
11–1511—11–1514. Repealed.
11–1515. Fees of jurors and witnesses at inquests.
11–1516. Attorneys for District—Fees.
11–1517. Costs allowed defendant if verdict is in his favor or plaintiff is nonsuited.
11–1518. Costs when verdict is in favor of one of several defendants.
11–1519. Neither District of Columbia nor officer thereof required to pay costs.
11–1520. Witness fees.
11–1521. Advancement of money to clerk of court for payment of witness fees.

§ 11–1501 [10: 1]. Compensation taxed as costs—Attorneys' agreements with clients not prohibited.

The following, and no other, compensation shall be taxed and allowed to attorneys, solicitors, proctors, district attorney, clerk of the District Court of the United States for the District of Columbia, marshal,

witnesses, and jurors, except in cases otherwise provided for by law; but nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging or receiving from their clients other than the government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon. (Mar. 3, 1901, 31 Stat. 1363, ch. 854, § 1108; June 25, 1948, 62 Stat. 989, ch. 646, § 16.)

AMENDMENTS

The act of June 25, 1948, cited to text, deleted the word "commissioners" which followed the word "marshal" and preceded the word "witnesses."

CROSS REFERENCES

Attorneys for District may not retain fees, § 11–1516.
Notary fee, §§ 1–514, 1–515.
Recorder's fees, § 28–708.

NOTES TO DECISIONS

BREACH OF CONTRACT

An attorney was not entitled to recover on a contract to render professional services to clients for balance of their lives without receiving any compensation therefor until the death of the survivor, where attorney breached the contract by accepting payments for his services during the lifetime of the client. *Hoover* v. *Lacey* (D. C., D. C. 1948, 80 F. Supp. 691).

COLLECTION OF FEES

Where attorney wrote client threatening to sue for fee, it was not wrongful and hence not duress. What constitutes duress is a matter of law though whether it existed is a question of fact. *Rizzi* v. *Fanelli* (D. C. Mun. App. 1949, 63 A. 2d 872).

DIVORCE

As statute does not expressly make provision therefor, a husband can not collect attorney fees from wife when he is plaintiff in a divorce action against her. *Eichelberger* v. *Symons* (53 App. D. C. 116, 288 Fed. 654).

EQUITY ACTIONS

In equitable actions, costs may be charged to either party in the discretion of the court, but the District Code specifies the compensation which may be taxed as costs and provides that no other costs may be so taxed unless provided by law. Since no fraud was found, attorneys' fees are not allowable as damages. *Cahill* v. *Bryan* (C. A. D. C. 1950, 184 F. 2d 277).

EVIDENCE

Member of the Bar of the District of Columbia was qualified to testify as an expert with respect to legal services rendered in neighboring jurisdiction of Virginia though he was not a member of the Virginia Bar, and had only a limited experience there, and had only slight knowledge of the fees customarily charged there, such facts going only to the weight of his testimony. *Fraser* v. *Crounse* (D. C. Mun. App. 1948, 56 A. 2d 54).

PARTITION SUIT

Attorney's fees in partition suit can not be taxed as costs. *Fletcher* v. *Coomes* (52 App. D. C. 159, 285 Fed. 893).

PLEADING

An attorney seeking cancellation of release of claims against clients based on a payment of $1,200 failed to plead fraud with sufficient particularity as required by Federal Rule 9b, 28 U. S. C., based on the statement that at time he executed the release he was in financial straits and that such was known to the client. *Hoover* v. *Lacey* (D. C., D. C. 1948, 80 F. Supp. 691).

PRESUMPTION

There is a presumption of over-reaching or duress in a contract regarding compensation between attorney and client, once the fiduciary relationship has been established, *Rizzi* v. *Fanelli* (D. C. Mun. App. 1949, 63 A. 2d 872).

RELEASE

A release executed by attorney to clients under contract for the performance of professional services for clients during balance of their lives in the consideration of $1,200 would not be set aside on the ground of gross inadequacy of consideration, where if any disparity existed between the parties, it was in favor of the attorney, and he was familiar with the size of the estate of the clients. *Hoover* v. *Lacey* (D. C., D. C. 1948, 80 F. Supp. 691).

RENT ACTIONS

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

REPRESENTING CONFLICTING INTERESTS

Good faith and honesty of motive and intention will not justify a lawyer in representing conflicting interests, and in that connection knowledge on part of attorney is material only on question of his good faith. *Fraser* v. *Crounse* (D. C. Mun. App. 1948, 56 A. 2d 54).

STATUTORY AUTHORIZATION REQUIRED

In absence of express statutory authority, attorney's fees are not taxable as "costs". *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

VACATING JUDGMENT

Counsel fees may be awarded as a condition of the vacating of the judgment on payment of the garnishee. The rule that, in the absence of statutory authority, attorneys' fees are not taxable as costs has no application since the payment for counsel fees is not imposed as costs but as a condition to obtaining relief to which the party is not entitled as a matter of right. *Bridgett* v. *Perpetual Building Association* (D. C. Mun. App. 1950, 75 A. 2d 780).

§ 11–1502 [10: 2]. Attorneys, solicitors, and proctors—Docket fees.

Attorney's, solicitor's and proctor's docket fees may be taxed in the amounts fixed by title 28, United States Code, section 1923. (Mar. 3, 1901, 31 Stat. 1363, ch. 854, § 1109; May 24, 1949, 63 Stat. 109, ch. 139, § 140.)

AMENDMENTS

The 1949 act amended the section generally.

CROSS REFERENCE

Attorneys for District may not retain fees, § 11–1516.
This section does not apply to municipal courts, § 11–722.

STATUTORY REFERENCES

Salary and fees of United States district attorneys. U. S. C. title 28, § 578 et seq.

NOTES PRIOR TO 1949 AMENDMENT

PARTITION SUIT

As taxation and allowance for attorney's fees must be limited to the matters enumerated in the Code, there can be no allowance made when it is in a partition suit. *Fletcher* v. *Coomes* (52 App. D. C. 159, 285 Fed. 893).

§ 11–1503 [10: 3]. Fees appertaining to the probate court.

The register of wills, clerk of the probate court, shall be entitled to demand and to receive for services performed by him, in advance of such services, the following fees: For filing petition or caveat, fifty cents; for filing other papers, each, five cents; for making docket and indexes and taxing costs in each

case, two dollars and fifty cents; for additional docket entries, each, twenty-five cents; for issuing subpœna to witness and copies, each, twenty-five cents; for issuing subpœna duces tecum, fifty cents; for issuing summons, citation, commission, rule, warrant, notice of trial, process, execution, attachment, or writ, each, one dollar; for issuing notices to creditors, distributees, and legatees, each, fifty cents; for copies of summons, citation, rule, warrant, or other process, order of publication, notices to creditors, legatees, and distributees, attested under seal and delivered for service or publication, each, fifty cents; for taking and recording every bond, one dollar and fifty cents; for every probate of will, inventory, or account, one dollar; for issuing letters testamentary or of administration, collection, or guardianship, one dollar; for issuing certificate of appointment of executor, administrator, collector, or guardian, one dollar; for entering panel of jury and swearing them, fifty cents; for administering an oath or affirmation, fifteen cents; for passing a claim against an estate and entering in docket of claims, thirty cents; for drawing depositions of witnesses, per folio, fifteen cents; for every search of the files or records outside of a regular proceeding, where no other service is performed for which a fee is allowed, one dollar; for examining or stating any account of executor, administrator, collector, guardian, receiver, or trustee, not exceeding one hundred items, five dollars; for each additional item, two cents; for stating the distribution of an estate, for each distributee, one dollar; for copy of an account, not exceeding one hundred items, one dollar and fifty cents; for each additional item, two cents; for recording all papers, per folio, fifteen cents; for copies of all papers not otherwise specified, per folio, twelve cents; for every certificate under seal, not otherwise specified, fifty cents: *Provided,* That in all cases where the estate does not exceed two hundred dollars in value the register of wills shall receive no fees, and where the estate does not exceed five hundred dollars in value the fees shall not exceed ten dollars: *Provided further,* That the court may allow to the register reasonable fees for any service he may render not specified in section 11–1509. (Mar. 3, 1901, 31 Stat. 1364, ch. 854, § 1111; June 30, 1902, 32 Stat. 541, ch. 1329.)

AMENDMENT

The 1902 amendment substantially rewrote the entire section to provide specifically for the amount of the various fees. One sentence of the 1901 Act is retained as the first proviso clause.

§ 11–1504 [10: 4]. Fees and emoluments of register of wills deposited with collector of taxes.

All of the fees and emoluments of the office of register of wills of the District of Columbia shall be paid at least weekly to the collector of taxes for the District of Columbia for deposit in the treasury of the United States to the credit of the District of Columbia. (Apr. 24, 1926. 44 Stat. 322, ch. 176, § 1.)

§ 11–1505 [10: 5]. Fees in probate court payable in advance—Deposit.

For proceedings in the probate court deposits and fees shall be paid to the register of wills, who shall be entitled to demand and may require, upon the presentation for filing of a petition or a caveat to a will, a deposit for his fees to be charged for the proceedings under such petition or such caveat; and upon such deposit becoming exhausted in the liquidation of his fees so charged, he may demand and require a further deposit from the original petitioner or caveator; but such deposits shall not be required in excess of fifteen dollars at any one time. (Mar. 3, 1901, 31 Stat. 1219, ch. 854, § 175; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENTS

The act of June 30, 1902, struck out the original proviso clause in § 175 of the 1901 Code and inserted in lieu thereof the above. As enacted it was a proviso to § 11–1506. The original proviso, provided that § 175 of the 1901 Code, § 11–1506 herein, should not apply to the probate court.

CROSS REFERENCE

Actions in forma pauperis in United States courts, § 11–1508.

§ 11–1506 [10: 6]. Deposit for costs in District Court of the United States for the District of Columbia—Refunds—Security for costs by nonresidents.

At the commencement of every suit in said District Court of the United States for the District of Columbia the plaintiff shall deposit at least ten dollars with the clerk, to be appropriated toward the costs of the suit; and the court is hereby authorized to prescribe rules as to any further costs to be paid by either the plaintiff or defendant during the progress of the case, and as to the collection thereof. Upon the termination of the case any surplus of costs shall be refunded by the clerk.

The defendant in any suit instituted by a nonresident of the District of Columbia, or by one who becomes such after the suit is commenced, may, upon notice served on the plaintiff or his attorney, at any time after service of process on the defendant, require the plaintiff to give security for all costs and charges that may be adjudged against him on the final disposition of the cause. But such right of the defendant shall not entitle him to delay in pleading, and his pleading before the giving of such security shall not be deemed a waiver of his right to require such security for costs. In case of noncompliance with the foregoing requirements, within a time to be fixed by the court, judgment of nonsuit or dismissal shall be entered. The security required may be by an undertaking, with security, to be approved by the court, or by a deposit of money in amount to be fixed by the court.

A nonresident may, at the commencement of his suit, deposit with the clerk such sum in money as the court shall deem sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1219, ch. 854, § 175.)

COMPILER'S NOTE

Section 11–1505 was enacted as a proviso to this section.

CROSS REFERENCES

Costs in municipal court, §§ 11–719, 11–720.

Fees and costs in small claims branch of municipal court, § 11–807.

RULES OF CIVIL PROCEDURE

General provision concerning costs, see Rule 54 (d).

NOTES TO DECISIONS

DUTY OF CLERK

Where jurisdiction did not depend upon diversity of citizenship, defendant was entitled to security for costs from nonresident plaintiff in the form of an undertaking in the amount of $100 with surety approved by court, or a cash deposit of $50. *Moyers* v. *Leoffler* (D. C., D. C. 1948, 80 F. Supp. 221).

SECURITY FOR COSTS

Where more than four months had elapsed between filing of defendants' motion for security for costs and final denial of plaintiff's motion for reconsideration of order dismissing the action during which no bonds for security were tendered by plaintiff, dismissal of the action was not an abuse of discretion. *Carpenter* v. *Carpenter* (App. D. C. 1946, 156 F. 2d 857).

§ 11–1507 [10: 7]. Costs in clerk's office and register of wills payable immediately—Exception—United States and District of Columbia.

All costs and fees for services rendered by the clerk and the register of wills and chargeable to others than the United States shall be payable in advance and shall be collected by such rules and regulations, not incompatible with law, as may be prescribed by the court, but shall in no case be paid by the United States. The District of Columbia shall not be required to pay fees to the clerk of the United States Court of Appeals for the District, or to the marshal of the District, and shall be entitled to the services of said marshal in the service of all civil process.

Provided, That neither the United States nor the District of Columbia, nor any officer of either, acting in his official capacity, shall be required to give bond or enter into undertaking to perfect any appeal or to obtain any injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking was, on June 9, 1910, or may thereafter be required by law or rule of court. (Mar. 3, 1901, 31 Stat. 1219, ch. 854, § 177; June 30, 1902, 32 Stat. 527, ch. 1329; June 9, 1910, 36 Stat. 464, ch. 277.)

AMENDMENTS

The 1902 amendment struck out the words "immediately after the services are performed" and inserted in lieu thereof the words "in advance."

The 1910 amendment added the proviso.

CROSS REFERENCE

Liability for costs in suits against Board of Education, § 31–101.

NOTES TO DECISIONS

DUTY OF CLERK

Fees and emoluments of the office belong to the government, subject only to the payment of the annual salary of the clerk, necessary clerk hire, and incidental expenses, and the clerk is the collecting agent of the government. *Bean* v. *Patterson* (110 U. S. 401, 28 L. Ed. 190, 4 Sup. Ct. 23).

Clerk should account to United States for fees received in civil actions and from the territory on account of territorial business, but not for services in naturalization proceedings. *United States* v. *McMillan* (165 U. S. 504, 41 L. Ed. 805, 17 Sup. Ct. 395).

FORMER RULE

As to liability of District of Columbia Commissioners for costs prior to act of June 9, 1910, see *Brown* v. *Macfarland* (22 App. D. C. 412).

PRINTING RECORD

Practice under this section has been for parties to deposit the sum of $25 in lieu of a fee bond, and the rule provides for the subsequent advance of the cost of printing the record and the fee for its preparation. *Green* v. *Elbert* (137 U. S. 615, 34 L. Ed. 792, 11 Sup. Ct. 188).

REASON FOR THE RULE

Clerk is required to pay into the treasury the fees and emoluments of his office over and above his own compensation as fixed by law, and his necessary clerk hire and incidental expenses. It is proper, therefore, that for his protection his fees should be paid in advance, if demanded. *Steever* v. *Rickman* (109 U. S. 74, 27 L. Ed. 861, 3 Sup. Ct. 67, 343).

§ 11–1508 [10: 8]. Poor persons allowed to plead and proceed without prepayment of fees and costs.

Any citizen of the United States entitled to commence any suit or action, civil or criminal, in any court of the United States, may, upon the order of the court, commence and prosecute or defend to conclusion any suit or action, or a writ of error or an appeal to the circuit court of appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court shall certify in writing that in the opinion of the court such appeal or writ of error is not taken in good faith, without being required to prepay fees or costs or for the printing of the record in the appellate court or give security therefor, before or after bringing suit or action, or upon suing out a writ of error or appealing, upon filing in said court a statement under oath in writing, that because of his poverty he is unable to pay the costs of said suit or action or of such writ of error or appeal, or to give security for the same, and that he believes that he is entitled to the redress he seeks in such suit or action or writ of error or appeal, and setting forth briefly the nature of his alleged cause of action, or appeal: *Provided,* That in any criminal case the court may, upon the filing in said court of the affidavit hereinbefore mentioned, direct that the expense of printing the record on appeal or writ of error be paid by the United States, and the same shall be paid when authorized by the Attorney-General. (June 25, 1910, 36 Stat. 866, ch. 435; June 27, 1922, 42 Stat. 666, ch. 246.)

COMPILER'S NOTES

The act of Congress of Jan. 31, 1928, 45 Stat. 54, ch. 14, § 1 (U. S. C., title 28, §§ 861a, 861b), abolished the writ of error in cases, civil and criminal, and provided that "all relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal." This law applies to courts of the United States and consequently would apply to the review of decisions of the District Court of the United States for the District of Columbia and the United States Court of Appeals for the District of Columbia, but would not of necessity apply to the police court, municipal court, and other District courts not considered as courts of the United States.

AMENDMENT

The 1922 amendment added the proviso.

CROSS REFERENCES

Poor persons exempted from costs in municipal court, § 11–720.

Poor persons exempt from costs and fees in small claims branch of municipal court, § 11–807.

STATUTORY REFERENCE

This section is similar to U. S. C., title 28, § 832, except that the words "writs of error" were eliminated after the abolition of such writs (U. S. C., title 28, §§ 861a, 861b).

NOTES TO DECISIONS

AFFIDAVIT REQUIRED

Suit can not be allowed to proceed in forma pauperis unless plaintiff's attorney makes the statutory affidavit. *Ex parte Saunders* (275 U. S. 507, 72 L. Ed. 397, 48 Sup. Ct. 158); *United States* v. *Ross* ((C. C. A. 6), 298 Fed. 64).

CITIZENS

Privileges of the forma pauperis statute are extended only to citizens of the United States. *The Memphian* ((D. C.-Mass.), 245 Fed. 484); *Johnson* v. *Nickoloff* ((C. C. A. 9), 52 Fed. (2d) 1074).

CLERK TO PAY COSTS

In forma pauperis action which is denied the clerk shall pay the costs. *Aldridge* v. *United States* (282 U. S. 836, 75 L. Ed. 743, 51 Sup. Ct. 333); *Drazich* v. *Archer* (282 U. S. 893, 75 L. Ed. 787, 51 Sup. Ct. 180).

COURTS INCLUDED

Right to prosecute in forma pauperis suits without paying fees or costs does not extend to appellate courts. *In re Abdu* (247 U. S. 27, 62 L. Ed. 966, 38 Sup. Ct. 447).

JURISDICTION OF COURT

To prosecute an appeal or writ of error to the Supreme Court in forma pauperis, it must appear from the record that the court has jurisdiction. *Kinney* v. *Plymouth Rock Squab Co.* (236 U. S. 43, 59 L. Ed. 457, 35 Sup. Ct. 236); *Pothier* v. *Rodman* (261 U. S. 307, 67 L. Ed. 670, 43 Sup. Ct. 374).

PROCEEDINGS IN ADMIRALTY

Congress did not intend to deny to poor persons of the United States the right to proceed in admiralty. *Washington-Southern Nav. Co.* v. *Baltimore & P. Steamboat Co.* (263 U. S. 629, 68 L. Ed. 480, 44 Sup. Ct. 220).

TRANSCRIPTS

As Congress did not grant to the court the power to authorize payment for transcripts of testimony for poor persons, the court has no such authority. *United States ex rel. Estabrook* v. *Otis* ((C. C. A. 8), 18 Fed. (2d) 689).

UNITED STATES NOT LIABLE

Congress did not intend that the United States should be liable for any of the costs incurred under the provisions of this act. *United States* v. *Fair* ((D. C.-Cal.), 235 Fed. 1015).

§ 11–1509 [10: 9]. Clerk's fees in District Court of the United States for the District of Columbia.

For filing the following-named cases and for all services to be performed therein, except as otherwise provided herein, the clerk shall charge and collect the following fees:

Actions at law, $10; suits in equity, $10; lunacy cases, $10; deportation cases, $10; requisition cases, $10; habeas corpus cases, $10; plea of title cases, $10; District Court cases, $15; condemnation cases, $15; libel cases, $15; feeble-minded cases, $7.50; adoption cases, $5; change of name cases, $5; intervening petitions in any case, $5; cases substituting trustees, $4; docketing judgments of the municipal court, $2.50; and limited partnership cases, $3.

Upon the perfecting of any appeal to the United States Court of Appeals for the District of Columbia there shall be charged and collected by the clerk from the party or parties prosecuting such appeal an additional fee in said suit or proceeding of $5.

For each additional trial or final hearing, upon a reversal by the United States Court of Appeals for the District of Columbia, or following a disagreement by a jury or the granting of a new trial or rehearing by the court, there shall be charged and collected by the clerk from the party or parties securing such reversal, new trial, or rehearing the further sum of $5: *Provided, however,* That the clerk shall not be required to account for any such fee not collected by him in criminal cases: *Provided further,* That nothing herein contained shall prohibit the court from directing by rule or standing order the collection, at the time the services are rendered, of the fees herein enumerated from either party, but all such fees shall be taxed as costs in the respective cases.

In any case where attachments, executions, scire facias proceedings, or rules are issued the following fees shall be charged and collected by the clerk in addition to the fees hereinbefore provided: For each writ of attachment, $1, and each copy, $1; for each writ of execution, $1.50; for each writ of scire facias, $1, and each copy, $1; for each rule, 50 cents, and each copy certified, 50 cents; for each writ of ne exeat, $1; for each bench warrant, $1; for each warrant of arrest, $1.

That in addition to the fees for services rendered in cases hereinbefore enumerated the clerk shall charge and collect, for miscellaneous services performed by him and his assistants, except when on behalf of the United States, the following fees:

For issuing any writ or subpoena for a witness not in a case instituted or pending in the court from which it is issued, 50 cents for each writ and copy or subpœna and copy.

For filing and indexing any paper not in a case or proceeding, 25 cents.

For administering an oath or affirmation, not in a case or proceeding pending in the court where the oath is administered, 50 cents.

For an acknowledgment, certificate, affidavit, or countersignature, with seal, 50 cents.

For taking and certifying depositions to file, 20 cents for each folio of one hundred words, and if taken stenographically, 15 cents per folio additional for the stenographer.

For copy of any record, entry, or other paper and the comparison thereof, 15 cents for each folio of one hundred words.

For searching the records of the court for judgments, decrees, or other instruments, or marriage records, 50 cents for each year covered by the search and for certifying the result, 50 cents.

For receiving, keeping, and disbursing money in pursuance of any statute or order of court, including cash bail or bond or securities authorized by law or order of court to be deposited in lieu of other security, 1 per centum of the amount so received, kept, and disbursed, or of the face value of such bonds or securities.

For making and comparing a transcript of record on appeal, 15 cents for each folio of one hundred words.

For comparing any transcript, copy of record, or other paper not made by the clerk with the original thereof, 5 cents for each folio of one hundred words.

For administering oath of admission of attorneys to practice, $2 each; for certificate of admission to be furnished upon request, $2 additional.

For each marriage license, $2.

For each certified copy of marriage license and return, $1.

For each certified copy of application for marriage license, $1.

For registering clergymen's authorizations to perform marriages and issuing certificate, $1.

For each certificate of official character, including the seal, 50 cents.

For filing and recording each notice of mechanic's lien, $1.

For entering release of mechanic's lien, 50 cents for each order of lienor; 75 cents for each undertaking of lienee.

For recording physicians', optometrists', and midwives' licenses, 50 cents each.

For the clerk's attendance on the court while actually in session, $5 per day; and for all services rendered to the United States in cases in which the United States is a party of record, $5.

The surplus fees collected by the clerk of the District Court of the United States for the District of Columbia shall be deposited in the treasury, to the credit of the District of Columbia and the United States in the proportions required by law. (Mar. 3, 1901, 31 Stat. 1363, ch. 854, § 1110; Aug. 23, 1912, 37 Stat. 412, ch. 350; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; Apr. 6, 1928, 45 Stat. 410, ch. 325.)

AMENDMENTS

The 1901 act provided a schedule of fees for various services performed by the clerk which have been changed to the present form by the 1928 amendment. The 1912 act provided for the payment of surplus fees into the treasury. The 1921 act provides for the apportionment of surplus fees paid into the treasury, and reads as follows: "SEC. 7. That on and after July 1, 1921, all fees, fines, and other miscellaneous items of revenue theretofore required by law to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia; and all collections on account of special assessments for public improvements for which assessments are levied according to the law shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as the appropriations used in paying for such assessment work are charged, respectively, against the revenues of the District of Columbia and the Treasury of the United States."

CROSS REFERENCE

No payment of fees by District of Columbia or officers, § 11–1519.

NOTE TO DECISIONS

NECESSITY FOR CLERK'S CERTIFICATE

In order that the printed transcript should become the record upon appeal, it was necessary that it should be made so by the certificate of the clerk as to its correctness in form and substance in accordance with his examination and comparison of the printed transcript with that which remained in the lower court. *Sarfert Co.* v. *Chipman* ((D. C.-Pa.), 205 Fed. 937).

TAXING COSTS

Questions of costs ordinarily do not properly arise before the taxation, and are not determined by a court in advance, without allowing parties an opportunity to be heard. *Ferguson* v. *Dent* ((C. C.-Tenn.), 46 Fed. 88).

§ 11–1510 [10: 10]. Marshal's fees.

The following, and no other, compensation shall be taxed and allowed the marshal, except in cases otherwise provided by law: For each return on any warrant, attachment, summons, capias, or other writ (except execution, venire, or a summons or subpœna for a witness), whether or not service has been made, $1 for each person: *Provided, however,* That for the return on any citation, summons, notice, or rule issued by the probate court the fee shall be 50 cents for each person.

For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

For serving venires and summoning every twelve persons as grand or petit jurors, four dollars, or thirty-three and one-third cents each.

For holding an inquisition or other proceeding before a jury, including the summoning of a jury, five dollars.

For serving a writ of subpœna on a witness, fifty cents; and no further compensation for a copy, summons, or notice for a witness.

For summoning appraisers, fifty cents.

For executing a deed prepared by a party or his attorney, one dollar.

For drawing and executing a deed, five dollars.

For copies of writs or papers furnished at request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment in rem or libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

When the debt or claim in admiralty is settled by the parties without a sale of the property, a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided,* That when the value of the property is less than the claim such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-half per centum on the excess of any sum over five hundred dollars.

For disbursing money to jurors and witnesses and for other expenses, two per centum.

For expenses while employed in endeavoring to arrest under process any person charged with or convicted of crime, the sum actually expended, not to exceed two dollars a day.

For every commitment or discharge of a prisoner, fifty cents.

For transporting criminals convicted of a crime in the District to a prison in a state or territory designated by the Attorney-General, the reasonable actual expense of transportation of the criminals, the mar-

shal, and the guards, and the necessary subsistence and hire.

For attending court and bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner and bringing in, guarding, and returning prisoners charged with crime, and witnesses, two dollars a day, and for each deputy, not exceeding two, necessarily attending, two dollars a day.

For fuel, lights, and other contingencies that may accrue in holding the courts, the amount of his expenses necessarily incurred.

For levying upon leasehold or freehold property in land and selling the same, a commission of one and one-half per centum on the proceeds to the amount of the debt.

For levying upon leasehold or freehold property in land where no sale thereof is made, one dollar.

For levying upon personal property and selling the same, a commission of three per centum on the proceeds to the amount of the debt and the reasonable cost for storage, keeper, insurance, advertising, and auctioneer.

For levying upon personal property where no sale thereof is made, two dollars and fifty cents and the reasonable cost for storage, keeper, and insurance incurred for the preservation of the same: *Provided,* That the court, on notice to all parties in interest, may allow additional compensation. (Mar. 3, 1901, 31 Stat. 1365, ch. 854, § 1112; May 29, 1930, 46 Stat. 486, ch. 358.)

AMENDMENT

The act of 1930 amended the first paragraph of this section by changing the words "For service on" following the colon to read "For each return on," and the words "one dollar for each person on whom service may be made," following the parenthesis, to read, "whether or not service has been made, one dollar for each person."

§ 11–1511 [10: 11]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Mar. 3, 1901, 31 Stat. 1366, ch. 854, § 1113, relating to Commissioners' fees is now covered by section 663 of title 28, U. S. C.

§ 11–1512 [10: 16]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Apr. 26, 1926, 44 Stat. 323, ch. 183, § 1, relating to fees of jurors and witnesses—per diem and mileage is now covered by sections 1871 and 1821 of title 28, U. S. C.

NOTES TO DECISIONS

DEPOSITIONS

Fees and mileage of witnesses whose depositions are taken are a necessary expense, and although federal statutes do not forbid recovery by express terms, their effect, by necessary implication, is to limit the allowable mileage of witnesses from without the District to one hundred miles. *Vincennes Steel Corp.* v. *Miller* ((C. C. A. 5), 94 Fed. (2d) 347).

EVIDENCE MUST BE MATERIAL

In order to entitle a party to tax the costs of witnesses, the evidence of such witnesses must be material. *Federal Intermediate Credit Bank* v. *Mitchell* ((D. C.-S. Car.), 38 Fed. (2d) 824).

WITNESSES WHO ATTEND

Congress has prescribed that witnesses who attend shall be paid, and has not seen fit to limit the payment of fees to those who also testify. *Federal Intermediate Credit Bank* v. *Mitchell* ((D. C.-S. Car.), 38 Fed. (2d) 824).

§ 11–1513 [10: 17]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, Apr. 26, 1926, 44 Stat. 323, ch. 183, § 2, relating to amount of per diem and milage for jurors is now covered by section 1871 of title 28, U. S. C.

§ 11–1514 [10: 18]. Repealed. June 25, 1948, effective September 1, 1948, 62 Stat. 992, ch. 646, § 39.

Section, based on Act Apr. 26, 1926, 44 Stat. 324, ch. 183, § 3, relating to amount of per diem, mileage and subsistence to witnesses is now covered by section 1821 of title 28, U. S. C.

§ 11–1515 [10: 20]. Fees of jurors and witnesses at inquests.

There shall be paid to the jurors and witnesses who may be lawfully summoned in any inquest the same fees and compensation as are allowed to the jurors and witnesses attending the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1221, ch. 854, § 195.)

CROSS REFERENCE

See notes to § 11–1512.

§ 11–1516 [10: 25]. Attorneys for District—Fees.

No attorney for the District of Columbia shall retain any attorney fees taxed as costs in any litigation in which the District of Columbia is a party. (Sept. 1, 1916, 39 Stat. 678, ch. 433.)

§ 11–1517 [10: 26]. Costs allowed defendant if verdict is in his favor or plaintiff is nonsuited.

If any person or persons shall commence or sue in any court of record, or in any other court, any action whatsoever, wherein the plaintiff or defendant might have costs (if in case judgment should be given for him) and the plaintiff or plaintiffs, demandant or demandants, in any such action, bill, or plaint, after appearance of the defendant or defendants, be nonsuited, or that any verdict happen to pass by any lawful trial against the plaintiff or plaintiffs, demandant or demandants, in any such action, bill, or plaint, then the defendant and defendants, in every such action, bill, or plaint, shall have judgment to recover his costs against every such plaintiff and plaintiffs, demandant and demandants, and that to be assessed and taxed by the discretion of the judge or judges of the court where any such action, bill, or plaint shall be commenced, sued, or taken; and also that every defendant in such action, bill, or plaint shall have such process and execution for the recovery and having of his costs against the plaintiff or plaintiffs, as the same plaintiff or plaintiffs should or might have had against the defendant or defendants, in case that judgment had been given for the part of the said plaintiff or plaintiffs, in any such action, bill, or plaint. (4 Jac. 1, ch. 3, § 2; Kilty's Rept. p. 236; Alex. Brit. Stat. p. 432; Comp. Stat. D. C. p. 418, § 106; 23 Hen. 8, ch. 15, § 1, 1531; Kilty's Rept. p. 231; Alex. Brit. Stat. 287; Comp. Stat. D. C. p. 418, § 105.)

COMPILER'S NOTE

This section sets forth a British Statute continued in force by virtue of the act of Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1. It was obviously impossible to modernize the language of this statute.

RULES OF CIVIL PROCEDURE

General provisions concerning costs, see Rule 54 (a).

§ 11–1518 [10: 27]. Costs when verdict is in favor of one of several defendants.

Where several persons shall be made defendants to any action or plaint of trespass, assault, false imprisonment, or *ejectione firmae,* and any one or more of them shall be upon the trial thereof acquitted by verdict, every person or persons so acquitted shall have and recover his costs of suit in like manner as if a verdict had been given against the plaintiff or plaintiffs, and acquitted all the defendants, unless the judge, before whom such cause shall be tried, shall, immediately after the trial thereof, in open court, certify upon the record, under his hand, that there was a reasonable cause for the making such person or persons a defendant or defendants to such action or plaint. (8 and 9 Wm. 3, ch. 11, § 1; Kilty's Rept. p. 243; Alex. Brit. Stat. p. 602; Comp. Stat. D. C. p. 417, § 101.)

CROSS REFERENCE

See note to § 11–1517.

§ 11–1519 [10: 28]. Neither District of Columbia nor officer thereof required to pay costs.

Neither the District of Columbia nor any officer thereof acting therefor shall be required to pay court costs in any court in and for the District of Columbia. (July 15, 1939, 53 Stat. 1009, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1; June 28, 1944, 58 Stat. 533, ch. 300, § 16.)

AMENDMENTS

The act of June 28, 1944, cited to text, amended section by omitting "to the clerk of the District Court of the United States for the District of Columbia", and inserting in lieu thereof "in any court in and for the District of Columbia.".

§ 11–1520. Witness fees.

For each day's attendance in court or before any officer pursuant to law, one dollar and twenty-five cents; and when a witness is subpœnaed in more than one cause between the same parties at the same term only one per diem compensation shall be allowed for attendance; and for traveling, at the rate of five cents per mile, coming and returning to and from the witness's place of abode, when summoned from without the District to testify in the courts of the District.

No officer of the United States courts shall be entitled to witness fees for attending before a court or commissioner where he is officiating. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1114.)

COMPILER'S NOTE

This section appears to be in force except insofar as it has been modified by and is inconsistent with §§ 11–1512 to 11–1515. It appears to be in force as far as the municipal and juvenile courts are concerned.

§ 11–1521. Advancement of money to clerk of court for payment of witness fees.

The disbursing officer of the District of Columbia is authorized to advance to the clerk of the court, upon requisition previously approved by the Auditor of the District of Columbia, sums of money not exceeding $500 at any one time, to be used for the payment of witness fees. (June 30, 1945, 59 Stat. 281, ch. 209, § 1; July 9, 1946, 60 Stat. 511, ch. 544, §1.)

TITLE 12.—RIGHT TO REMEDY—CONDITIONS AFFECTING

Chap. Sec.
1. Abatement and revivor ---------- 12–101
2. Limitation of actions ---------- 12–201
3. Statute of frauds ---------- 12–301
4. Fraudulent conveyances ---------- 12–401

Chapter 1.—ABATEMENT AND REVIVOR

Sec.
12–101. Actions survive in favor of or against representatives of deceased party—Injury to person or reputation—Exception.
12–102. Deceased defendant—Common law actions—Substituted party defendant—Appearance at same term—Summons—Notice—Limitation.
12–103. Deceased plaintiff—Actions at law before judgment—Substituted party plaintiff—Appearance at same term—Summons—Notice—Failure to appear and prosecute—Limitation—Abatement or judgment.
12–104. Upon death or removal of new party, his representative may be made party in same manner as if original party.
12–105. New party may use pleadings and amend, same as original party.
12–106. New party entitled to and liable for costs and damages same as original, except defendant not liable beyond assets received.
12–107. Representative of deceased joint defendant brought in, if action survives.
12–108. Equity suit not abated by death of party if rights survive.
12–109. Bill of revivor not necessary in case of death—Suggestion of death.
12–110. Upon suggestion of death, subpoena may issue to representative, or publication if nonresident.
12–111. Death of defendant after interlocutory decree—Effect—Court may order appropriate proceedings—Defenses by representative.
12–112. Marriage—Effect—Amendments.
12–113. Execution on final decree after death—Other appropriate proceedings.
12–114. Appearance ordered on failure of representative to appear after notice.
12–115. Representative proceeded against as nonresident.
12–116. Bill of revivor or supplemental bill—Notice—Service by publication.

§ 12–101 [24: 31]. Actions survive in favor of or against representatives of deceased party—Injury to person or reputation—Exception.

On the death of any person in whose favor or against whom a right of action may have accrued for any cause prior to his death, said right of action shall survive in favor of or against the legal representative of the deceased: *Provided, however,* That in tort actions, the said right of action shall be limited to damages for physical injury except for pain and suffering resulting therefrom. (Mar. 3, 1901, 31 Stat. 1227, ch. 854, §235; June 19, 1948, 62 Stat. 487, ch. 508, § 1.)

Amendments

Sec. 1 of act June 19, 1948, cited to text, amended section by inserting after the word "cause" the words "prior to his death"; striking the words "except an injury to the person or to the reputation"; substituting the words "legal representative" for the words "legal representatives"; striking all after "deceased" and inserting in lieu thereof the proviso.

Cross References

Actions for wrongful death, §§ 16–1201 to 16–1203.
Dissolution of corporation, effect, §§ 29–716 to 29–718.

NOTES TO DECISIONS

Application of Statute

In an action to enforce a contract to convey property, statute is without application where right of action did not accrue prior to the death of defendant's wife but arose after her death. *Bennett* v. *Bennett* (D. C. D. C. 1949, 83 F. Supp. 19).

Construction

While perhaps proviso excepting damages for pain and suffering is somewhat inartistically drawn, nevertheless it is not ambiguous and the legislative history supports this conclusion. *Phillips* v. *Lust* (D. C. D. C. 1949, 82 F. Supp. 63).

Disbarment Proceedings

Disbarment proceedings against attorney do not survive, although appeal was pending at his death. *Metzger* v. *O'Donoghue* (53 App. D. C. 107, 288 Fed. 461).

Emergency Rent Act

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act, § 45–1610, was not for an injury to person or to reputation, and therefore survived death of landlord. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act, § 45–1610, was an action to recover for a "private wrong" and not for a statutory "penalty," and hence, upon death of landlord, action survived as to double the excess rent and was not limited to amount of excess rent actually paid, even if this section did not provide for survival of action for statutory penalty. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

Partnerships

This section is not applicable to partnerships, since surviving partner is vested with legal title to the assets of the partnership, and after reducing them to possession will be accountable to representative of deceased partner. *Dingman* v. *Henry* (51 App. D. C. 339, 279 Fed. 795).

Personal Injury

The cause of action for personal injury does not survive the death of the wrongdoer or the injured person. *Woolen* v. *Lorenz* (68 App. D. C. 389, 98 Fed. (2d) 261).

Where United States marshal was liable to plaintiff for forcible entry late at night of plaintiff's dwelling by his deputies in serving a warrant in a civil proceeding, marshal's subsequent death did not preclude plaintiff from recovering for personal injuries inflicted on him by deputies and his wrongful arrest as elements of his damages by virtue of this section providing that actions for personal injuries should not survive in favor of or against legal representatives of deceased. *Colpoys* v. *Foreman* (App. D. C. 1947, 163 F. 2d 908, 82 U. S. App. D. C. 349).

Res Judicata

In an earlier case, appellant sued one Rich for injuries and before trial Rich died. Appellant moved for substitution of administratrix and Court ordered complaint dismissed. The order of dismissal operated as an adjudi-

cation on the merits of the right of action and barred present suit. *Slack* v. *Rich* (C. A. D. C. 1950, 182 F. 2d 706).

§ 12–102 [24: 32]. Deceased defendant—Common law actions—Substituted party defendant—Appearance at same term—Summons—Notice—Limitation.

No action at common law shall abate by the death of either or any of the parties thereto if the right of action would survive as aforesaid; but upon the death of any defendant the action shall continue pending, and the heir, devisee, executor, administrator, or other person interested in the place of the deceased defendant, as the case may require, may appear to such action. And in case the proper person to defend such action shall not appear to the same during the term of the court in which such death may be suggested, the plaintiff may cause a summons to be issued, directed to the proper person to defend such action, to be served on such person, if found in the District of Columbia and legally suable therein, requiring him to appear thereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the service thereof, and show cause why such action should not be prosecuted to judgment; and if it shall appear to the court that such summons has been duly served, and the person so summoned shall not appear as thereby required, then the court may cause the appearance of such person to be entered, and there shall be the same proceedings in said action as if said person had voluntarily appeared; and all the proceedings had before the death of the defendant shall be considered as proceedings in the action, and such further proceedings shall be had to bring the cause fairly to trial as the court may deem proper. If the proper representative of a deceased defendant be not made a party to the action within one year from the death of said defendant, the action shall abate as to such defendant: *Provided, however,* That where the representative of the deceased is an executor or administrator the plaintiff shall have six months after the issuance of letters testamentary or of administration within which to make such representative a party: *And provided further,* That in case the summons above provided for shall be returned "Not to be found," publication may be substituted therefor in all cases in which proceeding by publication is authorized by this code. (Mar. 3, 1901, 31 Stat. 1227, ch. 854, § 236.)

RULES OF CIVIL PROCEDURE

Substitution of parties because of death, see Rule 25 (a).

Substitution of parties, death or separation from office of public official, see Rule 25 (d).

NOTES TO DECISIONS

EJECTMENT

Upon the death of a married woman (plaintiff in an ejectment action), her husband, who thereby becomes entitled to the estate by curtesy, cannot be substituted in her place, and "a new action and summons on the part of the new plaintiff was essential." *Welch* v. *Lynch* (30 App. D. C. 122).

PRIOR LAW

The failure to bring in the representative of a deceased plaintiff by the tenth day of the second term of the court after the suggestion of death in pursuance of provisions of act of Maryland of 1785, ch. 80, § 1, can not apply to the case where there are two or more parties plaintiff, against the survivor or survivors of whom the action may be continued. *Corbett* v. *Pond* (10 App. D. C. 17) distinguishing *Danenhower* v. *Ball* (8 App. D. C. 137).

REPLEVIN

It is not competent for plaintiff in replevin to discontinue or dismiss his suit or voluntarily withdraw from it, without the consent of defendant, after the property has been delivered to him under the writ, unless he returns the property taken or makes good his loss. Hence plaintiff's death does not bar action, and defendant has the right to compel the executor or administrator to become a party to the suit. *Corbett* v. *Pond* (10 App. D. C. 17).

"WITHIN YEAR"

The year within which proper representative must be made a party is measured from the death of defendants, and not from the time that plaintiff learned thereof. *Whelan* v. *Welch* (50 App. D. C. 173, 269 Fed. 689).

§ 12–103 [24: 33]. Deceased plaintiff—Actions at law before judgment—Substituted party plaintiff—Appearance at same term—Summons—Notice—Failure to appear and prosecute—Limitation—Abatement or judgment.

If any plaintiff in any such action shall die before judgment is given, the heir, devisee, executor, administrator, or other proper person to prosecute such action may appear and prosecute the same; and if such person does not appear to prosecute such action during the term of said court in which the death may be suggested, the defendant may cause a summons to be issued, directed to the proper person to prosecute such action, requiring him to appear and prosecute the same on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after service of the same; and if it shall appear to the court that such summons has been duly served, and the party summoned shall fail to appear in obedience thereto to prosecute the action, or if said party be not found in the District of Columbia and shall not appear to prosecute such action by the fourth day of the second term of the court after the term at which the death is suggested, the action shall abate or the cause may proceed to judgment notwithstanding such failure to appear, as the defendant may elect; but if the proper person to prosecute such action shall appear therein, either voluntarily or after being summoned as aforesaid, before said suit shall so abate, all proceedings in the action had before the death of the plaintiff shall be considered as proceedings in the cause, and such other proceedings shall be had to bring the cause fairly to trial as the court may deem proper. (Mar. 3, 1901, 31 Stat. 1228, ch. 854, § 237; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "the" and inserted in lieu thereof the word "any" as the second word of the section, and inserted after the word "abate," the first time it appears, the words "or the cause may proceed to judgment notwithstanding such failure to appear, as the defendant may elect."

CROSS REFERENCE

See notes to § 12–102.

§ 12–104 [24: 34]. Upon death or removal of new party, his representative may be made party in same manner as if original party.

In all cases where a new party has been made to any action under the provisions aforesaid, and the

new party so made shall die before judgment, or if an executor or administrator shall be removed from his office, the proper person to prosecute or defend such action in the place of the party so dying or removed may be made a party thereto by the same proceeding herein authorized on the death of the original plaintiff or defendant. (Mar. 3, 1901, 31 Stat. 1228, ch. 854, § 238.)

CROSS REFERENCE

See notes to § 12–102.

§ 12–105 [24: 35]. New party may use pleadings and amend, same as original party.

Any new party to any action may use and rely upon any pleadings put in by his predecessor in such action, or shall have the same right to amend the pleadings or proceedings in such action as if he had been an original party thereto. (Mar. 3, 1901, 31 Stat. 1228, ch. 854, § 239.)

§ 12–106 [24: 36]. New party entitled to and liable for costs and damages same as original, except defendant not liable beyond assets received.

In all cases where a new party is made to an action the costs which accrued before such new party was made shall be taxed as part of the costs in such action, and the judgment rendered shall be the same as if the action had been originally commenced between the persons who are parties to such action: *Provided,* That no defendant who is made a new party to such action shall be burdened with debts, damages, or costs beyond the amount of property or assets descended or come to his hands from the deceased. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 240.)

§ 12–107 [24: 37]. Representative of deceased joint defendant brought in, if action survives.

In case of the death of one of several joint defendants to an action, where the right of action will survive as aforesaid, the same proceedings shall be had to make the proper representative of the deceased a party to the action as in the case of a sole defendant. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 241.)

CROSS REFERENCE

See notes to § 12–102.

§ 12–108 [24: 38]. Equity suit not abated by death of party if rights survive.

No suit in equity shall abate by the death of any of the parties in cases where the rights involved in the suit survive. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 243.)

NOTES TO DECISIONS

DIVORCE

The jurisdiction of the court over a divorce decree was not lost by reason of the death of the plaintiff. *Biscayne Trust Co.* v. *American Security & Trust Co.* (57 App. D. C. 251, 20 Fed. (2d) 267).

§ 12–109 [24: 39]. Bill of revivor not necessary in case of death—Suggestion of death.

If any of the parties to a suit in equity, whether complainant or defendant, shall die after the filing of the bill or petition, it shall not be necessary to file a bill of revivor; but any of the surviving parties may file a suggestion of such death, setting forth when the death occurred, and who is the legal representative of such deceased party, and how he is the representative, whether by devise, descent, or otherwise. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 244.)

§ 12–110 [24: 40]. Upon suggestion of death, subpœna may issue to representative, or publication if nonresident.

Upon such a suggestion a subpœna shall issue for the legal representative of the deceased party, commanding him to appear and be made a party to such suit, if such representative reside within the District of Columbia; and if such representative is a nonresident, then such notice shall be given instead of the subpœna as is herein elsewhere provided for nonresident defendants. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 245.)

CROSS REFERENCE

See notes to § 12–102.

§ 12–111 [24: 41]. Death of defendant after interlocutory decree—Effect—Court may order appropriate proceedings—Defenses by representative.

If any defendant shall die after a decree for an account, sale, or partition, or after such other proceedings shall have been had after appearance as would have warranted the passing of such a decree, or if such deceased defendant shall have answered, confessing the facts stated in the bill, or shall have set up no defense to the relief therein prayed, the court may, in its discretion, order the cause to be proceeded in as if no death had occurred, or may order a bill of revivor or a supplemental bill to be filed, and the proper representative of such deceased defendant to be made a party, as may seem best calculated to advance the purposes of justice: *Provided,* That the heir or other proper representative of such deceased defendant, at any time before final decree, may appear and be made a party on such reasonable terms as the court may direct; and such new party may file an answer to the original bill, subject to such terms as the court may impose, in which he may insist on such defenses, and none other, as might have been made to a bill of revivor or supplemental bill in the nature of a bill of revivor filed against him. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 246.)

CROSS REFERENCE

See notes to § 12–102.

§ 12–112 [24: 42]. Marriage—Effect—Amendments.

No suit at law or in equity shall abate by the marriage of any of the parties; but on application of any of the parties the court may, on such terms and notice as it shall deem proper, allow and order any amendment in the pleadings and the making of any new or additional parties that such marriage may render necessary or proper. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 247.)

§ 12–113 [24: 43]. Execution on final decree after death—Other appropriate proceedings.

If any of the parties to a suit die after final decree, the court may order execution of such decree as if no death had occurred, or the court may order a subpœna scire facias to be issued, or a bill of revivor to be filed against the proper representatives of such deceased party, or pass such other order or

direct such other proceedings as may seem best calculated to advance the purposes of justice: *Provided,* That the heir or other proper representative may appear at any time before execution of said decree and be admitted as a party to the suit, on such terms as the court may prescribe, and such further proceeding may be had as may be appropriate to the merits of the cause. (Mar. 3, 1901, 31 Stat. 1229, ch. 854, § 248.)

§ 12–114 [24: 44]. Appearance ordered on failure of representative to appear after notice.

If any representative of a deceased party shall fail to appear, after being summoned, within the time therein limited, or shall fail to appear after notice by publication, the court may order the appearance of such representative to be entered, to have the same effect as if such representative had appeared in person and been made a party. (Mar. 3, 1901, 31 Stat. 1230, ch. 854, § 249.)

CROSS REFERENCE

See notes to § 12–102.

§ 12–115 [24: 45]. Representative proceeded against as nonresident.

In all cases where any representative of a deceased party to a suit shall evade any process issued against him, or shall leave the District before any such process can be served on him, he may be proceeded against as a nonresident defendant. (Mar. 3, 1901, 31 Stat. 1230, ch. 854, § 250.)

§ 12–116 [24: 46]. Bill of revivor or supplemental bill—Notice—Service by publication.

A bill of revivor or supplemental bill in the nature of a bill of revivor may be filed, instead of a suggestion of the death of a party, and notice thereof shall be given to the defendant by subpœna or the service of a copy of such bill, if he be found within the District, as the court may direct; or, if the party be a nonresident or secrete himself or evade the service of the summons, or if his residence be unknown, then notice by publication may be given as against nonresident defendants. (Mar. 3, 1901, 31 Stat. 1230, ch. 854, § 251.)

CROSS REFERENCE

See notes to § 12–102.

NOTES TO DECISIONS

DIVORCE

The jurisdiction of the court over a divorce decree was not lost by reason of the death of the plaintiff. *Biscayne Trust Co.* v. *American Security & Trust Co.* (57 App. D. C. 251, 20 Fed. (2d) 267).

Chapter 2.—LIMITATION OF ACTIONS

Sec.

12–201. Periods—Recovery of real property—Executor's or administrator's bond—Instruments under seal—Simple contract—Property damage—Statutory penalty or forfeiture—Certain torts—Actions not specified—Persons under disabilities.
12–202. Suits against decedents' estates.
12–203. Foreign judgments.
12–204. Action by the United States.
12–205. Statute does not run when defendant absent or concealed.
12–206. Statute does not run during time action stayed.
12–207. Directions as to debts in a will.
12–208. Actions against District of Columbia for unliquidated damages—Notice within six months—Police report.

§ 12–201 [24: 341]. Periods—Recovery of real property—Executor's or administrator's bond—Instruments under seal—Simple contract—Property damage—Statutory penalty or forfeiture—Certain torts—Actions not specified—Persons under disabilities.

No action shall be brought for the recovery of lands, tenements, or hereditaments after fifteen years from the time the right to maintain such action shall have accrued; nor on any executor's or administrator's bond after five years from the time of the right of action accrued thereon; nor on any other bond or single bill, covenant, or other instrument under seal after twelve years after the accruing of the cause of action thereon; nor upon any simple contract, express or implied, or for the recovery of damages for any injury to real or personal property, or for the recovery of personal property or damages for its unlawful detention after three years from the time when the right to maintain any such action shall have accrued; nor for any statutory penalty or forfeiture, or for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest, or false imprisonment after one year from the time when the right to maintain any such action shall have accrued; and no action the limitation of which is not otherwise specially prescribed in this section shall be brought after three years from the time when the right to maintain such action shall have accrued: *Provided,* That if any person entitled to maintain any of the actions aforesaid shall be at the time of the accruing of such right of action under twenty-one years of age, non compos mentis, or imprisoned, such person or his proper representative shall be at liberty to bring such action within the respective times in this section limited after the removal of such disability, except that where any person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon any instrument under seal, shall be at the time such right of action shall accrue under any of the disabilities aforesaid, such person or his proper representative, except where otherwise provided herein, may bring such action within five years after the removal of such disability, and not thereafter. (Mar. 3, 1901, 31 Stat. 1389, ch. 854, § 1265; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the words "except where otherwise provided herein" after the word "representative" the second time it is used.

CROSS REFERENCES

Action for damages for usurpation of office to be brought within one year, § 16–1611.

Action on real estate salesmen's or brokers' bond must be brought within one year, § 45–1405.

Actions against common carrier for death of employee to be commenced within one year, § 44–404.

Adverse possession, period of limitation, § 16–1501.

Claims for refunds of void tax assessments, § 1–903 and notes.

Contesting will after majority, § 19–309.

Limitation of actions to collect income taxes, § 47–1533.

Limitation of actions to enforce mechanics' liens, § 38–115.

Limitation of action to enforce hospital lien on moneys paid for personal injuries, § 38–303.

Limitations on collection of personal property taxes, § 47–1408.

New promise tolling statute, § 12–305.

No limitation on actions to recover part of cost of constructing viaducts and subways, § 7–1215.

No limitation or action to recover part of cost of Fern and Varnum and Eastern Avenue viaduct, § 7–515.

Provision in will tolling statute of limitations, § 12–207.

NOTES TO DECISIONS

Decisions Under Prior Law

Statutory period of limitation applicable to simple contract action in District of Columbia, applies to actions brought upon a contract which has the effect of a specialty in the place where made. *Willard* v. *Wood* (1 App. D. C. 44, affd. 164 U. S. 502, 41 L. Ed. 531, 17 Sup. Ct. 176).

Part payment of judgment debt within statutory period of limitations will not avoid the operation of the statute when it is pleaded to a scire facias to revive the judgment, or in action of debt on the judgment. *Mann* v. *Cooper* (2 App. D. C. 226).

Bar of the statute of limitations will not commence to run in equity until the fraud has been discovered, or until such time as by the use of ordinary care it might reasonably have been discovered. *Lewis* v. *Denison* (2 App. D. C. 387).

Statute of limitations against claim of set-off is not stopped by action in which set-off is pleaded, unless set-off has some connection to the principal claim, but it continues to run until filing of such plea. *Durant* v. *Murdock* (3 App. D. C. 114).

In action by assignee to recover a call under direction of the court upon stockholder, the statute of limitations runs from the date of the order of court. *Glenn* v. *Sothoron* (4 App. D. C. 125).

On petition of holder of one note to participate in proceeds of sale of mortgaged property by foreclosure at the instance of the holder of the other note, the bar of limitations is not that applicable to an action on the note, but that which applies to the remedy for the enforcement of an equitable right under the mortgage; and the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (9 App. D. C. 373).

There is nothing in the language of acts of incorporation to prevent the running of the statute of limitations in favor of claimant against the company, to a portion of a public highway. *Columbia* v. *Krause* (11 App. D. C. 398).

When there is a mutual account and the last item is barred by statute of limitations, it is not proper for one of the parties to remove the bar of the statute by entering later items on his own side of the account. *Ross* v. *Fickling* (11 App. D. C. 442).

When a declaration is filed, with directions, either express or implied, given by the person on whose behalf it is filed, or by his attorney, to the clerk to issue the proper process thereon, and nothing then remains to be done but that the clerk should proceed, and the party has otherwise complied with the requirements of law, if other requirements there be, such as payment of necessary fees, the suit must be deemed to be then commenced so far as to arrest the application of the statute of limitations. *Huysman* v. *Evening Star* (12 App. D. C. 586).

When parent agrees to compensate in his will for daughter's services, but no provision is made, she has an action against the administrator and the claim will not be barred by limitations until after the lapse of statutory period after administration is granted. *Tuohy* v. *Trail* (19 App. D. C. 79).

In General

There is an apparent conflict between this section and § 16–1501, as to the extent of the principal limitation of actions and also as to the extent of the saving to parties under disability; but in order to give effect to both sections, the last-mentioned section, being the act of Congress of March 3, 1899, must be read as an exception to this section. *Gwin* v. *Brown* (21 App. D. C. 295).

"A defendant can not avail himself of the bar of the statute of limitations, if it appears that he has done anything that would tend to lull the plaintiff into inaction, and thereby permit the limitation prescribed by the statute to run against him." *Hornblower* v. *George Washington University* (31 App. D. C. 64).

Adverse Possession

If testator's right of entry is barred by adverse possession and statute of limitations, a devisee takes nothing under the devise. *Dangerfield* v. *Williams* (26 App. D. C. 508).

Adverse possession for 15 years confers title, and § 16–1501 has no application in an action of ejectment based upon adverse possession. *McMillan* v. *Fuller* (41 App. D. C. 384).

Possession for statutory period by cultivation, pasturage, or other means is sufficient under law of District of Columbia to produce title by "adverse possession", provided it is open, notorious, continuous, and adverse. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

Amendments to Pleadings

Where the cause of action remains the same, an amendment changing it in a different form is not open to the defense of the statute of limitations. *Beasley* v. *Baltimore & P. R. R. Co.* (27 App. D. C. 595). See also *District of Columbia* v. *Frazer* (21 App. D. C. 154).

An amendment made for the purpose of curing a defective cause of action will relate back to time of filing the original petition; and if made after the time limit of the statute, will not be barred itself or cause original petition, which was filed in time, to be barred. *Goodacre* v. *Shulmier* (64 App. D. C. 10, 73 Fed. (2d) 519).

Application to Equitable Actions

Enforcement in equity of mortgages and deeds of trust of real estate is governed by twenty-year period of statute of limitations. *Sis* v. *Boarman* (11 App. D. C. 116).

In cases of concurrent jurisdiction courts of equity will hold themselves bound by the statute of limitations that would govern an action at law upon the same demand; and where the subject-matter of the demand is one ordinarily cognizable at law, but, by reason of special conditions, the remedy for its enforcement in the particular case is obtainable solely in equity, the bar of limitation will be applied, either in obedience to the statute, or by analogy, in the same way as at law. *Washington L. & T. Co.* v. *Darling* (21 App. D. C. 132).

When in equity an attempt was made to avoid a devise as invalid on its face, the statute of limitations will be applied by analogy, and relief will be denied where there has been delay of more than statutory period. *Columbia University* v. *Taylor* (25 App. D. C. 124).

Where an action at law was barred by the statute, appellant can not avoid this conclusion by describing the misappropriated money as a trust fund, for equity follows the law in such cases and the limitation would be enforced. *Moran* v. *Schlosberg* (67 App. D. C. 163, 90 Fed. (2d) 408).

Assault

Limitation of three years applies to a suit against the Director General of Railroads for damages for assault by special officer of railroad acting within the scope of his employment. *Mellon* v. *Seymoure* (56 App. D. C. 301, 12 Fed. (2d) 836).

Bailments

A bailor's right of action accrues only after bailee's breach of duty under contract, and hence this section begins to run only from time of refusal to perform the contract, so that this section does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee, or some other act of bailee inconsistent with bailment. *Schupp* v. *Taendler* (App. D. C. 1946, 154 F. 2d 849).

An action to recover personalty which plaintiffs had turned over to defendant, who agreed to keep it until plaintiffs should ask for it, which action was commenced within three years after demand and refusal to deliver

the personalty, was not barred by three-year limitation of this section, since limitation does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee. *Schupp* v. *Taendler* (App. D. C. 1946, 154 F. 2d 849).

Cancellation for Usury

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by usury statute of limitations, § 28–2704, or this section. *Hill* v. *Hawes,* 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

Commencement of Action

The filing of complaint "commenced" action within rule 3 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., for purpose of determining whether action to recover land was barred by 15-year limitation of this section. *Reynolds* v. *Needle,* 1942 (132 F. 2d 161, 77 U. S. App. D. C. 53).

Conflict of Laws

Where a Florida contract was sued upon in the District, the court applied the D. C. Code as the law of the forum. *Wells* v. *Alropa Corp.* (65 App. D. C. 281, 82 Fed. (2d) 887).

If by the law of the state which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, no action begun after the period has elapsed can be maintained in any jurisdiction. *Moran* v. *Harrison* (67 App. D. C. 237, 91 Fed. (2d) 310, 113 A. L. R. 505).

Suit on a policy of life insurance brought within the six-year statute of limitations of New York, where the policy was to be paid, was barred by the three-year statute of the District of Columbia where the suit was brought. *Kaplan* v. *Manhattan Life Ins. Co.* (71 App. D. C. 250, 109 Fed. (2d) 463).

A limitation on the time of suit is procedural and is governed by the law of the forum. *Kaplan* v. *Manhattan Life Ins. Co.* (71 App. D. C. 250, 109 Fed. (2d) 463).

Conspiracy Action

Complaint, in action for conspiracy, not alleging any other tortious acts, except of certain slanderous statements allegedly made by defendants, but which were both privileged and barred by statute of limitations, did not state cause of action. *Burns* v. *Spiller* (D. C., D. C. 1945, 4 F. R. D. 299, affirmed 161 F. 2d 377, certiorari denied 68 S. Ct. 101, 332 U. S. 792, 92 L. Ed.).

Contracts

When debt is payable in independent instalments, the action accrues as it matures upon each, and if the obligee fails to act until statute of limitations has barred some of the instalments, he can recover only for those not barred when his action was commenced. *Washington L. & Trust Co.* v. *Darling* (21 App. D. C. 132).

When plaintiff claimed she rendered services under an express contract for a specified monthly compensation but more than three years elapsed between date payment became due and bringing of the action, the claim is barred by § 1265 of 1901 Code (this section), which provides a three-year period on express or implied contracts. *McCurley* v. *National Sav. & Trust Co.* (49 App. D. C. 10, 258 Fed. 154); *Booger* v. *Roach* (25 App. D. C. 324).

An action against executrix, if regarded as one upon account, accrued on the date of the last item, and is barred in three years. *Anglo-Colombian Dev. Co.* v. *Stapleton* (57 App. D. C. 209, 19 Fed. (2d) 683).

Limitation of three years applies to a suit against estate of testate for recovery upon a quantum meruit for services performed, or for specific performance of contract to compensate for services in will, and cause of action accrues at death of promisor. *Hurdle* v. *American Sec. & Trust Co.* (59 App. D. C. 58, 32 Fed. (2d) 954).

Applicable to action on contract brought in United States Court for China. *Chalaire* v. *Franklin* ((C. C. A. 9), 81 Fed. (2d) 105, cert. den. 298 U. S. 678, 80 L. Ed. 1399, 56 Sup. Ct. 942).

Where university architect was appointed agent of university land extension committee, even if activities of the agent after completion of his connection with the extension project was an authorized service to university so as to entitle the agent to compensation therefor, such additional activities were under a new appointment and the running of this section on the services rendered in connection with the extension project would not be affected; there being a lack of continuity between the two employments. *Howard University* v. *Cassell,* 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

Where attorney was employed to prosecute client's claim for damages because of alleged illegal confinement in hospital and case was tried in April, 1939, action instituted by client in April, 1944, against attorney for alleged breach of contract and breach of professional duty was barred by three-year statute of limitations. *Case* v. *Ricketts* (D. C. Mun. App. 1945, 42 A. 2d 304).

Estoppel

Where university architect was appointed agent of university land extension committee, but university never acknowledged the correctness of the architect's claim for additional compensation as agent, or that it owed anything or that it would pay anything, there were negotiations looking toward an amicable settlement, but there was strong opposition in the board of trustees to the payment of the claim, and the only assurances were to the effect that the architect would be fairly dealt with, the doctrine of equitable "estoppel" did not preclude the university from asserting this section. *Howard University* v. *Cassell,* 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

If, by agreement to arbitrate, plaintiffs by action of defendant were induced not to bring their suit, defendant would be "estopped" from pleading the bar of this section, but if, after the agreement was made to submit to arbitration, plaintiffs took no steps toward having the matter submitted and did not insist on defendant's submission of the matter, the agreement could not be held to stop the running of this section. *Howard University* v. *Cassell,* 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committee, and, practically from the time of submission of the architect's claim for additional compensation for services rendered as agent to time when suit was brought, attitude of board of trustees was one of question, if not of active opposition to payment, and, after it became evident that the claim would probably not be recognized, the architect had ample time to bring suit before bar of this section fell, but he even delayed in presenting his claim to the university, the conduct of the university did not work an "estoppel", since it did not lull the architect into inaction until after the limitation period. *Howard University* v. *Cassell,* 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

Where employer repeatedly assured employee that overtime claims had not been settled and promised to advise employee of action taken by Wage and Hour Division and by Maritime Commission, but failed to do so and employee brought action for overtime, etc., about four months after he learned that claims had been denied, trial judge properly held that employer was estopped to plead limitations. *McCloskey & Co.* v. *Dickinson* (D. C. Mun. App. 1948, 56 A. 2d 442).

Foreign Judgments

"The section (this section) is lengthy and prescribes periods of limitation for many actions, civil and criminal, specially enumerated therein. The clause aforesaid (not otherwise provided for) was apparently intended to remedy a possible omission of some action that might have been properly embraced in that enumeration. Foreign judgments were provided for specially in section 1267 (§ 12–203)," and therefore, are not embraced in this section. *McKay* v. *Bradley* (26 App. D. C. 449).

FRAUD

Action for fraud in inducing plaintiff to purchase realty, barred in three years. *District-Florida Corp.* v. *Penny* (62 App. D. C. 268, 66 Fed. (2d) 794).

Partners asking for an accounting of a partnership dissolution agreement, on the ground of fraud, four years later, are barred by laches. *Singer* v. *Friedman* (66 App. D. C. 191, 85 Fed. (2d) 690, cert. den. 299 U. S. 590, 81 L. Ed. 435, 57 Sup. Ct. 116).

A complaint for mismanagement and depletion of capital by receiver of building and loan association against former directors who resigned more than three years before commencement of action was barred by limitations, where complaint contained no allegation of concealment and admitted that directors neither obtained any advantage from wrongdoing of incorporators nor intentionally did any affirmative act to cause loss of funds paid in by certificate holders. *Peyser v. Owen* (D. C., D. C. 1940, 73 App. D. C. 64).

In action based on fraud, this section begins to run, not when cause of action accrued, but from discovery of facts out of which the claim arose, or from time when facts should have reasonably been found out in exercise of due diligence. *Johnson* v. *Taylor* (D. C., D. C. 1947, 73 F. Supp. 537).

This section would not commence to run against an action to recover damages of notary public and surety on his bond caused by alleged wrongful acknowledgment of signature of forged deed by notary, either against notary or surety, until notary's alleged fraud was discovered or should reasonably have been discovered by plaintiff, notwithstanding that it was not charged that surety participated in the alleged fraud. *Johnson* v. *Taylor* (D. C., D. C. 1947, 73 F. Supp. 537).

HISTORICAL

By the enactment of this section, §§ 1 and 2 of the statute of James (21 James I, ch. 16), were repealed, and new periods of limitations substituted therefor. *Gwin* v. *Brown* (21 App. D. C. 295).

The Maryland statute of limitations of 1715 "was repealed or superseded by the District Code." *McKay* v. *Bradley* (26 App. D. C. 449).

IMPRISONMENT

The fact that plaintiff was held to bail and remained under bond did not stop the running of the statute of limitations against his civil action for libel. *Rose* v. *Washington Times Co.* (57 App. D. C. 385, 23 Fed. 993, cert. den. 277 U. S. 597, 72 L. Ed. 1006, 48 Sup. Ct. 559).

JUDGMENT ON PLEADINGS

Where action on notes pleaded agreement by maker waiving defense of limitations in consideration of withholding action on notes until date when action on notes would otherwise have been barred by limitations and action was not brought within three years after date agreed upon, and maker answered setting up defense that action had not been brought within three years after date agreed upon, the matter was properly disposed of on motion for judgment on the pleadings. *Noel* v. *Baskin,* 1942 (131 F. 2d 231, 76 U. S. App. D. C. 332).

LIBEL COUNTERCLAIM

Where defendant filed counterclaim for libel, which occurred more than one year prior thereto, statute was not tolled by the principal claim since the statute of limitations continues to run in respect of a setoff which has no relation to the principal claim. *Walker* v. *Pilkerton* (D. C. D. C. 1949, 82 F. Supp. 321).

LOANS

An action for money which had been delivered by plaintiffs to defendant as a loan payable on demand, which action was commenced more than three years after loan was made but within three years of demand, was barred by three-year limitation of this section, since the money became due at once and limitation ran from date of the loan. *Schupp* v. *Taendler* (App. D. C. 1946, 154 F. 2d 849).

MANDAMUS

This section is not applicable to mandamus proceedings. *United States ex rel. Arant* v. *Lane* (249 U. S. 367, 63 L. Ed. 650, 39 Sup. Ct. 293).

MINORS

In an action for negligence "the minor * * * has the entire period of his minority and three years thereafter within which to institute the action," and, if the action is brought within his minority, he is not confined to three years after the accrual of the right. *Carson* v. *Jackson* (52 App. D. C. 51, 281 Fed. 411).

The interest of adult beneficiary barred by statute and insurance company was liable to minor beneficiaries only to the extent of their separate interests in the policy. *Kaplan* v. *Manhattan Life Ins. Co.* (71 App. D. C. 250, 109 Fed. (2d) 463).

NEW PROMISE OR ACKNOWLEDGMENT

Suit for services is barred after three years from the time the action accrued, in the absence of a new promise or an acknowledgment within statutory period. *Booger* v. *Roach* (25 App. D. C. 324).

Where property covered by a mortgage barred by limitations, was devised by will, with a provision that the mortgage should be first satisfied, payee was entitled to interest not only to time of maturity of note but to time of payment. *Taylor* v. *Drury* (56 App. D. C. 266, 12 Fed. (2d) 489).

Commissioner's direction to assessor to cancel the record of paving assessments did not constitute an acknowledgment of indebtedness which would take case out of the operation of the statute of limitations. *Lake for Use of Peyser* v. *District of Columbia* (63 App. D. C. 306, 72 Fed. (2d) 174).

To take any case out of the operation of the statute, the acknowledgment must not be accompanied by circumstances which negative any intention or promise to pay. *Moore* v. *Snyder* (71 App. D. C. 293, 109 Fed. (2d) 840).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan* v. *Lincoln Inv. Corp.* (71 App. D. C. 365, 110 Fed. (2d) 130).

PERSONAL INJURIES

In a suit for personal injuries sustained as a result of three separate acts, two of which are barred by limitations, evidence of injuries sustained by any but the one act not barred is inadmissible. *Jackson* v. *Emmons* (25 App. D. C. 146, affd. 203 U. S. 578, 51 L. Ed. 325, 27 Sup. Ct. 778).

PLEADING

On appeal from judgment dismissing complaint as barred by statute of limitations, appellant's contention, made in the brief, that defense of statute of limitations should have been raised by answer rather than by motion to dismiss, would not be considered, where question was not raised in District Court and was abandoned in the oral argument. *Peyser* v. *Owen,* 1940 (116 F. 2d 298, 73 App. D. C. 64).

In action to recover land and mesne profits where defendant pleaded res judicata and limitation of this section to complaint which showed on its face that cause of action arose more than 15 years before action was instituted, if plaintiff had facts which would toll this section, he might have amended his complaint, served affidavits, or asked permission to reply. *Reynolds* v. *Needle,* 1942 (132 F. 2d 161, 77 U. S. App. D. C. 53).

Where principal of note sued on in Municipal Court for District of Columbia was less than $500, formal pleadings were not required but defendant properly raised defense of statute of limitations by written answer. *Whitman* v. *Noel* (D. C. Mun. App. 1947, 53 A. 2d 280).

The defense that plaintiff's claim was barred by limitations made for the first time in a brief submitted to the trial judge in support of motion for new trial was too late to save the point for review. *Atchison & Keller* v. *Taylor* (D. C. Mun. App. 1947, 51 A. 2d 297).

RECOVERY OF PERSONAL PROPERTY

Limitations do not apply to attachment for recovery of property seized by alien property custodian. *Sprunt* v. *Direction Der Disconto Gesellschaft* (61 App. D. C. 350, 63 Fed. (2d) 127, cert. den. 289 U. S. 730, 77 L. Ed. 1479, 53 Sup. Ct. 526).

RECOVERY OF THE POSSESSION OF LAND

"An action against the commissioners to compel the execution and delivery of a tax deed is not one for the recovery of the possession of land" and does not come within the 15-year limitation, but within the omnibus clause of the section. *Luchs* v. *Christman* (42 App. D. C. 326).

RELEASE OF SURETY

Whether an indemnitor is discharged by the mere failure of his obligee to sue the principal debtor until suit is barred by the statute of limitations remains an open question in this court. *Chapman* v. *Hoage* (296 U. S. 526, 80 L. Ed. 370, 56 Sup. Ct. 333).

STATUTE A DEFENSE ONLY

Statute of limitations is "one of repose, and not one of payment or cancelation. It is a bar to the remedy only and does not extinguish or even impair the obligation of the debtor." *Hall* v. *District of Columbia* (47 App. D. C. 552); *Talbott* v. *Hill* (49 App. D. C. 96, 261 Fed. 244); *Miles* v. *McGrath* ((D. C.-Md.) 4 Fed. Supp. 604).

Statute of limitations is available as defense and not as a cause of action, and a suit to cancel lien of deed of trust can not be upon the ground that the power of sale under the trust deed was barred by statute. *Talbott* v. *Hill* (49 App. D. C. 96, 261 Fed. 244).

STATUTORY PENALTY OR FORFEITURE

Liability of principal and sureties on bond given by a contractor with District of Columbia, providing that such bond shall be the "usual penal bond" conditioned upon contractor paying expenses for materials and labor, is not a statutory penalty in the proper legal sense as to come within one-year statute of limitations within meaning of section 1265 of the 1901 Code (this section). *Pavarini* v. *Title Guar. & S. Co.* (36 App. D. C. 348).

Revocation of license to practice medicine is in the nature of a remedial measure for the protection of the public, and not a penalty or forfeiture, but as less than three years intervened between final judgment of conviction and institution of this proceeding, it is unnecessary to consider the application of the general three-year statute of limitations. *Kemp* v. *Medical Supervisors* (46 App. D. C. 173).

A proceeding to revoke physician's license who had been convicted of crime involving moral turpitude is not barred by act of Congress of June 3, 1896 (29 Stat. 198, ch. 313) when proceeding is instituted more than two years after affirmance of conviction; and it is not barred by § 1265 of the 1901 Code (this section) which provides for one-year period after cause of action accrues; nor is it barred by the fact that more than three years elapsed between conviction in trial court and proceeding by supervisors. *Kemp* v. *Medical Supervisors* (46 App. D. C. 173).

SUMMARY JUDGMENT

In action to recover land and mesne profits where complaint showed on its face that it arose more than 15 years before institution of the action, "issues of material fact" were not presented, within rule 56 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., authorizing summary judgment in absence of issues of material fact, because there might possibly be facts which would toll this section and avoid defendants' plea of res judicata, where plaintiff alleged no such facts and raised no such issues. *Reynolds* v. *Needle,* 1942 (132 F. 2d 161, 77 U. S. App. D. C. 53).

SUSPENSION OF LIMITATIONS

Where university architect was appointed agent of university land extension committee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, the fact that the agent was later requested by auditors to verify several items did not prolong period of limitations under this section on claim of architect who was under no obligation to assist auditors checking his report. *Howard University* v. *Cassell,* 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 7149, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, activities of the agent subsequent to the submission of his report did not prolong the three-year period of limitations on his claim against university for services, and action instituted on June 4, 1936, was barred, where agent did not seek compensation for, and did not ask for reimbursement for expenses. *Howard University* v. *Cassell,* 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

TORT ACTIONS

Where plaintiff sued a Maryland Corporation, solely owned by the U. S. and having the power to be sued in the District in tort actions for negligence, the action was not barred by the general statute of limitations. *Hood* v. *Defense Homes Corp.* (D. C. D. C. 1949, 83 F. Supp. 365).

USURY AS DEFENSE

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill* v. *Hawes,* 1944 (144 F. 2d 511, 79 U. S. App. D. C. 168).

WHEN STATUTE BEGINS TO RUN

Upon the abandonment of a public improvement, cause of action for the return of assessment for benefits accrues at the time of abandonment. *District of Columbia* v. *Thompson* (281 U. S. 25, 74 L. Ed. 677, 50 Sup. Ct. 172, affg. 58 App. D. C. 313, 30 Fed. (2d) 476).

This jurisdiction prefers the rule followed in New York and Pennsylvania, which excludes the day on which the cause of action accrues, as a point of time after which the limitation ensues. *Ambrose* v. *Brown* (42 App. D. C. 25).

Payments made after life tenant's death tolled the three-year statute under § 1265 of the 1901 Code (this section) as to bringing suit against trustee's executor. *National Sav. & Trust Co.* v. *Ryan* (49 App. D. C. 159, 262 Fed. 613).

The time between the death of the deceased and the granting of letters testamentary is not to be counted in determining whether or not the statute of limitations has run. *National Sav. & Trust Co.* v. *Ryan* (49 App. D. C. 159, 262 Fed. 613).

Where a broker is engaged to procure a loan on real estate, the statute of limitations, as far as it affects his right to recover commissions, runs from the time that he furnishes a person ready, able, and willing to make the loan, and not from the time of the contract of employment. *Daniel* v. *Drury* (50 App. D. C. 107, 267 Fed. 751).

In computing limitation for action for malicious prosecution, the day on which cause of action accrued should be excluded. *Freeman* v. *Pew* (61 App. D. C. 223, 59 Fed. (2d) 1037).

Since no liability accrued until the date set by the comptroller, and since suit was brought within three years of that date, the action is not barred. *Strasburger* v. *Schram* (68 App. D. C. 87, 93 Fed. (2d) 246).

A promissory note payable on demand is a present debt and the statute begins to run from its date. *Feucht* v. *Keller* (70 App. D. C. 117, 104 Fed. (2d) 250), citing *Kenyon* v. *Youngman* (59 App. D. C. 300, 40 Fed. (2d) 812).

In action for deficiency on deed of trust notes, this section begins to run from date of their maturity. *Hoffman* v. *Sheahin,* 1941 (121 F. 2d 861, 73 App. D. C. 374).

In action to recover land and mesne profits, where complaint was filed more than 15 years after date on which it was alleged that defendants entered and unlawfully ejected the plaintiff, complaint showed on its face that it was barred by this section and hence, summary judg-

ment for defendant was properly granted, since the cause of action "accrued" within meaning of this section at the time of the ejectment. *Reynolds* v. *Needle*, 1942 (132 F. 2d 161, 77 U. S. App. D. C. 53).

Where maker agreed to waive defense of limitation in consideration of withholding action on notes until the date when action on notes would otherwise have been barred by limitations but reserved all other defenses, holders of notes had power to maintain action on notes after date agreed on, and this section began to run anew after such date and action not brought within three years thereafter was barred, although agreement was under seal. *Noel* v. *Baskin* (App. D. C. 1942, 131 F. 2d 231).

This section begins to run on conclusion of services, where it is not required by agreement or statute that an audit must be made before payment shall be due. *Howard University* v. *Cassell*, 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U. S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committee university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, the agent's cause of action against university for services "accrued" on April 21, 1933, and he could have brought his suit then or any time thereafter within the three-year period, since his rights did not await a check by the university auditors. *Howard University* v. *Cassell*, 1942 (126 F. 2d 6, 75 U. S. App. D. C. 75, certiorari denied 62 S. Ct. 1046, 316 U. S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1278, 316 U. S. 711, 86 L. Ed. 1777).

Where contract for building a house contained a provision that the basement shall be dry and remain so for three years, statute of limitations in action for breach of contract began to run when the contractor abandoned his efforts to remedy condition, and not when the basement first became wet. *Zellan* v. *Cole* (C. A. D. C. 1950, 183 F. 2d 139).

Whatever right of action appellant might have had against the District occurred when the consideration passed (the date of the deed). Action held to be barred by the twelve-year period of the statute and by the three-year statute also. *Cobb* v. *Shore* (C. A. D. C. 1950, 183 F. 2d 980).

Claims arise when contracts are broken, not when the resulting damage is precisely ascertained. When appellee failed to make due payments for materials and subjected appellant to claims of persons who had supplied them, he broke his contract and the suit was barred when filed more than three years later. *H. Herfurth, Jr., Inc.* v. *Acker* (C. A. D. C. 1949, 177 F. 2d 38, 85 U. S. App. D. C. 158).

§ 12–202 [24: 342]. Suits against decedents' estates.

In suits against the estate of a deceased person, in computing the time of limitation, the interval, not exceeding two years, between the death of the deceased and the granting of letters testamentary or of administration shall not be counted as part of said time of limitation. (Mar. 3, 1901, 31 Stat. 1389, ch. 854, § 1266; June 30, 1902, 32 Stat. 542, ch. 1329.)

Amendment

The 1902 amendment inserted the words "not exceeding two years" after the word "interval."

Cross Reference

Claims against estate, § 18–518.

NOTES TO DECISIONS

Domestic Judgments

This section does not cut down the periods specifically prescribed for actions on domestic judgments. *Miller* v. *Miller*, 1941 (122 F. 2d 209, 74 App. D. C. 216).

Maintenance of Insane Person

The estate of a patient committed to St. Elizabeth's Hospital while a resident of the District of Columbia is liable to the District for his maintenance, and statute of limitations does not run against the District in its claim for such maintenance. *Hart* v. *Commissioners of District of Columbia* (App. D. C. 1946, 155 F. 2d 877).

Proving Claim Against Estate

Proving claim against decedent's estate under section 336 of the 1901 Code (§ 18–509), as suspending running of limitations. *Berry & Whitmore Co.* v. *Dante* (43 App. D. C. 110).

§ 12–203 [24: 343]. Foreign judgments.

Every action upon a judgment or decree rendered in any state or territory of the United States or in any foreign country shall be barred if by the laws of such state, territory, or foreign country such action would there be barred and the judgment or decree be incapable of being otherwise enforced there. (Mar. 3, 1901, 31 Stat. 1389, ch. 854, § 1267; June 30, 1902, 32 Stat. 542, ch. 1329.)

Amendment

The 1902 amendment struck out the following words from the end of the section: "and whether so barred or not, no action shall be brought in the District on any such judgment or decree rendered more than ten years before the commencement of such action."

NOTES TO DECISIONS

Historical

"This section prescribes two rules of limitation. By the first, all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than ten years before the commencement of the action. On June 30, 1902, section 1267 (this section) was amended by striking therefrom the last part * * * in which the second rule aforesaid is embodied." *McKay* v. *Bradley* (26 App. D. C. 449).

Bankruptcy

That judgment debtor who filed a voluntary petition in bankruptcy during pendency of suit to have lien for payment of barred California judgment charged on debtor's interest in an estate listed judgment among his scheduled liabilities without indicating its disputed character did not constitute a voluntary "acknowledgment" sufficient to remove the bar of this section against enforcement of the judgment debt. *Fowler* v. *Pilson*, 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

Dormant Judgment

Possibility of enforcing or satisfying a judgment after a dormant judgment is revived by suit for that purpose is not contemplated by the words "otherwise enforced" or by the general purpose of this section. *Fowler* v. *Pilson*, 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

Under California Code Civ. Proc. § 685, providing that a barred judgment may be enforced or carried into execution by leave of court on motion and after due notice to judgment debtor and providing for general revival founded on supplemental proceedings, a barred judgment is "dormant" until one of those procedures is made effective, and hence a California judgment barred by California Code Civ. Proc. §§ 335, 336, when creditor's bill was filed in the District of Columbia to have lien for payment charged on debtor's interest in an estate could not be "otherwise enforced" within this section. *Fowler* v. *Pilson*, 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

Effect Limited

"Section 1267, as amended (this section), has no other effect than to bar an action upon a judgment of another

state that is barred, at the time of the commencement of the action, by the laws of that state." *McKay* v. *Bradley* (26 App. D. C. 449).

ENFORCEABILITY

"Enforceability", within this section, means a right of enforcement which exists at the time suit is begun in the District of Columbia, and not a mere possibility of enforcement in the future which depends on a further showing of facts and a further exercise of judicial discretion. *Fowler* v. *Pilson,* 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

EQUITY, SUITS IN

This section bars suits in equity as well as actions at law. *Fowler* v. *Pilson,* 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 86 L. Ed. 1740).

FORM OF ACTION

Under this section the words "otherwise enforced" are used alternatively to "such action" and comprehend that the judgment need not be enforceable in its original jurisdiction in the identical manner or form of proceeding by which enforcement is sought in the District of Columbia. *Fowler* v. *Pilson,* 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

FULL FAITH AND CREDIT

In this jurisdiction, an action upon a judgment of any state is barred if, by the laws of such state, the action would be barred, and the judgment would be incapable of being otherwise enforced there. *Rosenberg* v. *Ichcovitz* (D. C. Mun. App. 1950, 72 A. 2d 466).

JUDGMENT OF JUSTICES OF THE PEACE

Valid judgments of justices of the peace of other states are enforcible in the District of Columbia, provided they are properly proved. *Koehne* v. *Price* (D. C. Mun. App. 1949, 68 A. 2d 806).

LIMITATIONS OF ACTIONS

California Code Civ. Proc. §§ 335, 336, prescribing periods for commencement of actions other than for the recovery of realty and requiring an action on a judgment or decree of any federal or state court to be commenced within five years after entry bar suits in equity as well as actions at law, and hence a creditor's bill filed in 1937, whereby assignee of California judgment rendered against defendant in 1930 sought to have a lien for payment of amount of judgment charged on defendant's interest in an estate, could not have been maintained in California had it been brought there when it was begun in the District of Columbia. *Fowler* v. *Pilson,* 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

Where a judgment of a Maryland court was governed by the twelve-year statute of limitations of Maryland, an action brought thereon in the Municipal Court of the District within the twelve years was not barred by Maryland law and therefore not barred by the District of Columbia. *Koehne* v. *Price* (D. C. Mun. App. 1949, 68 A. 2d 806).

PROOF OF JUDGMENT

Where no issue is raised regarding the jurisdiction of the justice of the peace rendering the judgment, a properly certified transcript of the docket entries showing service of process upon the defendant and jurisdiction of the subject matter is sufficient to support a judgment in another state. *Koehne* v. *Price* (D. C. Mun. App. 1949, 68 A. 2d 806).

PURPOSE

This section was intended to bring about uniformity between the two jurisdictions in the time allowed for enforcing the judgment by suit and to achieve uniformity in the scope and kinds of substantive relief available. *Fowler* v. *Pilson,* 1942 (123 F. 2d 918, 74 App. D. C. 340, certiorari denied 62 S. Ct. 944, 316 U. S. 664, 86 L. Ed. 1740).

§ 12–204 [24: 344]. Action by the United States.

None of the provisions of sections 12–201 to 12–203 shall apply to any action in which the United States is the real and not merely the nominal plaintiff. (Mar. 3, 1901, 31 Stat. 1389, ch. 854, § 1268; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the word "foregoing," translated herein as "sections 12–201 to 12–203," and struck out the word "aforesaid," inserting in lieu thereof the words "of this chapter," which refer to chapter 41 of the D. C. Code, 1901 edition.

NOTES TO DECISIONS

GENERALLY

Neither this chapter nor laches applies to any action in which the United States is the real and not merely the nominal plaintiff. *U. S.* v. *Washington Loan & Trust Co.* (D. C., D. C. 1942, 47 F. Supp. 25, affirmed 134 F. 2d 59, 77 U. S. App. D. C. 284).

UNREASONABLE DELAY

Unreasonable delay by Government in giving notice to banks as to discovery of forgery of indorsement of payees of Government checks to prejudice of banks would be a defense to action by Government against banks to extent of the loss shown by banks. *U. S.* v. *Washington Loan & Trust Co.* (D. C., D. C. 1942, 47 F. Supp. 25, affirmed 134 F. 2d 59, 77 U. S. App. D. C. 284).

§ 12–205 [24: 345]. Statute does not run when defendant absent or concealed.

If, when a cause of action accrues against a person who is a resident of the District of Columbia, he is out of the District or has absconded or concealed himself, the period limited for the bringing of the action shall not begin to run until he comes into the District or while he is so absconded or concealed; and if after the cause of action accrues he abscond or conceal himself, the time of such absence or concealment shall not be computed as any part of the period within which the action must be brought. (Mar. 3, 1901, 31 Stat. 1389, ch. 854, § 1269.)

§ 12–206 [24: 346]. Statute does not run during time action stayed.

Where the bringing of an action has been stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of such stay shall not be part of the time limited for the commencement of the action. (Mar. 3, 1901, 31 Stat. 1389, ch. 854, § 1270.)

§ 12–207 [24: 347]. Directions as to debts in a will.

No provision in the will of a testator devising his real estate, or any part thereof, subject to the payment of his debts, or charging the same therewith, shall prevent the statute of limitations from operating against such debts, unless it plainly appears to be the testator's intention that it shall not so operate. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1272.)

CROSS REFERENCE

See §§ 18–514, 18–515, 18–604.

§ 12–208 [24: 348]. Actions against District of Columbia for unliquidated damages—Notice within 6 months—Police report.

No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave notice in writing to the commissioners of the District of Columbia of the approximate time,

place, cause, and circumstances of such injury or damage: *Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision. (Feb. 28, 1933, 47 Stat. 1370, ch. 138.)

CROSS REFERENCE

Claims against District, §§ 1–901 to 1–905.

NOTES TO DECISIONS

CONSTRUCTION

The statute, being in derogation of common law rights, is to be strictly construed, and oral notice is not sufficient to waive the requirement of the statute. Actual notice is without effect to dispense with a written notice when a statute requires notice in writing. *District of Columbia* v. *World Fire and Marine Insurance Co.* (D. C. Mun. App. 1949, 68 A. 2d 222).

NOTICE REQUIREMENT

The notice requirement governs only where the District is sought to be held on a claim for unliquidated damages and is inapplicable to liquidated claims. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

WRITTEN NOTICE

The requirements of the statute as to written notice are mandatory. For failure to give such written notice, an action could not be maintained. *District of Columbia* v. *World Fire and Marine Insurance Co.* (D. C. Mun. App. 1949, 68 A. 2d 222).

Chapter 3.—STATUTE OF FRAUDS

Sec.

12–301. Estates created by parol—Estate by sufferance.
12–302. Actions to charge executors or others to answer for debt or default of another.
12–303. Declarations, grants, and assignments of trust—Implied trusts.
12–304. Contracts for sale of goods.
12–305. New promise to be in writing—Effect of payment on account—Recovery against joint contractors, coexecutors, coadministrators when statute waived.
12–306. New promise by quondam infant to be in writing—Ratification by conduct.

§ 12–301 [11: 1]. Estates created by parol—Estate by sufferance.

Every estate in lands, tenements, or hereditaments for a greater term than one year attempted to be created by parol, or otherwise than by deed, shall be an estate by sufferance. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1116.)

STATUTORY REFERENCE—BRITISH STATUTE

It has been suggested that portions of the third section of Statute of Frauds (29 Car. 2d, c. 3) remain in force. That section provides that: "No leases, estates, or interests, either of freehold, or terms of years, or any uncertain interests, not being copyhold, or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law."

CROSS REFERENCES

Other provisions requiring estates in lands to be created by written instrument, §§ 45–106, 45–820.

NOTES TO DECISIONS

ASSIGNMENT OF LEASE

An assignment of a lease conveys an interest in realty and comes within the statute of frauds if for a greater term than one year. However, it is well established that an oral agreement creating an interest in land which has been carried into effect is valid and enforcible and where the lessee turns the premises over to the assignee and the assignee enters into possession with the consent of the lessor and pays rent, the assignment is complete and the rights and liabilities of the parties are not affected by the statute. *Diatz* v. *Washington Technical School* (D. C. Mun. App. 1950, 73 A. 2d 227. Rehearing denied by 73 A. 2d 718).

EXECUTED ORAL ASSIGNMENT

Where retiring partner received back his contributions to partnership and orally assigned to copartner rights in five-year lease of store, lease became property of general partnership under oral agreement between assignee and third person, and general partnership immediately took possession of leased premises with implied consent of landlord and discharged obligations under lease until dissolved by order of court, as respects rights of assignors and assignees, both assignments were completely executed and hence not avoidable for violation of this section. *Mars* v. *Spanos,* 1944 (139 F. 2d 369, 78 U. S. App. D. C. 230).

An oral agreement creating an interest in land which has been carried into effect is valid. *Mars* v. *Spanos,* 1944 (139 F. 2d 369, 78 U. S. App. D. C. 230).

OUSTER OF TENANTS

Plaintiff-grantee could not ignore the legal procedure provided for ousting tenants, and compromise with them for a sum which it might elect to pay, and then recover that sum from defendant-grantors upon any basis of breach of warranty. *Standard Sav. Bank* v. *Stone* (52 App. D. C. 42, 280 Fed. 1016).

PAROL AGREEMENT

In suit for specific performance of deceased's alleged parol agreement to leave house and premises to plaintiff in consideration for his caring for deceased, where plaintiff and wife moved into house after it was purchased by deceased, plaintiff paid no rent during lifetime of deceased who occupied room of house and occasionally ate meals with plaintiff, evidence supported judgment dismissing action on ground that performance was not sufficient to take case out of operation of statute of frauds. *Slaughter* v. *Madison,* 1943 (135 F. 2d 650, 77 U. S. App. D. C. 226, certiorari denied 63 S. Ct. 1331, 319 U. S. 768, 87 L. Ed. 1717).

§ 12–302 [11: 2]. Actions to charge executors or others to answer for debt or default of another.

No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1117.)

NOTES TO DECISIONS

APPLICATION GENERALLY

This section applies to an agreement which appears from its terms to be incapable of performance within a year. *Street* v. *Maddux* (58 App. D. C. 42, 24 Fed. (2d) 617).

Under this section, an agreement for sale of real estate is enforceable only when it is in writing and there is a suffi-

cient description of the thing sold, the price to be paid, and the names of the party selling and the party buying, and none of such elements can be supplied by parol testimony. *Ochs* v. *Weil,* 1944 (142 F. 2d 758, 79 U. S. App. D. C. 84); *Fitzgan* v. *Burke* (D. C. Mun. App. 1948, 61 A. 2d 721).

The statute of frauds requiring written evidence of an agreement to answer for the death, default or miscarriage of another is not applicable where the settlement agreement in compromise rested on the theory of direct liability by reason of ownership of the striking car. *Saunders System Washington Co.,* v. *Kuffner* (D. C. Mun. App. 1950, 75 A. 2d 136).

Approval

The fact that printed form used in making agreement for purchase of realty provided that the deposit was subject to the owner's approval did not render agreement signed by purchasers and broker but not by owner unenforceable under this section where such approval had previously been given in exchange of telegrams between owner and broker. *Ochs* v. *Weil,* 1944 (142 F. 2d 758, 79 U. S. App. D. C. 84).

Description of Property

If contract contains in itself no description of the property to be sold, standing alone, no court of equity could specifically enforce it, but, if the description is found in other writings, forming part and parcel of the transaction, the omission is not fatal. *Shell Eastern Petroleum Products* v. *White* (62 App. D. C. 332, 68 Fed. (2d) 379).

Improvements

One who has been induced to alter his position and make improvements on property based on a parol contract may enforce such contract in the courts notwithstanding this section. *De Grazia* v. *Anderson* (D. C. Mun. App. 1948, 62 A. 2d 194).

Memorandum to Disclose Vendor

A contract for the sale of land, where the memorandum fails to disclose the name of the vendor, can not be enforced. *Storrow* v. *Concord Club* (63 App. D. C. 190, 70 Fed. (2d) 852).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and asked for $1,000 deposit and thereafter broker and purchasers signed agreement which identified purchasers and property and fully set out purchase price and manner of payment, the contract was binding under this section, notwithstanding the owner's name did not appear in the agreement and it was never signed by him. *Ochs* v. *Weil,* 1944 (142 F. 2d 758, 79 U. S. App. D. C. 84).

Where owner employed broker to sell realty and in response to broker's telegram regarding cash offer and query "Advise immediately if accepted", owner telegraphed broker to accept offer, the fact that agreement, which was signed by broker and purchasers, did not name owner and was sent to owner who refused to sign it did not establish that broker did not have authority to make agreement binding on owner under this section. *Ochs* v. *Weil,* 1944 (142 F. 2d 758, 79 U. S. App. D. C. 84).

Where contract for sale of real estate described the seller as the "seller" and there was no description of the premises allegedly involved except that the contract stated that the premises were "owner occupied", there was no reasonably sufficient description of the premises involved and parol testimony was inadmissible to supply the description. *Fitzgan* v. *Burke* (D. C. Mun. App. 1948, 61 A. 2d 721).

Option Within Year

While plaintiff's contract with defendant was in parol, the option might have been exercised within a year, and the statute therefore did not apply. *Campbell* v. *Rawlings* (52 App. D. C. 37, 280 Fed. 1011, 23 A. L. R. 854).

Parol Evidence

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may be properly inferred that the party did not intend the writing to be a complete and final statement of the whole transaction. *Jay's Restaurant v. Jack Stone Co.* (D. C. Mun. App. 1948, 62 A. 2d 799).

Partial Performance

Remaining in employ of one orally agreeing to devise real estate when husband wished to move to another city held not to amount to such a change in the course of service in life of promisee as would justify invocation of exceptional rule of equity permitting specific performance. *Faunce* v. *Woods* (55 App. D. C. 330, 5 Fed. (2d) 753, 40 A. L. R. 208).

Personal Obligation

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and § 38–121 authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within this section requiring special promise to answer for debt of another person to be in writing. *Jones* v. *Guice* (D. C. Mun. App. 1948, 57 A. 2d 190).

Pleading

Complaint, alleging in effect that owner employed broker to sell realty, that in response to broker's telegram regarding cash offer and query "Advise immediately if accepted," owner telegraphed broker to accept offer and that broker and purchasers signed agreement which carried out authority granted to broker and which identified purchasers and property and set out purchase price and manner of payment, stated a claim on which relief could be granted, although agreement did not name, and was not signed by owner. *Ochs* v. *Weil,* 1944 (142 F. 2d 758, 79 U. S. App. D. C. 84).

Constructive Trusts

Where complaint charged facts indicating that defendant held all but her own share of land in question charged with a constructive trust for plaintiff and certain other designated persons, plaintiff was not foreclosed from recovery of her share by this section. *Major* v. *Shaver* (D. C., D. C. 1946, 6 F. R. D. 207).

Related Writings

A complete contract regarding realty binding under this section may be gathered from letters, writings and telegrams between the parties relating to the subject matter of the contract when so connected with each other that they may be fairly said to constitute one paper relating to the contract. *Ochs* v. *Weil,* 1944 (142 F. 2d 758, 79 U. S. App. D. C. 84).

§ 12–303 [11: 3]. Declarations, grants, and assignments of trust—Implied trusts.

All declarations or creations of trust or confidence of any lands, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust or by his last will in writing, or else they shall be utterly void and of none effect.

All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same or by such last will or devise, or else shall likewise be utterly void and of none effect.

Where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every

such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1118.)

CROSS REFERENCES

Conveyances in general, § 45–101 et seq.
Estates in lands in general, § 45–801 et seq.
Mortgages and deeds of trust, § 45–601 et seq.
See notes to § 12–301.

CITED

G. G. Loehler Constr. Co. v. *Auth* (60 App. D. C. 273, 51 Fed. (2d) 435).

NOTES TO DECISIONS

FRAUDULENT VERBAL PROMISE

Facts presented bring case within the second provision of the Statute of Frauds and a trust would result by implication or construction of law. *Bennett* v. *Bennett* (D. C. D. C. 1949, 83 F. Supp. 19).

GENERALLY

This section requires, not only that writing be sufficient to establish trust, but that it show precisely what the trust covers. *Moore* v. *Guy,* 1943 (135 F. 2d 476, 77 U. S. App. D. C. 379).

The requisite of certainty in instrument creating trust in realty includes subject matter embraced within trust, beneficiaries, the nature and quantity of interests which they are to have and manner in which trust is to be performed. *Moore* v. *Guy,* 1943 (135 F. 2d 476, 77 U. S. App. D. C. 379).

WRITING, SUFFICIENCY OF

Where wife first executed deed conveying to husband one-third interest in property and then, having kept possession of deed, destroyed it, simultaneously making will devising property to her brother and sister, and still later wife wrote explanatory letter to husband stating that her brother and sister would deal fairly with him and "Do the best you can, and sell, and enjoy the little I have been able to accumulate and which I now gladly and lovingly pass on to the three of you", the letter was not a "declaration of trust" in favor of husband. *Moore* v. *Guy,* 1943 (135 F. 2d 476, 77 U. S. App. D. C. 379).

IMPLIED TRUSTS

Implied or resulting trusts are recognized by the law in force in the District of Columbia. *Haliday* v. *Haliday* (56 App. D. C. 179, 11 Fed. (2d) 565).

INFORMAL WRITING SUFFICIENT

The writing required to prove the trust may be informal provided it establishes the fact and the terms of the trust. *Tschiffely* v. *Tschiffely* (70 App. D. C. 386, 107 Fed. (2d) 191).

PAROL TRUST UNENFORCEABLE

Parol trust agreement unenforceable under statute of frauds. *Baldi* v. *Ambrogi* (67 App. D. C. 101, 89 Fed. (2d) 845); *Chiswell* v. *Johnston* (55 App. D. C. 3, 299 Fed. 681); *Dahlgren* v. *Dahlgren* (55 App. D. C. 52, 1 Fed. (2d) 755).

§ 12–304 [11: 4]. Contracts for sale of goods.

No contract for the sale of any goods, wares, and merchandise for the price of $50 or upward shall be allowed to be good except the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such a contract or their agent thereunto lawfully authorized. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1119.)

COMPILER'S NOTE

This section may be superseded by a similar provision of the Uniform Sales Act (§ 28–1104). See also 30 A. L. R. 1169.

NOTES TO DECISIONS

LETTERS WRITTEN AFTER CONTRACT

It is immaterial that letters were written after instead of before or at the time of the contract. *Pierce* v. *Gillet & Co.* (64 App. D. C. 156, 75 Fed. (2d) 675).

ORIGINAL PROMISE OF GENERAL CONTRACTOR

Alleged original promises of the general contractor to pay a materialman for materials furnished a subcontractor by the application of any retainable percentages accruing to the subcontractor were insufficient to warrant judgment against the general contractor when the subcontractor defaulted and the general contractor was compelled to take over the work and finish it at a loss. *Watkins-Whitney* v. *Thyson* (65 App. D. C. 404, 78 Fed. (2d) 1022).

§ 12–305 [11: 5]. New promise to be in writing—Effect of payment on account—Recovery against joint contractors, coexecutors, coadministrators when statute waived.

In actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the statute of limitations or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby: *Provided,* That nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever: *Provided, also,* That in actions to be commenced against two or more joint contractors, or executors, or administrators, if it shall appear at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of such joint contractors, or executors, or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise or otherwise, judgment may be given for the plaintiff as to such defendant or defendants against whom he shall recover. No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall purport to be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the statute of limitations. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271.)

CROSS REFERENCE

Statutes of limitation, § 12–201 et seq.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

A promise to pay to the creditor an indebtedness at such time as creditor should need it is not a conditional promise to pay but an acknowledgment and new promise, and sufficient to avoid bar of statute of limitations. *Cooper* v. *Olcott* (1 App. D. C. 123).

NEW CONTRACTS

This section respecting form of acknowledgment in actions of debt, or upon the case, grounded upon any simple contract, in order to take case out of operation of statute of limitations, has reference only to a unilateral act or statement, and does not render ineffective a new promise supported by contemporaneous consideration. *Cafritz* v. *Koslow* (App. D. C. 1948, 167 F. 2d 749).

Where plaintiff, in sister's action to recover money allegedly loaned to brother, was seeking recovery on basis

of new relationship founded upon oral contract whereby old indebtedness barred by limitations was incorporated as an element of consideration, old indebtedness, if it ever existed and remained unsatisfied, would afford consideration for new oral contract, since statute of limitations operated merely to extinguish the remedy and not the right. *Cafritz* v. *Koslow* (App. D. C. 1948, 167 F. 2d 749).

PRIOR TO CODE

Mann v. *Cooper* (2 App. D. C. 226); *Flannery* v. *Maine Red Granite Co.* (3 App. D. C. 395); *Pumphrey* v. *Boggan* (8 App. D. C. 449); *Cropley* v. *Eyster* (9 App. D. C. 373); *Reed* v. *Tierney* (12 App. D. C. 165).

Evidence of a new promise may be given under the general issue joined on the plea of limitations. *Pumphrey* v. *Boggan* (8 App. D. C. 449).

Defendant can not be permitted, after he has made an acknowledgment, the effect of which may be to remove the bar, or to prevent the running of the statute, as to a particular account, upon a different occasion, by his declaration or claim, to overcome, qualify, or defeat the effect of his previous acknowledgment. *Bean* v. *Wheatley* (13 App. D. C. 473).

ACKNOWLEDGMENT OF PARTNER

When debt is legally subsisting and not affected by the statute of limitations, an acknowledgment or promise of one partner will avoid the operation of the statute as to the rest. *Flannery* v. *Maine Red Granite Co.* (3 App. D. C. 395).

EVIDENCE

Testimony of oral acknowledgment and promise to pay debt within statute of limitations is admissible in action against one upon the debt when there is other and written evidence consisting of letters relating to the debt, as § 1271 does not make testimony of oral acknowledgment wholly inadmissible, but provides only that it shall not be sufficient evidence. *Shelley* v. *Westcott* (23 App. D. C. 135).

Parol evidence, if competent, is admissible as to indorsement of payment on note. *Madison* v. *White* (60 App. D. C. 329, 54 Fed. (2d) 440).

EXTENSION OF TIME

Agreement for the extension of the time for payment was good and binding upon the parties thereto; and consequently the right of action upon the note, by reason of such extension of time for payment, did not accrue until the 16th of March 1894; and as this action was commenced on the 19th of February 1897, therefore the statute of limitations forms no bar to the right of recovery. *Reed* v. *Tierney* (12 App. D. C. 165).

JUDGMENT FOR EXECUTION

Judgment for execution is a new judgment, and statute of limitations begins to run from the new date. *Mann* v. *Cooper* (2 App. D. C. 226).

NOTES SECURED BY MORTGAGE

On petition by holder of one of two notes secured by mortgage for leave to participate in sale of mortgaged property in foreclosure proceedings by the holder of the other note, in this proceeding the bar of limitation, or lapse of time, does not apply, as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (9 App. D. C. 373).

SUFFICIENCY OF ACKNOWLEDGMENT

"To effect a confirmation of a contract entered into during infancy, the act must have been done with knowledge that the contract was voidable." *Manning* v. *Gannon* (44 App. D. C. 98). See also *Gannon* v. *Manning* (42 App. D. C. 206).

"A distinct and unequivocal acknowledgment by the debtor of the debt as a still subsisting personal obligation constitutes an implied promise to pay it, and this, 'according to all the authorities, is all that is required to remove the statute in the case of a simple contract'" (referring to such a promise in writing). *Green* v. *Reeves* (47 App. D. C. 83), citing *Ruppert* v. *Beavans* (2 App. D. C. 298) and *Catholic University* v. *Waggaman* (32 App. D. C. 307). See also *Hornblower* v. *George Washington University* (31 App. D. C. 64); *Strong* v. *Andros* (34 App. D. C. 278).

Correspondence between parties, to be sufficient acknowledgment of indebtedness to toll the statute, must recognize subsisting personal obligation. *Hayden* v. *International Banking Corp.* (59 App. D. C. 313, 41 Fed. (2d) 107).

The acknowledgment must not be accompanied by circumstances which negative any intention or promise to pay. *Moore* v. *Snyder* (71 App. D. C. 293, 109 Fed. (2d) 840).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan* v. *Lincoln Inv. Corp.* (71 App. D. C. 365), 110 Fed. (2d) 130).

§ 12–306 [11: 6]. New promise by quondam infant to be in writing—Ratification by conduct.

No action shall be maintained whereby to charge any person upon any acknowledgment of, or promise to pay, any debt contracted during infancy made after full age, except for necessaries, unless such acknowledgment or promise shall be made by some writing signed by the party to be charged therewith: *Provided,* That nothing herein contained shall affect ratification by conduct. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

The 1902 amendment added this section as a last paragraph to § 1271 of the 1901 act. The rest of § 1271 is contained in this Code as § 12–305.

NOTES TO DECISIONS

TORT ACTION

Seller of automobile to minor representing himself to be of age, who disaffirms purchase, may nevertheless recover damage to car. *Dick Murphy, Inc.* v. *Holcer* (61 App. D. C. 65, 57 Fed. (2d) 431).

Chapter 4.—FRAUDULENT CONVEYANCES

Sec.
12–401. Intent to defraud creditors.
12–402. Intent to defraud purchasers.
12–403. Executors may sue to vacate fraudulent transaction.

§ 12–401 [11: 11]. Intent to defraud creditors.

Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded: *Provided,* That nothing herein shall be construed to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor: *Provided further,* That the question of fraudulent intent shall be deemed a question of fact and not of law. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1120.)

CROSS REFERENCES

Attachment or garnishment because of fraudulent conveyance, §§ 16–301, 16–326.

Fraudulent attornment, § 45–934.

NOTES TO DECISIONS

IN GENERAL

By the terms of the statute a final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered, and this section likewise makes every conveyance of lands with intent to defraud creditors not merely voidable, but void. *Reilly* v. *Sabin* (65 App. D. C. 125, 81 Fed. (2d) 259).

Where it did not appear that anyone but plaintiff was hindered, delayed, or defrauded by transfer of property sought to be set aside as fraudulent, judgment to the extent that it avoided transfer as against other persons should be modified. *Brady* v. *Games,* 1942 (128 F. 2d 754, 76 U. S. App. D. C. 47).

A court should not enrich a fraudulent grantee at expense of parties not responsible for original grantor's attempt to avoid creditors. *Hurwitz* v. *Hurwitz,* 1943 (136 F. 2d 796, 78 U. S. App. D. C. 66, 148 A. L. R. 226).

Every case involving question whether debtor made fraudulent conveyances depends on its own circumstances. *J. R. Beaton Co.* v. *Berberich,* 1943 (135 F. 2d 831, 77 U. S. App. D. C. 377).

Even if a conveyance is, on its face, presumptively fraudulent, it is susceptible of explanation. *Snider* v. *Kelly,* 1943 (135 F. 2d 817, 77 U. S. App. D. C. 363, certiorari denied 64 S. Ct. 62, 320 U. S. 764, 88 L. Ed. 456).

DUTY OF COURT

Where issue regarding whether conveyance is fraudulent is presented to trial court, its duty is to determine from circumstances surrounding transaction of parties whether the intent proscribed by this section was present and in doing so, it should apply the rule that the parties intend the natural and probable consequences of their acts, and if the inevitable consequences of a conveyance are to hinder, delay or defraud creditors, the court must so hold notwithstanding denial of such intent by the parties. *Snider* v. *Kelly,* 1943 (135 F. 2d 817, 77 U. S. App. D. C. 363, certiorari denied 64 S. Ct. 62, 320 U. S. 764, 88 L. Ed. 456).

GOOD FAITH

In determining whether debtor's conveyances are fraudulent, the vital question is the good faith of the transactions. *J. R. Beaton Co.* v. *Berberich,* 1943 (135 F. 2d 831, 77 U. S. App. D. C. 377).

INTENT OF PARTIES

In creditor's suit to declare void certain transfers of title and of interests by debtor to others, record sustained determination that the transactions were consistent with an honest purpose and were free from fraud and wrongdoing. *J. R. Beaton Co.* v. *Berberich,* 1943 (135 F. 2d 831, 77 U. S. App. D. C. 377).

Where it appears from all surrounding circumstances that acts of parties are consistent with an honest purpose, it is not an inevitable consequence that conveyance will hinder, delay or defraud creditors, and the court should find accordingly. *Snider* v. *Kelly,* 1943 (135 F. 2d 817, 77 U. S. App. D. C. 363, certiorari denied 64 S. Ct. 62, 320 U. S. 764, 88 L. Ed. 456).

MORTGAGES

A mortgage made with intent to hinder, delay, or defraud the bankrupt's creditors may be declared void. *Universal Dealers Co.* v. *Cromelin* (71 App. D. C. 234, 109 Fed. (2d) 828).

The giving of the mortgage followed by withholding it from record pursuant to an agreement or understanding, operated to hinder, delay, and defraud the bankrupt's creditors as the parties are presumed to intend the natural and probable consequences of their own acts and whatever may have been the intention of the petitioner is immaterial. *In re Nolan Motor Co., Inc.* ((D. C.-D. C.), 25 Fed. Supp. 186).

PRESUMPTIONS

In determining whether debtor made fraudulent transfer, certain rebuttable presumptions go into balance, in creditor's favor, but if it appears from circumstances that challenged acts of parties to transfer are consistent with an honest purpose, the presumptions are overcome. *J. R. Beaton Co.* v. *Berberich,* 1943 (135 F. 2d 831, 77 U. S. App. D. C. 377).

QUESTION OF FACT

Under this section, the question of fraudulent intent is a "question of fact" and not a "question of law". *Snider* v. *Kelly,* 1943 (135 F. 2d 817, 77 U. S. App. D. C. 363, certiorari denied 64 S. Ct. 62, 320 U. S. 764, 88 L. Ed. 456).

QUITCLAIM DEEDS

Where circumstances indicated that debtor was not owner of property or any part of it but at best had a claim which, in hands of creditor, might have had some nuisance value as a cloud on title, that real owner was debtor's brother and that deed from debtor to brother was in nature of a quitclaim to clear brother's title, evidence sustained findings and conclusion that conveyance did not violate this section regarding fraudulent conveyances. *Snider* v. *Kelly,* 1943 (135 F. 2d 817, 77 U. S. App. D. C. 363, certiorari denied 64 S. Ct. 62, 320 U. S. 764, 88 L. Ed. 456).

TRANSFER TO WIFE OF BANKRUPT

Fraudulent transfer of bankrupt's property to wife; conveyance set aside in equity. *Harding* v. *Aaronson* (63 App. D. C. 107, 69 Fed. (2d) 845).

§ 12–402 [11: 12]. Intent to defraud purchasers.

Every conveyance of any estate or interest in land or the rents and profits thereof, and every charge upon the same, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, shall, as against such purchasers, be void; but no such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it appear that the grantee in such conveyance, or the person to be benefited by such charge, was privy to the fraud intended. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1121.)

NOTE TO DECISIONS

QUESTION OF FACT

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan v. Farmer* and *Light v. Farmer* (D. C. Mun. App. 1948, 62 A. 2d 367).

§ 12–403 [11: 13]. Executors may sue to vacate fraudulent transaction.

Any executor, administrator, receiver, assignee, or other trustee of an estate, or of the property and effects of an insolvent estate, corporation, association, partnership, or individual, may, for the benefit of creditors and others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers, and agreements made in fraud of the rights of any creditor, including themselves and others interested in any estate or property held by or of right belonging to any such trustee or estate; and every person who in fraud of the rights of creditors and others shall have received, taken, or in any manner interfered with the estate, property, or effects of any deceased person or insolvent corporation, association, partnership, or individual shall be liable, in the proper action, to the

executors, administrators, receivers, or other trustees of such estate or property for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1122.)

NOTES TO DECISIONS

ACTION TO AVOID DEED

Section authorizes executors to file suit setting aside or canceling a deed executed by testator and to collect the expenses incident thereto. *Ramsey v. Curtis* (C. A., D. C. 1950, 182 F. 2d 687, 86 U. S. App. D. C. 386).

INCREASE OF RIGHTS

This section is "procedural", and the person for whose benefit transfer is sought to be set aside can get no increased substantive rights because administrator is bringing the suit. *Hurwitz* v. *Hurwitz,* 1943 (136 F. 2d 796, 78 U. S. App. D. C. 66, 148 A. L. R. 226).

Where administratrix of deceased grantor sought to set aside transfers that allegedly had illegal purpose of defeating creditors and administratrix did not seek to benefit creditors, but to set aside the transfers for benefit of grantor's heirs, the heirs obtained no additional rights because their interests were represented by administratrix. *Hurwitz* v. *Hurwitz,* 1943 (136 F. 2d 796, 78 U. S. App. D. C. 66, 148 A. L. R. 226).

TRUST, ENFORCEMENT OF

Administratrix of deceased grantor could enforce "resulting trust" and recover proceeds of realty on behalf of heirs of grantor, notwithstanding evidence that transfers which administratix sought to set aside had illegal purpose of defeating grantor's creditors. *Hurwitz* v. *Hurwitz,* 1943 (136 F. 2d 796, 78 U. S. App. D. C. 66, 148 A. L. R. 226).

TITLE 13.—PROCESS, PLEADINGS, AND PARTIES

Chap.		Sec.
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2.	Pleadings	13–201
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Chapter 1.—PROCESS

Sec.

13–101. Form of summons.
13–102. Service or execution on Sunday—Void—Right of action for damages given.
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13–113. Notice by publication upon proper parties unknown to be alive or dead—Heirs—Devisees—Diligence to ascertain.

§ 13–101 [24: 371]. Form of summons.

In all common-law civil suits and actions in the District of Columbia the process for compelling the defendant's appearance shall be a summons in the following form:

SUMMONS

In the District Court of the United States for the District of Columbia

A B, plaintiff,
versus
C D, defendant.
} At law. Number ——

The President of the United States to the defendant, ———, greeting:

You are hereby summoned to appear in this court on or before the twentieth day, exclusive of Sundays and legal holidays, after the day of service of this writ upon you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration; and in case of your failure so to appear and answer, judgment will be given against you by default.

Witness the honorable ———, Chief Justice of said court, the —— day of ——, anno Domini ———

——— ———, Clerk.

By ——— ———, Assistant Clerk.

(Mar. 3, 1901, 31 Stat. 1419, ch. 854, § 1536.)

CROSS REFERENCES

Process in attachment and garnishment proceedings, § 16–302.

Service of process against institutions of learning, § 29–412.

Service of process upon insurance companies, §§ 35–423, 35–601, 35–1327.

RULES OF CIVIL PROCEDURE

Issuance and service of summons, see Rule 4.

NOTES TO DECISIONS

NECESSITY FOR SUMMONS

Where wife obtained a limited divorce from husband, and thereafter she filed a petition for enlargement of the decree into a decree for absolute divorce, and rule to show cause was issued, but husband refused to appear, rule to show cause would be discharged, and wife was required to proceed by summons. *Stern* v. *Stern* (D. C. Sup. 1948, 80 F. Supp. 266).

SERVICE OF PROCESS

Where trial court found that the place of service at time of service was neither defendant's dwelling house nor her usual place of abode, an order quashing service supported by more than substantial evidence must be affirmed. *Halpern* v. *Gunn* (D. C. Mun. App. 1949, 66 A. 2d 207).

§ 13–102 [24: 372]. Service or execution on Sunday—Void—Right of action for damages given.

No person or persons, upon the Lord's day, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree (except in cases of treason, felony, or breach of the peace) but the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all. (29 Car. 2, ch. 7, § 6, 1676; Kilty's Rept., p. 242; Alex. Br. Stat., p. 562; Comp. Stat., D. C., p. 451, § 54.)

CROSS REFERENCE

See note to § 13–201.

NOTE TO DECISION

SEARCH WARRANT

Where defendants were charged with violating statute in the sale of alcoholic beverages, the intervention of Sunday did not prevent a valid execution of the search warrant. The relevancy of the validity of the search warrant is not apparent where, under the ruling of the trial court, no evidence seized under the warrant was used in evidence against defendant. *Edwards* v. *District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

§ 13–103 [24: 373]. Service on foreign corporations.

In actions against foreign corporations doing business in the District all process may be served on the agent of such corporation or person conducting its

business, or, in case he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, if there be no such place of business, by leaving the same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court.

When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the said District. (Mar. 3, 1901, 31 Stat. 1419, ch. 854, § 1537; June 30, 1902, 32 Stat. 544, ch. 1329; Feb. 1, 1907, 34 Stat. 874, ch. 445.)

AMENDMENTS

The 1902 amendment added the second paragraph.

The 1907 amendment struck out the words "heretofore or hereafter" after the word "tort" in the last phrase of the last sentence.

RULES OF CIVIL PROCEDURE

See Rule 4.

NOTES TO DECISIONS

IN GENERAL

It was intended merely to remedy an existing mischief by providing a simple and effectual way through which a foreign corporation doing business in the District of Columbia might be brought before the court. It does not attempt to limit the general jurisdiction of the courts of the District and cannot prevent their jurisdiction from attaching in any case where a foreign corporation might, like a natural person resident elsewhere, appear by competent authority and answer the cause of action. *Howard* v. *Chesapeake & O. R. Co.* (11 App. D. C. 300).

CONCEALMENT BY AGENT

Where writ of garnishment was served on secretary of garnishee, a foreign corporation, and secretary filed answers to interrogatories in garnishee's name, but the secretary was the judgment debtor and concealed fact of service for her own interest and prevented notice from reaching the garnishee, the service was not in compliance with spirit of this section providing that process against a foreign corporation may be served on agent of corporation, or on person conducting its business and the service would not support judgment against the garnishee. *Encyclopaedia Britannica* v. *Shannon,* 1943 (133 F. 2d 397, 77 U. S. App. D. C. 125).

CONSTITUTIONALITY

This section is constitutional. *Hoffman* v. *Washington-Virginia R. Co.* (44 App. D. C. 418).

CONTRACTS ENTERED INTO OR TO BE PERFORMED

"It will be observed that the statute is not confined to general agency or an established custom of doing business, but it applies to a suit growing out of a contract 'entered into or to be performed, in whole or in part, in the District of Columbia.'" *Berkeley* v. *Culley* (42 App. D. C. 140).

The utilization of procedure outlined in this section for service in line of publication on nonresidents in action in rem, in causing service of written motion to have defendant adjudged in contempt for failure to pay permanent alimony to be made by deputy marshal upon defendant, resulting in service of notice in accordance with method provided in federal rule 5 (b) following section 723 of 28 U. S. C. did not convert motion into a new action in personam wherein such procedure was unavailable. *Tilghman* v. *Tilghman* (D. C., D. C. 1944, 57 F. Supp. 417).

DEFINITIONS

This section providing that, when a corporation shall "transact business" in District of Columbia without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in District shall be effectual, etc., uses quoted words as meaning "doing business". *Bilbrey* v. *Chicago Daily News* (D. C., D. C. 1944, 57 F. Supp. 579).

DOING BUSINESS

An action by a foreign corporation against another foreign corporation may be brought in District of Columbia when the defendant has business there. *Guilford Granite Co.* v. *Harrison Granite Co.* (23 App. D. C. 1).

A newspaper corporation which, in addition to its chief business of publishing a newspaper in New York, also maintains a permanent office in the District of Columbia, is doing business in the District within terms of statute so that service of process may be had. *Rickets* v. *Sun Printing & Pub. Co.* (27 App. D. C. 222).

Maintenance of an office in the District for the performance by the general officers of their duties of management and supervision of the affairs of the corporation amounts to doing business therein, especially when its president, secretary, and treasurer transacted business incidentally relating to corporate purposes. *Ferguson Contracting Co.* v. *Coal & Coke R. Co.* (33 App. D. C. 159).

Service on corporation was not proper when their room in the building had been abandoned and used as a storage place, and the officers had left the District. *Mitchell Min. Co.* v. *Emig* (35 App. D. C. 527).

When scales corporation not only negotiated sales, but looked after deliveries, collections, and complaints, service upon agent was proper under part of § 1537 of the 1901 Code (this section). *Toledo Computing Scales Co.* v. *Miller* (38 App. D. C. 237).

Service was not proper on corporation that had no office in the District of Columbia, at the time of service, for the transaction of business, and was not doing business therein. In fact it was not doing business anywhere, in the ordinary sense of the term, its purpose having been accomplished by issue of stock for purchase of patent, which formed the sole basis of its capitalization. *Doremus* v. *National Cotton Impr. Co.* (39 App. D. C. 295).

Service was proper upon agent of foreign corporation that was engaged in selling tickets for transportation between New York and Europe when such corporation had office in District of Columbia. *Windell* v. *Holland American Line* (40 App. D. C. 1).

"In this section Congress clearly has recognized the distinction made by the Supreme Court of the United States between the doing of business within a state at a place regularly established therefor, and the intermittent transaction of business through agents who come and go. Notwithstanding that a corporation is deemed to be a resident of the state of its creation, if it goes within another State or jurisdiction, and there establishes a place of business from which, through its authorized agents, its business is transacted, it must be regarded as also within that jurisdiction." *Hoffman* v. *Washington-Virginia R. Co.* (44 App. D. C. 418).

The agent or person contemplated by the Code must be possessed of such authority as will justify the conclusion that his principal, by him, is in the District. *Chase Bag Co.* v. *Munson S. S. Line* (54 App. D. C. 169, 295 Fed. 990).

Solicitation of business by railroad having no line in District held not "doing business." *Cancelmo* v. *Seaboard A. L. R. Co.* (56 App. D. C. 225, 12 Fed. (2d) 166); *Knobel* v. *Seaboard A. L. R. Co.* (56 App. D. C. 228, 12 Fed. (2d) 169).

An express company, doing business in the District, may be sued there for damages to a shipment, although shipment began and ended in other states; nor does this cause an unlawful burden on interstate commerce. *Harris* v. *American R. Exp. Co.* (56 App. D. C. 264, 12 Fed. (2d) 487).

Having selling agency contract constitutes "doing business." *Carroll Elec. Co.* v. *Freed-Eisemann Radio Corp.* (60 App. D. C. 228, 50 Fed. (2d) 993).

A foreign newspaper maintaining correspondent in District constitutes "doing business." *Neely* v. *Philadelphia Inquirer Co.* (61 App. D. C. 334, 62 Fed. (2d) 873).

The mere collection of news in Washington and its transmission to a paper published outside the District of Columbia is not "doing business" within meaning of statute. *Layne* v. *Tribune Co.* (63 App. D. C. 213, 71 Fed. (2d) 223).

A foreign corporation is amendable to process to enforce a personal liability, in the absence of consent only if it is doing business within the state in such manner as to warrant the inference that it is present there, citing *Philadelphia & Reading R. Co.* v. *McKibben* (243 U. S. 264, 61 L. Ed. 710, 37 Sup. Ct. 280). *Whitaker* v. *Macfadden Publications* (70 App. D. C. 165, 105 Fed. (2d) 44).

The trial court was without jurisdiction and the original judgment was void where foreign corporation was never engaged in business in the District of Columbia, and has no officer or agent in the District upon whom process could be served. *Consolidated Radio Artists* v. *Washington Section* (70 App. D. C. 262, 105 Fed. (2d) 785).

The mere insuring of residents of a foreign state, the contract of insurance being made and carried out in the home state, does not constitute "doing business" in the state of the insured. *Sasnett* v. *Iowa State Traveling Men's Assn.* ((C. C. A. 8), 90 Fed. (2d) 514).

The fundamental principle underlying the "doing business" concept, rendering foreign corporation amenable to process is the maintenance within jurisdiction of a regular, continuous course of business activities, whether or not it includes the final stage of contracting and if, in addition to regular course of solicitation, other business activities are carried on, the corporation is "present" for jurisdictional purposes. *Frene* v. *Louisville Cement Co.,* 1943 (134 F. 2d 511, 77 U. S. App. D. C. 129).

In determining whether acts of foreign corporation's agents constitute "doing business" in jurisdictional sense, the test of agent's authority is not found in inquiry whether he is required to do questioned act by formal instructions of corporation or his failure to do it would be breach of duty to corporation, but rather in nature of the act, in relation to corporation's business, and whether the corporation has assented to it either by explicit modification of original instructions or impliedly by a course of conduct inconsistent with the limitations they impose. *Frene* v. *Louisville Cement Co.,* 1943 (134 F. 2d 511, 77 U. S. App. D. C. 129).

Where foreign corporation's employee was not required by original authorization to do more than solicit orders in court's territorial jurisdiction but to create good will and with corporation's consent employee visited jobs where corporation's product was being used, made suggestions for solving difficulties, received complaints, forwarded them to corporation's home office and aided generally in preventing and clearing up difficulties and the corporation accepted benefits derived from such activities, the employee's activities constituted "doing business" or "transacting business" so as to make the corporation amenable to process. *Frene* v. *Louisville Cement Co.,* 1943 (134 F. 2d 511, 77 U. S. App. D. C. 129).

An Illinois newspaper publishing corporation maintaining an office in Washington and a "Washington correspondent" in charge was not "doing business" within the District so as to give court of District jurisdiction by service of process on such correspondent. *Bilbrey* v. *Chicago Daily News* (D. C., D. C. 1944, 57 F. Supp. 579).

A foreign corporation is amenable to process to enforce a personal liability only if it is doing business within state to such extent as to warrant inference that it is present there. *Bilbrey* v. *Chicago Daily News* (D. C., D. C. 1944, 57 F. Supp. 579).

The mere maintenance of an office for solicitation of business within District does not subject foreign corporation to process of course of District as "doing business" therein. *Atlantic Coast Line R. Co.* v. *Goldberg* (D. C. Mun. App. 1944, 39 A. 2d 563).

Where railroad, which had no tracks in District but whose cars continued into District over tracks of another railroad which controlled and operated them, maintained offices in District for solicitation of business and for conduct of its dining car service, it was "doing business" in District, and service of process on its agent within District was valid. *Atlantic Coast Line R. Co.* v. *Goldberg* (D. C. Mun. App. 1944, 39 A. 2d 563).

Where foreign corporation engaged almost entirely in manufacture of war materials for the United States maintained representative in Washington, D. C., with primary duty of maintaining contact with various government agencies in respect to reports, allocations, and directives relating to the corporation's requirements for materials and incidentally with duty of soliciting orders but without authority to make any binding commitment, corporation maintained office for the representative in Washington and its name was carried in telephone directory, city directory, and in a trade catalog, the corporation was not "doing business" within this section governing service of process. *Mueller Brass Co.* v. *Alexander Milburn Co.* (App. D. C. 1945, 154 F. 2d 142).

Mere solicitation of orders by foreign corporation's agent does not constitute "doing business" within this section governing service of process. *Mueller Brass Co.* v. *Alexander Milburn* (App. D. C. 1945, 152 F. 2d 142).

Under this section, District Court of United States for District of Columbia has jurisdiction over corporations which are domestic in a local sense and over those which, by doing business, are present in the District of Columbia. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (App. D. C. 1946, 155 F. 2d 864, 81 U. S. App. D. C. 124).

Where Tennessee Valley Authority was organized as government agency under 16 U. S. C. § 831g providing that it should be resident of northern judicial district of Alabama within 28 U. S. C. § 112, but Authority maintained office in District of Columbia, the Authority was not "doing business" in the district in jurisdictional sense and did not waive venue. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (App. D. C. 1946, 155 F. 2d 864, 81 U. S. App. D. C. 124).

"Doing business" is equivalent to "transacting business" and generally statutes prohibiting a foreign corporation from doing business until it has filed a certificate, etc., have reference to a continuation in some form of business and do not apply where a foreign corporation does a single act of business within the state. *Frye* v. *Batavia (N. Y.) Veterans Administration Emp. Federal Credit Union No. 189, Inc.* (D. C., D. C. 1948, 8 F. R. D. 334).

It can well be that many corporations have representatives in the City of Washington solely for the purposes of transacting business with the government and this would not constitute the doing of business within the District under the statute. However, when a corporation maintains an office and otherwise holds itself out to the public generally as being present in the city for the purpose of doing business, it submits itself to the jurisdiction of the courts of the District. *State of Maryland* v. *Eastern Airlines* (D. C. D. C. 1948, 81 F. Supp. 345).

A Maryland corporation operating as a private school, with all its educational activities conducted in Maryland, is not amenable to service under statute despite the fact that it maintained bank accounts in the District, made purchases or advertised in local papers and was listed in the local telephone directory. *Lichtenberg* v. *Bullis Schools, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 586).

Maryland corporation, solely owned by the U. S. and doing business in the District of Columbia, may be sued in the District in the manner provided by law. *Hood* v. *Defense Homes Corp.* (D. C. D. C. 1949, 83 F. Supp. 365).

The term "doing business" is not one possessed of but a single meaning in the law but is used in conection with many different situations and must be characterized and defined according to the context. What constitutes doing business for purpose of taxation may be very different from doing business for purpose of process and subjection by foreign corporation to the jurisdiction of local courts. *Goldberg* v. *Southern Builders, Inc.* (C. A. D. C. 1950, 184 F. 2d 345).

It is clear that the foreign corporation's contacts with the District have been regular and systematic, since its books, records, and offices all are in the District. Under such circumstances, a foreign corporation was doing business in the District and upon service of process, was subject to the jurisdiction of the district court. *Goldberg* v. *Southern Builders, Inc.* (C. A. D. C. 1950, 184 F. 2d 345).

GENERAL APPEARANCE

Coupling of a motion to dismiss with a motion to quash service of process did not constitute a "general appearance" by foreign corporation and thus give court jurisdiction. *Frye* v. *Batavia (N. Y.) Veterans Administration Emp. Federal Credit Union No. 189* (D. C., D. C. 1948, 8 F. R. D. 334).

The fact that affidavits filed by counsel for nonresident corporation in connection with motion to quash service of process also went to merits did not amount to a "general appearance" so as to give the court jurisdiction. *Frye* v. *Batavia (N. Y.) Veterans Administration Emp. Federal Credit Union 189* (D. C., D. C. 1948, 8 F. R. D. 334).

INDEPENDENT CONTRACTOR

Evidence showed that foreign corporation was not doing business in the District of Columbia, and service upon independent contractor of the corporation did not bring such corporation before the court. *Read* v. *LaSalle Extension University* (App. D. C. 1946, 156 F. 2d 575).

PARTNERSHIPS

Statute relating to foreign corporations does not apply to partnerships. *Matson* v. *Mackubin* (61 App. D. C. 102, 57 Fed. (2d) 941).

PENDING BANKRUPTCY PROCEEDING

No effective service in a creditor's suit for appointment of receiver of company whose only asset is a claim against the United States Shipping Board and Emergency Fleet Corporation can be made owing to a bankruptcy proceeding begun in another court having full jurisdiction. *Zibell* v. *Meacham & Babcock Shipbldg. Co.* (56 App. D. C. 385, 16 Fed. (2d) 330).

PLEADING

To raise the question whether summons was served on proper representative, motion to quash service is proper. *Bloedorn* v. *Washington Times Co.* (67 App. D. C. 91, 89 Fed. (2d) 835).

To same effect as original annotation, see *Read* v. *LaSalle Extension University* (App. D. C. 1946, 156 F. 2d 575).

PURPOSE

The statute is remedial in purpose and its object is quite clear—to enable the District of Columbia courts to exercise jurisdiction over foreign corporations which engage in business activities in the District. *Goldberg* v. *Southern Builders, Inc.* (C. A. D. C. 1950, 184 F. 2d 345).

SERVICE UPON OFFICER

When officers of corporation are not in the District in their official or representative capacity and it is not shown that they are clothed with authority, the corporation is not liable to suit in a jurisdiction foreign to its creation. *Ambler* v. *Archer* (1 App. D. C. 94).

STATUTE MUST BE STRICTLY FOLLOWED

When appellant had closed its office and removed its property from the District and there were no agents in the District, service of summons could not be secured, and statutes pertaining to such service must be strictly followed. *New York Continental Filtration Co.* v. *Karr* (31 App. D. C. 459).

§ 13–104 [24: 374]. Corporations—Process by publication.

In a suit against a corporation, whether foreign or domestic, if process can not be served, such corporation may be proceeded against as a nonresident defendant, by notice by publication. (Mar. 3, 1901, 31 Stat. 1207, ch. 854, § 112.)

RULES OF CIVIL PROCEDURE

See Rule 4.

§ 13–105 [24: 375]. Process against infants—Guardian ad litem—Attorney—Compensation.

Whenever an infant is a party defendant in any suit, in equity or at law, the subpœna or summons issued in such suit shall be served upon him personally, and also the person with whom he resides if under sixteen years of age, if within the District, and said infant shall in such case be produced in court, unless, for cause shown, the court shall dispense with his appearance; and it shall be the duty of the court to appoint a suitable and competent person guardian ad litem for such infant, to appear for and defend such suit on his behalf, and whenever in the judgment of the court the interests of such infant shall require it the court shall assign a solicitor or attorney to represent such infant, whose compensation shall be paid by the plaintiff, or out of the estate of such infant, at the discretion of the court. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 102; June 30, 1902, 32 Stat. 523, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the section of the 1901 Act and inserted in lieu thereof the above. The 1901 section read: "Whenever an infant is a party defendant in any equity suit, the subpœna issued in said suit shall be served upon him personally, if within the District, and the said infant shall be produced in court unless, for cause shown, the court shall dispense with his appearance, and a guardian ad litem shall be appointed to answer the bill and defend the suit for him, the said infant having the right to select his guardian ad litem if of the age of fourteen years or older."

CROSS REFERENCES

Appointment of guardian for non compos mentis or infant owners of buildings sought to be condemned by board for condemnation of insanitary buildings, § 5–609.

Guardian ad litem for persons under disability in condemnation proceedings to obtain lands for streets, § 7–204; to condemn lands for public parks and playgrounds, § 8–102.

STATUTORY REFERENCE

Guardian ad litem for persons under disabilities in proceedings to condemn lands for public parks and playgrounds, U. S. C., title 40, § 120.

RULES OF CIVIL PROCEDURE

See Rule 4.

NOTES TO DECISIONS

ADOPTION

General statutes prescribing appointment of guardian ad litem to protect infants, and the rules for civil procedure in the District Courts authorizing appointment of guardian ad litem for infant or incompetent person not otherwise represented in an action do not govern procedure in adoption proceedings. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

ANSWER FILED BY GUARDIAN

Decree of court is valid against infant although there was no service upon him, where a guardian ad litem had been appointed for him and an answer had been filed by such guardian. *Manson* v. *Duncanson* (166 U. S. 533, 41 L. Ed. 1105, 17 Sup. Ct. 647, affg. 3 App. D. C. 260).

APPOINTMENT OF GUARDIAN AD LITEM

Where defense of infancy was asserted, trial court should satisfy itself as to defendant's age and appoint guardian ad litem before proceeding with trial, if infancy were established, even though defendant's attorney did not make formal request for guardian ad litem and did not insist on offering testimony as to defendant's age. *Gray* v. *Droze* (D. C. Mun. App. 1947, 55 A. 2d 340).

Trial courts have mandatory duty under this section to provide guardian ad litem for every underage defendant, and to make inquiry as to defendant's actual age whenever the defense of infancy is advanced. *Gray* v. *Droze* (D. C. Mun. App. 1947, 55 A. 2d 340).

CIVIL PROCEEDINGS ONLY

Applies only to civil and not criminal proceedings. *Ledrick* v. *United States* (42 App. D. C. 384).

§ 13–106 [24: 376]. Secreting infant to evade process—Penalty—Infant secreting himself treated as nonresident.

If any person shall secrete an infant against whom process has issued, so as to prevent the service of such process, or shall prevent his appearance in court as aforesaid, such person shall be liable to attachment and punishment as for contempt; or if any infant shall secrete himself or evade the service of process, he may be proceeded against as if he were a nonresident. (Mar. 3, 1901, 31 Stat. 1206, ch. 854, § 103.)

RULES OF CIVIL PROCEDURE

See Rule 4.

§ 13–107 [24: 377]. Persons non compos mentis—On committee—Guardian ad litem.

If a person non compos mentis be a party defendant in any suit at law, or in equity, process shall be served upon him, if within the District, and upon his committee, if there be one within the District, and if there be no such committee and the court shall be satisfied as to the condition of said party, it may appoint a guardian ad litem to answer and defend for him. (Mar. 3, 1901, 31 Stat. 1206, ch. 854, § 104; June 30, 1902, 32 Stat. 523, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "equity suit, the subpœna" and inserted in lieu thereof the words "suit at law, or in equity, process" in the first phrase.

CROSS REFERENCES

Service of process on inmates of the District Training School, § 32–627.

Summons in feeble-minded inquest, § 32–609.

See notes to § 13–105.

RULES OF CIVIL PROCEDURE

See Rule 4.

§ 13–108 [24: 378]. Publication as to nonresident, those absent for six months, unknown heirs or devisees, for divorce or proceeding in rem—Actual service beyond District.

Publication may be substituted for personal service of process upon any defendant who cannot be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons, in suits for partition, divorce, annulment, by attachment, foreclosure or mortgages and deeds of trust, the establishment of title to real estate by possession, the enforcement of mechanics' liens, and all other liens against real or personal property within the District, and in all actions at law and in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

Personal service of process may be made by any person not a party to or otherwise interested in the subject-matter in controversy on a nonresident defendant out of the District of Columbia, which service shall have the same effect and no other as an order of publication duly executed. In such case the return must be made under oath in the District of Columbia, unless the person making the service be a sheriff or deputy sheriff, a marshal or deputy marshal, authorized to serve process where service is made, and such return must show the time and place of such service and that the defendant so served is a nonresident of the District of Columbia. The cost and expense of such service of process out of the District of Columbia shall be borne by the party at whose instance the same is made and shall not be taxed as a part of the costs in the case; but where such service of process is made by same authorized officer of the law in this section mentioned, the actual and usual cost of such service of process shall be taxed as a part of the costs in the case. (Mar. 3, 1901, 31 Stat. 1206, ch. 854, § 105; Apr. 19, 1920, 41 Stat. 556, ch. 153; June 20, 1949, 63 Stat. 214, ch. 230.)

AMENDMENT

The act of June 20, 1949, amended the first paragraph by inserting the word "annulment" following "divorce". The 1920 amendment added the second paragraph.

CROSS REFERENCE

Service of process on nonresident owner of motor vehicles in actions growing out of accidents or collisions within the District, § 40–403.

RULES OF CIVIL PROCEDURE

See Rule 4.

NOTES TO DECISIONS

IN GENERAL

"Constructive service is a statutory proceeding, and each step required to be taken is essential to the validity of the service." *Thompson* v. *Tanner* (53 App. D. C. 3, 287 Fed. 980).

Generally, mere casual and occasional acts do not furnish a sufficient basis for assertion of jurisdiction of person in cases of nonresidents. *Frene* v. *Louisville Cement Co.*, 1943 (134 F. 2d 511, 77 U. S. App. D. C. 129).

CONSTRUCTION WITH OTHER LAWS

Personal service of process on non-resident defendant in the state where he resided was not invalid because prior thereto a summons had not been issued and returned "Not to be found" in the District of Columbia and because his non-residence had not been proved by affidavit according to § 13–109 dealing with service on a non-resident by publication, since that section has no application to provision of this section relating to personal service on a non-resident. *Gaines* v. *Gaines* (App. D. C. 1946, 157 F. 2d 521, 81 U. S. App. D. C. 260).

ADOPTION PROCEEDING

Where summons in adoption proceeding was delivered to child's legal custodian in another jurisdiction, his letter to clerk of court stating that he was not interested in outcome of suit and that letter was to be treated as his answer to the summons was not an "appearance," but a mere acknowledgment of summons. *Wathen* v. *Ugast*, 1944 (143 F. 2d 160, 79 U. S. App. D. C. 162).

In proceeding for adoption of child who was in custody of legal custodian in another jurisdiction, service of process upon custodian in that jurisdiction, not being authorized by statute, was invalid. *Wathen* v. *Ugast*, 1944 (143 F. 2d 160, 79 U. S. App. D. C. 162).

ALIEN PROPERTY CUSTODIAN

Jurisdiction of Supreme Court of District over suit against Secretary of Treasury to determine right to fund created by Alien Property Custodian. *Doerschuck* v. *Mellon* (60 App. D. C. 383, 55 Fed. (2d) 741).

Parties in suit against Alien Property Custodian. *Pilger* v. *Sutherland* (61 App. D. C. 84, 57 Fed. (2d) 604).

ALIMONY

Any attempt to enforce the payment of an order for alimony and suit money pendente lite in a foreign jurisdiction is in the nature of an action in personam, and can be maintained only through personal service upon the defendant. *Johnston* v. *Johnston* (64 App. D. C. 87, 74 Fed. (2d) 774).

Fact that written motion to have defendant adjudged in contempt for failure to pay permanent alimony awarded in judgment for absolute divorce was served upon defendant personally instead of attorney, without obtaining in advance an order of court authorizing such service, did not invalidate the service. *Tilghman* v. *Tilghman* (D. C., D. C. 1944, 57 F. Supp. 417).

A decree for payment of alimony against a non-resident brought before the court by constructive or extra-territorial service is void except as to property which is within the court's jurisdiction, and which has been specifically proceeded against in the divorce action. *Gaines* v. *Gaines* (App. D. C. 1946, 157 F. 2d 521, 81 U. S. App. D. C. 260).

Order of District Court of District of Columbia directing resident of Virginia who was personally served in Virginia, to pay alimony pendente lite, was "in personam" and void for lack of jurisdiction, in absence of any acts by non-resident to subject himself to court's authority, and in absence of a claim of, right to, or lien on any personalty in District of Columbia. *Gaines* v. *Gaines* (App. D. C. 1946, 157 F. 2d 521, 81 U. S. App. D. C. 260).

ATTACHMENT

Although this section authorizes publication in cases of attachment, an attachment can not issue under § 445 (§ 16–301) against the property of a decedent for a debt due by him, when the estate is being administered in another jurisdiction. *Jordon* v. *Landram* (35 App. D. C. 89), citing *Graham* v. *Fitch* (13 App. D. C. 569).

Service by publication is not good in actions in personam on nonresidents not found within jurisdiction unless property of party within jurisdiction is the subject of attachment. *Indemnity Ins. Co. of North America* v. *Smoot* (App. D. C. 1945, 152 F. 2d 667, 80 U. S. App. D. C. 287, 163 A. L. R. 498, certiorari denied 66 S. Ct. 981, 328 U. S. 835, 90 L. Ed.).

DISMISSAL

Where complaint was not predicated solely on establishment of a lien upon fund held by Secretary of Treasury for benefit of non-resident defendant but also sought injunction and specific performance against non-resident personally, fact that order of publication against non-resident defendant was required to be vacated as not within purview of this section did not entitle non-resident defendant to dismissal of the action as to him, since if non-resident defendant should be personally served court would have jurisdiction to give appropriate relief. *Dunn* v. *Parker* (D. C., D. C. 1948, 8 F. R. D. 373).

DIVORCE

This section which authorizes substituted service in suits for divorce does not apply in suits for maintenance. *Bliss* v. *Bliss* (60 App. D. C. 237, 50 Fed. (2d) 1002).

MAINTENANCE

A suit for maintenance is a proceeding in personam, and this section, authorizing substituted service, does not apply. *Vertner* v. *Vertner* (63 App. D. C. 179, 70 Fed. (2d) 783).

PERSONAL PROPERTY

Quaere: Whether a defendant in a contract action, by complying with the conditions of § 1531 (§13–217), can convert the same into one having for its "immediate object the enforcement * * * of any lawful right * * * to * * * any personal property within the jurisdiction," so as to authorize service by publication under this section. *Dexter* v. *Lichliter* (24 App. D. C. 222).

A check or draft in the hands of the treasurer of the United States, in which the United States has no longer any interest is "personal property" within the meaning of this section. *Jones* v. *Rutherford* (26 App. D. C. 114).

A treasury check held by the Government was "personal property" within meaning of statute. *Morgenthau* v. *Fidelity & Deposit Co.* (68 App. D. C. 163, 94 Fed. (2d) 632).

A trust res in the form of a deposit in a local bank is personal property within the meaning of this section. *Green* v. *Brophy* (71 App. D. C. 299, 110 Fed. (2d) 539).

Money paid into United States Treasury by the Mexican Government is "personal property" within meaning of statute. *American-Mexican Claims Bureau, Inc.* v. *Morgenthau* ((D. C.-D. C.), 26 Fed. Supp. 904).

Suit against trustee and beneficiary of trusts by beneficiary's divorced wife to establish on behalf of herself and minor child interest in trust funds, located within District of Columbia, and proceeds thereof, was for purpose of enforcing or establishing a lawful right against "property" within this section, so that process was properly served by publication on beneficiary who was absent from district. *Buchanan* v. *National Sav. & Trust Co.*, 1944 (146 F. 2d 13, 79 U. S. App. D. C. 278).

QUASHING SERVICE

In suit for an accounting and discovery and for appointment of receiver, where verified complaint alleged that defendant was resident of District of Columbia, but summons was served on defendant in Virginia and the return, verified by a Virginia sheriff, alleged that defendant "is a nonresident of the District of Columbia," denied of defendant's motion, made on special appearance, to quash service of process was error. *Contella* v. *Clayton*, 1944 (140 F. 2d 469, 78 U. S. App. D. C. 291).

REVIVAL OF JUDGMENT

The service of notice of motion to revive a judgment obtained in Municipal Court of District of Columbia could be made upon a judgment debtor in Maryland upon showing that he was a non-resident, without first having a summons issued in the District of Columbia and returned "not to be found" and the debtor's non-residence established by affidavit. *White* v. *O. R. Evans & Bro.* (App. D. C. 1946, 157 F. 2d 857).

RIGHT AS STATUTORY

Notice by publication is in derogation of the common law, and it can be availed of only when a statute permits. *Cooper* v. *Burton*, 1942 (127 F. 2d 741, 75 U. S. App. D. C. 298).

SITUS OF THE "CLAIM"

The situs of the claim alone does not authorize notice to a nonresident defendant by publication under the code. *Lindberg* v. *Humphrey* (53 App. D. C. 243, 289 Fed. 901).

VACATING ORDER

Plaintiff's action so far as it related to establishment of a lien upon a fund held by Secretary of Treasury for benefit of non-resident defendant under Settlement of Mexican Claims Act, 22 U. S. C. § 668 (b), did not come within purview of this section providing for publication as to non-residents, and, hence, non-resident defendant's motion to vacate order of publication would be granted. *Dunn* v. *Parker* (D. C., D. C. 1948, 8 F. R. D. 373).

WAIVER BY APPEARANCE

When the jurisdiction over the defendant rests upon her having voluntarily appeared and answered the bill without objection, the decree binds her. *Houston* v. *Ormes* (252 U. S. 469, 64 L. Ed. 667; 40 Sup. Ct. 369).

A general appearance waives irregularities in obtaining the order of publication. *Landram* v. *Jordan* (25 App. D. C. 291, affd. 203 U. S. 56, 51 L. Ed. 88, 27 Sup. Ct. 17).

§ 13–109 [24: 379]. Service by publication—Return of summons—Proof of absence by affidavit.

No order for the substitution of publication for personal service shall be made until a summons for the defendant shall have been issued and returned "Not to be found," and the nonresidence of the defendant or his absence for at least six months shall be proved by affidavit to the satisfaction of the court. (Mar. 3, 1901, 31 Stat. 1206, ch. 854, § 106.)

RULES OF CIVIL PROCEDURE

See Rule 4.

NOTES TO DECISIONS

CONSTRUCTION WITH OTHER LAWS

Personal service of process on non-resident defendant in the state where he resided was not invalid because prior thereto a summons had not been issued and returned "Not to be found" in the District of Columbia and because his non-residence had not been proved by affidavit according to this section dealing with service on a non-resident by publication, since this section has no application to provision of § 13–108 relating to personal service on a non-resident. *Gaines* v. *Gaines* (App. D. C. 1946, 157 F. 2d 521, 81 U. S. App. D. C. 260).

PLURIES SUMMONS

Order of publication cannot be had before return day named in summons, and this rule applies as well to pluries summons. *Thompson* v. *Tanner* (53 App. D. C. 3, 287 Fed. 980), citing *Plumb* v. *Bateman* (2 App. D. C. 156).

§ 13–110 [24: 380]. Form of order of publication.

The order of publication shall be in the following or an equivalent form:

In the District Court of the United States for the District of Columbia.

A B, complainant,
versus
C D, defendant.
} In ———. No. ——.

The object of this suit is to (state it briefly).

On motion of the complainant, it is this —— day of ——, A. D. ——, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

E F, Justice.

(Mar. 3, 1901, 31 Stat. 1206, ch. 854, § 107.)

RULES OF CIVIL PROCEDURE

See Rule 4.

§ 13–111 [24: 381]. Publication of notice — Affidavit showing copy mailed—Guardian ad litem.

Every such order shall be published at least once a week for three successive weeks, or oftener, or for such further time as may be specially ordered; and no order or decree shall be passed against said absent or nonresident defendant upon proof of notice by such publication unless the complainant, plaintiff, his agent, or solicitor, or attorney shall file in the cause an affidavit showing that at least twenty days before applying for such order or decree he mailed, postpaid, a copy of said advertisement, directed to the party therein ordered to appear, at his last known place of residence, or that he has been unable to ascertain the last place of residence of said party after diligent effort to ascertain the same. On failure of the defendant to appear in obedience to said notice within the time named therein, a decree or judgment by default may be entered: *Provided,* That if the said absent or nonresident defendant be an infant, the court shall appoint a guardian ad litem to answer and defend for him, and may assign counsel to represent him as provided in section 13–105. (Mar. 3, 1901, 31 Stat. 1206, ch. 854, § 108; June 30, 1902, 32 Stat. 523, ch. 1329.)

AMENDMENT

The 1902 amendment added the last phrase.

CROSS REFERENCES

See notes to § 13–105.

See notes to §§ 13–108, 13–109. *Thompson* v. *Tanner* (53 App. D. C. 3, 287 Fed. 980).

RULES OF CIVIL PROCEDURE

See Rule 4.

NOTES TO DECISIONS

SUFFICIENCY

Two publications in each of four consecutive periods of seven days from date of order of publication satisfy requirement that publication be twice a week for period of not less than four weeks. *Leach* v. *Burr* (188 U. S. 510, 47 L. Ed. 567, 23 Sup. Ct. 393, affg. 17 App. D. C. 128).

§ 13–112 [24: 382]. Notice by publication upon non compos mentis, nonresident defendant—Assignment of attorney.

If the court shall be satisfied that said absent or nonresident defendant is non compos mentis, notice may be given to him by publication as aforesaid, and upon his failure to appear such decree or judgment may be passed as the circumstances of the case may require: *Provided,* That no decree or judgment shall be passed unless the case is fully proved; and the court shall assign a solicitor or attorney to represent such nonresident defendant and such solicitor or attorney shall be paid by the complainant or out of the estate of the defendant, at the discretion of the court. (Mar. 3, 1901, 31 Stat. 1207, ch. 854, § 109.)

CROSS REFERENCE

See notes to §§ 13–105, 13–107.

RULES OF CIVIL PROCEDURE

See Rule 4.

§ 13–113 [24: 383]. Notice by publication upon proper parties unknown to be alive or dead—Heirs—Devisees—Diligence to ascertain.

Upon allegation under oath, and proof satisfactory to the court, that it is unknown whether one who, if living, would be a proper party to any judicial proceeding is living or dead, such party may be proceeded against as if he were living, and with like effect, provided no representative of or claimant under such person shall intervene in the suit before final determination thereof, after notice by publication as in the case of nonresident parties. If such person be dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees be unknown, such unknown persons may be described as the heirs or devisees of the person who, if living, would be the proper party, and notice shall be given by publication to such persons according to such description, and the same proceedings shall be had against them as are had against nonresident defendants, except that said notice shall be published at least twice a month for such period as the court may order, which period shall not be less than three months without good cause shown, and which notice shall require said parties to appear on or before the first rule day occurring after the expiration of such prescribed period, and no decree shall be passed against said parties unless the court shall be satisfied that due diligence has been used to ascertain such unknown heirs. (Mar. 3, 1901, 31 Stat.

1207, ch. 854, § 110; June 30, 1902, 32 Stat. 524, ch. 1329.)

AMENDMENT

The 1902 amendment changed the word "heirs" to "parties" in the caption to this section as it appeared in the 1901 code.

RULES OF CIVIL PROCEDURE

See Rule 4.

Chapter 2.—PLEADINGS

Sec.

13–201. Pleadings must be in English tongue.
13–202. All proceedings which concern the law and administration of justice shall be in the English tongue—Penalty for violation.
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13–222. Fines, penalties, and forfeitures accruing under Maryland laws to be recovered in name of United States—Disposition of amount recovered.

§ 13–201 [24: 1]. Pleadings must be in English tongue.

All pleas which shall be pleaded in any courts whatsoever, before any justices whatsoever, or in other places, or before any other ministers whatsoever, shall be pleaded, shewed, defended, answered, debated, and judged in the English tongue. (36 Edw. 3, ch. 15, § 1, 1362; Kilty Rep., p. 221; Alex. Br. Stat., p. 177; Comp. Stat., D. C., p. 445, § 27.)

COMPILER'S NOTES

Many sections of this and other titles are affected by the Rules of Civil Procedure for the District Courts of the United States, adopted by the Supreme Court of the United States pursuant to the act of June 19, 1934, 48 Stat. 1064, ch. 651, §§ 1, 2 (U. S. C., title 28, §§ 723b, 723c).

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

RULES OF CIVIL PROCEDURE

See Rules 2, 7–16, 18, 54 (b), 55 (a), (d), and 56.

§ 13–202 [24: 2]. All proceedings which concern the law and administration of justice shall be in the English tongue—Penalty for violation.

All writs, process, and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines, and recoveries, and all proceedings relating thereunto, and all copies thereof, and all proceedings whatsoever in any courts of justice which concern the law, and administration of justice, shall be in the English tongue and language only, and not in Latin or French, or any other tongue or language whatsoever, and in words at length, and not abbreviated; and all and every person or persons offending against this section shall for every such offence forfeit and pay $133.33 to any person, who shall sue for the same, by action of debt, bill, plaint, or information in any courts of record. (4 Geo. 2, ch. 26, § 1, 1731; Kilty Rep., p. 249; Alex. Br. Stat., p. 702; Md. Act 1781, ch. 16; Comp. Stat., D. C., p. 445, § 28; Apr. 2, 1792, 1 Stat. 248, ch. 16, § 9.)

§ 13–203 [24: 3]. All proceedings written—Figures and abbreviations commonly used, permissible—Writs, other process, and technical words, how expressed.

All writs, process, and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all copies thereof, and all proceedings whatsoever, in any courts of justice, and which concern the law and administration of justice, may be written or printed in a common legible hand and character, and with the like way of writing or printing, and with the like manner of expressing numbers by figures, as have been heretofore or are now commonly used in the said courts respectively, and with such abbreviations as are now commonly used in the English language, and no penalty or punishment shall be incurred, by virtue of section 13–202, for any other offence than for writing or printing any of the proceedings, or other the matters and things above mentioned, in any hand commonly called Court Hand, or in any language except the English language, nor shall any such penalty or punishment be extended to the expressing the proper or known names of writs or other process or technical words in the same language, as hath been commonly used, so as the same be written or printed in a common legible hand and character, and not in any hand, commonly called Court Hand; and that all prosecutions for offences against the said section shall be commenced within three months after the same shall be committed. (6 Geo. 2, ch. 14, § 5, 1733;

Kilty Rep., p. 250; Alex. Br. Stat., p. 720; Comp. Stat., D. C., p. 446, § 29.)

CROSS REFERENCE

See notes to § 13–301.

NOTES TO DECISIONS

BILL OF PARTICULARS PART OF DECLARATION

Although a declaration may be defective and not a model of good pleading, a bill of particulars is part thereof and may serve to remove any uncertainty inherent in the latter. *Finney* v. *Pennsylvania Iron Works Co.* (22 App. D. C. 476).

FILING INSTRUMENT SUED ON

It is not the practice, and it would be unreasonable to require, that a promissory note which is the subject of suit should be filed with the declaration. It is sufficient if it is produced at the trial or at the hearing on motion for judgment; and it will be presumed that this was done when there is nothing in the record to show the contrary. *Finney* v. *Pennsylvania Iron Works Co.* (22 App. D. C. 476).

§ 13–204 [24: 4]. Suits at law on lost instruments—Bond.

No suit at law founded upon a lost instrument shall be dismissed on the ground that the suit should have been brought in equity, but a similar bond or undertaking to that required in equity shall be given as a condition precedent to judgment. (Apr. 19, 1920, 41 Stat. 569, ch. 153, § 1335d.)

§ 13–205 [24: 5]. Plural breaches may be assigned in suits on bonds or on penal sums—Judgment given on demurrer, confession, or nihil dicit—Damages—Determination by jury.

In all actions, which shall be commenced or prosecuted in any courts of record, upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury, upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or nihil dicit, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which a jury shall inquire of the truth of every one of those breaches, and assess the damages that the plaintiff shall have sustained thereby. (8 and 9 Wm. 3, ch. 11, § 8, 1697; Kilty Rep., p. 244; Alex. Br. Stat., p. 604; Comp. Stat. D. C., p. 69, § 14.)

§ 13–206 [24: 6]. On demurrer, judgment shall be given according to right, disregarding form, immaterial traverses or lack of profert, except as specifically set down as cause for demurrer.

Where any demurrer shall be joyned, and entered in any action or suit in any court of record, the judges shall proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or defect or want of form in any writ, retort, plaint, declaration, or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, so as sufficient matter appear in the said pleadings, upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immeterial travers; or of or for the default of alledging the bringing into court any bond, bill, indenture or other deed whatsoever mentioned in the declaration or other pleading; or of or for the default of alledging of the bringing into court letters testamentary, or letters of administration; or of or for the omission of vi et armis et contra pacem, or either of them; or of or for the want of averment of hoc paratus est verificare, or hoc paratus est verificare per recordum; or of or for not alledging prout patet per recordum; but the court shall give judgment according to the very right of the cause, as aforesaid, without regarding any such imperfections, omissions and defects, or any other matter of like nature, except the same shall be specially and particularly set down and shewn for cause of demurrer, and that no judgment to be given shall be reversed, for any such imperfection, defect, or want of form, as is aforesaid, except such only as is before excepted. *Provided always,* that this section, or anything herein contained, shall not extend to any writ, declaration, or suit of appeal of felony or murder, or to any indictment or presentment of felony, murder, treason, or other matter, or to any process upon any of them, or to any writ, bill, action, or information upon any popular or penal statute. (27 Eliz., ch. 5, § 1, 1585; Kilty Rep., p. 235; Alex. Br. Stat., p. 420; Comp. Stat., D. C., p. 462, § 96; 4 Ann., ch. 16, § 1, 1705; Kilty Rep., p, 245; Alex. Br. Stat., p. 659; Comp. Stat., D. C., p. 447, § 36.)

RULES OF CIVIL PROCEDURE

Demurrers not used in District Court of the United States for the District of Columbia, see Rule 7 (c).

NOTES TO DECISIONS

DUTY OF COURT

Errors in prayer of complaint do not affect cause of action disclosed by facts alleged, but court must give any relief which those facts will support. *Smith* v. *Schlein,* 1944 (144 F. 2d 257, 79 U. S. App. D. C. 166).

§ 13–207 [24: 7]. After demurrer joined court may amend imperfections, defects, and wants of form, except those expressly set down with demurrer.

After demurrers joined and entered, the court shall and may from time to time amend all and every such imperfections, defects, and wants of form, as set out in section 13–206, other than those only which the party demurring shall specially and particularly express and set down together with his demurrer, as is aforesaid. (27 Eliz., ch. 5, § 2, 1585; Kilty Rept., p. 235; Alex. Br. Stat., p. 421; Comp. Stat., D. C., p. 462, § 96.)

RULES OF CIVIL PROCEDURE

Demurrers not used in District Court of the United States for the District of Columbia, see Rule 7 (c).

§ 13–208 [24: 252]. Joinder of counts.

The plaintiff may join in his declaration in debt, in separate counts, different claims for liquidated amounts due him, whether founded on judgment, specialty, or simple contract, and also claims for unliquidated damages for breach of contract, whether growing out of specialties or simple contract. He may also join in his declaration in trespass, in separate counts, different claims for damages for torts, whether committed with force or not. He shall also be allowed to join in the same declaration counts sounding in tort and counts sounding in contract when they relate to the same transaction, but not otherwise. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1532; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "not" and inserted in lieu thereof the word "also" in the last sentence, and added the last words of the section which read, "when they relate to the same transaction, but not otherwise."

NOTES TO DECISIONS

JOINDER OF TORT AND CONTRACT

A count sounding in tort may be joined with a count on contract. *Minton* v. *F. G. Smith Piano Co.* (36 App. D. C. 137).

Quaere: Whether, under this section, a count for libel may be joined with one of assault and battery. *Friedlander* v. *Rapley* (38 App. D. C. 208).

Causes of action for commission for realty sold, and for fraudulent misrepresentation as to the agency to sell property, by which plaintiff had been damaged, not an improper joining. Amended, June 30, 1902, 32 Stat. 520, ch. 1329. *Minar* v. *Sheehy* (56 App. D. C. 318, 13 Fed. (2d) 290).

§ 13–209 [24: 8]. Demurrer not waived by pleading over.

In all cases, civil or criminal, in which any or either party shall demur to any indictment, declaration, or other pleading of the adverse party, and said demurrer shall be overruled, the party demurring shall have the right to plead over, by traverse or otherwise, without waiving his said demurrer; and upon appeal shall have the right to insist upon his demurrer and have the benefit thereof as fully as if he had not pleaded over. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1533.)

RULES OF CIVIL PROCEDURE

Demurrers not used in District Court of the United States for the District of Columbia, see Rule 7 (c).

NOTES TO DECISIONS

FRIVOLOUS DEMURRER

If a demurrer has been stricken off on the ground that it is frivolous, the provision of this section relative to the right to plead over does not apply. *Miller* v. *Ambrose* (35 App. D. C. 75).

§ 13–210 [24: 9]. Dilatory pleas—Verification.

No dilatory plea shall be received in any court of record, unless the party offering such plea, do, by affidavit, prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true. (4 Ann, ch. 16, § 11, 1705; Kilty Rep., p. 246; Alex. Br. Stat., p. 661; Comp. Stat., D. C., p. 450, § 45.)

§ 13–211 [24: 10]. Plea of non est factum—Verification.

No plea of non est factum shall be received unless it be verified by the oath of the party tendering the same, or unless the defendant, being heir, executor, or administrator of the person alleged to have made the deed, obtain leave of the court, upon just cause shown, to put in such plea without verification. (Mar. 3, 1901, 31 Stat. 1419, ch. 854, § 1534.)

§ 13–212 [24: 11]. Plural pleas permitted.

It shall and may be lawful for any defendant or tenant in any action or suit, or for any plaintiff in replevin in any court of record, with the leave of the same court, to plead as many several matters thereto as he shall think necessary for his defence. (4 Ann, ch. 16, § 4, 1705; Kilty Rep., p. 246; Alex. Br. Stat., p. 660; Comp. Stat., D. C., p. 447, § 35.)

§ 13–213 [24: 12]. Official character of party may be denied only under oath, except with leave of court.

If either party wishes to deny the right of any other party to claim as executor, or as trustee, or in other representative capacity, or as a corporation, he shall deny the same specially under oath, unless for cause shown he obtain leave of the court to make such denial without oath. (Mar. 3, 1901, 31 Stat. 1419, ch. 854, § 1535; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The 1902 amendment added the words, "unless for cause shown he obtain leave of the court to make such denial without oath."

§ 13–214 [24: 13]. Equitable defenses in actions at law.

In all actions at law equitable defenses may be interposed by plea or replication. (Apr. 19, 1920, 41 Stat. 569, ch. 153, § 1535c; Mar. 4, 1923, 42 Stat. 1506, ch. 278.)

AMENDMENT

This section is made applicable to the municipal court by the 1923 act, which reads as follows: "That hereafter section 1535c (this section) of the Code of Law for the District of Columbia, permitting equitable defenses to be interposed in actions at law, shall be applicable to proceedings now pending in the Municipal Court of the District of Columbia as well as to actions hereafter brought in said court."

RULES OF CIVIL PROCEDURE

Forms of actions have been abolished in the District Court of the United States for the District of Columbia, see rule 2.

NOTES TO DECISIONS

COUNTERCLAIMS

Court should not have entertained the counterclaims of defendants in suit in which possesion was sought on the grounds of unlawful entry and detainer. Though we have held that where a tenant is sued for possession for nonpayment of rent, he may defend by an equitable defense sufficient to defeat the claim for rent or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action. Where the suit was not for nonpayment and the counterclaim sounded in tort, this rule does not apply. *Bellmore* v. *Baum* (D. C. Mun. App. 1949, 68 A. 2d 588).

LEGISLATIVE INTENT

The true legislative intent was to simplify the practice as between legal and equitable procedure in those courts which already possessed jurisdiction over equitable causes,

and was not to give the municipal court general equitable jurisdiction when dealing with defenses to actions. *International Exch. Bank* v. *Pullo* (52 App. D. C. 199, 285 Fed. 933) (decided prior to enactment of 42 Stat. 1506).

No Extension of Equity Jurisdiction

This section does not authorize an equity court, having jurisdiction, to stay proceedings to await the bringing of another action in an inferior court. *Sambataro* v. *Caffo* (57 App. D. C. 260, 20 Fed. (2d) 276).

Raising Question on Appeal

An equitable defense not interposed below could not be insisted upon on appeal. *Saks* v. *B. H. Stinemetz & Son Co.* (54 App. D. C. 38, 293 Fed. 1005).

Reformation, Rescission or Performance

The Municipal Court for the District of Columbia would be without jurisdiction to try issues appropriate to suit for reformation or rescission of instrument or for specific performance, unless such issues were presented by way of defense to action within the court's jurisdiction. *Howenstein Realty Corporation* v. *Richardson,* 1943 (135 F. 2d 803, 77 U. S. App. D. C. 299).

Specific Defenses

A lessee's plea denying default in rent sued for is a good equitable defense, *Smith* v. *O'Connor* (66 App. D. C. 367, 88 Fed. (2d) 749).

A tenant who is sued for possession of real property for non-payment of rent may defend by an equitable defense sufficient to defeat landlord's claim for rent in whole or in part, or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action. *Lalekos* v. *Manset* (D. C. Mun. App. 1946, 47 A. 2d 617).

In landlord's action for possession of leased premises and for money judgment for rent, exclusion of testimony of oral agreement to repair, made before signing of lease, was error, since violation of such agreement would have constituted an equitable defense. *Mitchell* v. *David* (D. C. Mun. App. 1947, 51 A. 2d 375).

§ 13–215 [24: 14]. Transfer of causes from law to equity or vice versa—Amendments—Previous testimony preserved to stand in cause.

In any case where it shall appear that an action at law should have been brought in equity, or a suit in equity should have been brought at law, the judge presiding in the special term, circuit or equity, as the case may be, shall order such case to be transferred to such other special term accordingly, whereupon such amendments shall be made in the pleadings as may be necessary to make them conform to the proper practice. All testimony taken before such transfer, if preserved, shall stand as testimony in the cause. (Apr. 19, 1920, 41 Stat. 569, ch. 153, § 1535b.)

Cross Reference

Other provisions concerning transfer of actions, § 11–314.

NOTES TO DECISIONS

Probate Court

Probate court's jurisdiction over proof of wills is exclusive. *Gracie* v. *American Sec. & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

On Appeal

Equitable defense not urged in the trial court by bill or motion cannot be availed of on appeal. *Saks* v. *B. H. Stinemetz & Son Co.* (54 App. D. C. 38, 293 Fed. 1005).

§ 13–216 [24: 15]. Judgment or decree may be entered for part of cause admitted, and remainder of claim prosecuted.

Whenever in any action at law or in equity the defendant admits a part of the cause of action, a final judgment or decree may be entered for such part, and the plaintiff may prosecute the remainder of his claim in the same suit and (if he sustains his claim for such remainder) may have a further final judgment or decree therefor. (Apr. 19, 1920, 41 Stat. 569, ch. 153, § 1535a.)

Cross Reference

Payment into court of amount alleged to be due, §§ 16–1401 to 16–1403.

NOTES TO DECISIONS

In General

This section must be considered when construing § 1535c of the 1901 Code (§ 13–214). *International Exch. Bank* v. *Pullo* (52 App. D. C. 199, 285 Fed. 933).

§ 13–217 [24: 16]. Interpleader—Affidavit by defendant—Contents—Order of court—Appearance of third party—Failure to appear.

Upon affidavit by the defendant, in an action upon contract or for the recovery of personal property, that a third party, without collusion with him, has or makes claim to the subject of the action, and that he, the defendant, is ready to pay or dispose of the same as the court may direct, the court may make an order for the safe-keeping or for the payment or deposit in court of the subject of the action, or the delivery thereof to such person as it may direct, and also an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant; and if said third party, having been served with a copy of the order by the marshal, fail to appear the court may declare him barred of all claim in respect to the subject of the action against the defendant therein; but if he appear he shall be allowed to make himself defendant in the action in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action on his compliance with the order of the court for the payment, deposit, or delivery thereof. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1531; Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 9.)

Amendment

The 1921 act makes this section applicable to the municipal court.

Cross References

Application to proceedings in municipal court, § 11–734.
Payments into court, §§ 16–1401 to 16–1403.
See notes to § 13–301.

Statutory References

Deposit of funds in court, see U. S. C., title 28, §§ 851, 852.
Interpleader in United States District Courts, see U. S. C., title 28, § 41 (26).

NOTES TO DECISIONS

Counsel Fees

Defendant, who was successful in having bill of interpleader dismissed, was not entitled to allowance of counsel fees, where ground on which such defendant claimed to be entitled to allowance of counsel fees was not apparent. *Continental Trust Co.* v. *Corbin* (D. C. Sup. 1948, 80 F. Supp. 394).

Requisites of Interpleader

The four conditions prerequisite to an order for interpleader are: (1) The same thing, debt, or duty must be claimed by both or all the parties against whom relief is demanded; (2) all their adverse titles or claims must be

dependent, or be derived from a common source; (3) the person asking the relief—the plaintiff—must not have or claim any interest in the subject-matter; and, (4) he must have incurred no independent liability to either of the claimants—that is, he must stand perfectly indifferent between them in the position merely of a stakeholder. *Morgan* v. *Kraft* (52 App. D. C. 172, 285 Fed. 906).

SERVICE ON THIRD PERSON

Personal service upon such third person within the jurisdiction is necessary to bring him into court. Personal service out of the jurisdiction or service by publication is insufficient. *Dexter* v. *Lichliter* (24 App. D. C. 222).

§ 13–218 [24: 17]. Payment—When pleaded—Debt on single bill or scire facias on judgment—On bond—Or a lesser sum at different date from defeasance.

When any action of debt shall be brought upon any single bill, or where action of debt or scire facias, shall be brought upon any judgment, if the defendant hath paid the money due upon such bill or judgment, such payment shall and may be pleaded in bar of such action or suit, and where an action of debt is brought upon any bond which hath a condition or defeazance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors, or administrators have, before the action brought, paid to the obligee, his executors or administrators, the principal and interest due by the defeazance or condition of such bond, though such payment was not made strictly according to the condition or defeazance; yet it shall and may nevertheless be pleaded in bar of such action, and shall be as effectual a bar thereof, as if the money had been paid at the day and place, according to the condition or defeazance, and had been so pleaded. (4 Ann. ch. 16, § 12, 1705; Kilty Rep., p. 246; Alex. Br. Stat., p. 661; Comp. Stat., D. C., p. 449, § 43.)

CROSS REFERENCE

See notes to § 13–301.

§ 13–219 [24: 18]. Chancellor may award damages for equity suits grounded upon untrue suggestions.

Forasmuch as people be compelled to come into chancery, by writs grounded upon untrue suggestions, that the chancellor for the time being, presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his discretion, to him which is so troubled unduly, as afore is said. (17 Rich. 2, ch. 6, § 1, 1393; Kilty Rep., p. 224; Alex. Br. Stat., p. 199; Comp. Stat., D. C., p. 104, § 97; see Md. Act 1785, ch. 72, § 25.)

CROSS REFERENCE

See notes to § 13–301.

§ 13–220 [24: 19]. Covin may be pleaded in bar of res judicata in actions popular.

If any person or persons sue with good faith any action popular, and the defendant or defendants in the same action plead any manner of recovery of action popular in bar of the said action, or else that the same defendant or defendants plead, that he or they before that time barred any such plaintiff or plaintiffs in any such action popular, the plaintiff or plaintiffs in the action taken with good faith may aver, that the said recovery in the said action popular was had by covin, or else to aver that the said plaintiff or plaintiffs was or were barred in the said action popular by covin, that then if after the said collusion or covin so averred be lawfully found, the plaintiff or plaintiffs in that action sued with good faith, shall have recovery according to the nature of the action, and execution upon the same in like wise and effect, as though no such afore had been had. (4 Henry 7, ch. 20, 1487; Kilty Rep., p. 229; Alex. Br. Stat., p. 259.)

CROSS REFERENCE

See notes to § 13–301.

§ 13–221 [24: 20]. Motion to set aside verdict and grant new trial—Trial justice—Causes—Made at same term.

The justice who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion shall be made at the same term at which the trial was had. (Rev. Stat., D. C., § 804; Comp. Stat., D. C., p. 442, § 6.)

CROSS REFERENCES

Setting aside jury's verdict in proceedings to condemn land for alleys and minor streets, § 7–317.

Setting aside verdict of jury in proceedings to condemn land for United States, §§ 16–634 to 16–635.

Setting aside verdict of the jury in proceedings to condemn land for streets outside Washington and Georgetown, § 7–209.

RULES OF CIVIL PROCEDURE

See Rules 59 to 61.

§ 13–222 [24: 21]. Fines, penalties, and forfeitures accruing under Maryland laws to be recovered in name of United States—Disposition of amount recovered.

All fines, penalties, and forfeitures accruing under the laws of the State of Maryland, which, by adoption, have become the laws of the District, shall be recovered with costs, by indictment or information, in the name of the United States, or by action of debt, in the name of the United States and of the informer; one-half of which fine shall accrue to the United States, and the other half to the informer; and such fines shall be collected by or paid to the marshal, and one-half thereof shall be by him paid over to the District of Columbia, and the other half to the informer. (Md. Act 1777, ch. 6, § 1; R. S., D. C., § 837.)

Chapter 3.—AMENDMENT OF AND MISTAKES IN PLEADINGS AND PROCEEDINGS

Sec.

13–301. Writs, pleadings, and other papers amendable at any stage, on terms—Supplemental or substituted affidavits permitted.
13–302. Continuances after amendment—Discharge of jury.
13–303. Costs on amendment at discretion of court.
13–304. Process not annulled or discontinued by clerk writing one syllable or one letter too much or too little—Such errors amendable.
13–305. Justices may authorize amendments of record and process after judgment as long as the record is before them.
13–306. Justices may authorize amendments of record and process after judgment on verdict as well as upon matter in law pleaded.

Sec.
13–307. Record and proceedings not amendable after term at which judgment given and enrolled.
13–308. Judges may reform and amend misprisions of clerk in record, process, word, plea, warrant of attorney, writ, panel, and return, except appeals, indictments of treason and felonies, so that by such misprision no judgment shall be reversed or annulled.
13–309. Judges may order amended or reformed erroneous or defective certification of record, process, writs, warrants of attorney, and return—Party may show certification varies from first writing.
13–310. No judgment of records and process reversed nor annulled after exemplification under great seal enrolled.
13–311. Justices have power to amend defaults, errors and misprisions in the record, process or returns by the marshal, coroner, or clerk, in writing one letter or syllable too much or too little.
13–312. Writs of error variant from the original record, or otherwise defective, amendable by the court where returnable—Judgment shall not be stayed or reversed for defect or fault, in form or substance, in bill, writ, original, or judicial, or variance in said writs from other proceedings, except process upon indictment, presentment, or information, of or for any offense or misdemeanor.
13–313. After verdict, judgment shall be given, notwithstanding lack of color, insufficient pleading, jeofail, miscontinuance, discontinuance, misconveyance of process, misjoining of issue, lack of warrant of attorney, or other default or neglect of parties, counsel, or attorneys—Such judgment shall stand in full force according to the verdict, without reversal as though such default or negligence had not been.
13–314. After verdict, judgment shall not be stayed or reversed for default in form, lack of form, false Latin, variance from register—Default in form of writ, count, declaration, plaint, bill, suit or demand, want of writ, imperfect return or default in process—Except indictment or presentment of felony, murder, treason, or process upon them, actions popular and upon penal statutes.
13–315. After verdict, judgment shall not be stayed nor reversed for issuance of process to the wrong officer, that any juror is misnamed, no return to writs, that the marshal's name does not appear, that infant plaintiff appeared by attorney, if he won—Except as to indictment or presentment of felony, murder, or treason, or process upon them, and popular and penal statutes.
13–316. After verdict, judgment shall not be stayed or reversed for default in or lack of form, want of profert, allegation of vi et armis or contra pacem, mistake in name of party, sum of money, time, or for other named formal defects, all of which may be amended.
13–317. Section 13–316 shall not extend to any indictment or presentment of felony, murder, treason, or to process upon them, penal statutes, other than subsidies of tonnage, writs of error by executors or administrators, actions popular, penal law or statute, information or appeal.
13–318. Statutes of jeofails extend to judgments by confession nihil dicit and non sum informatus.
13–319. Criminal and penal matters.
13–320. Mandamus, quo warranto, and proceedings thereon.

§ 13–301 [24: 61]. Writs, pleadings, and other papers amendable at any stage, on terms—Supplemental or substituted affidavits permitted.

In all judicial proceedings the court, justice or judge, in which, or before whom, the cause shall be pending shall have power upon such terms as shall seem best, at any stage of the case, to allow amendments of writs, pleadings, or other papers in the cause and to allow supplemental or substituted affidavits to be filed. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 399; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the section of the 1901 act and inserted the above in lieu thereof. The former section read: "In all actions at law the court shall have power to order and allow amendments to be made in all proceedings whatsoever, so as to have the merits of the controversy fairly tried, before the jury retire to make up their verdict, in cases of jury trial, and at any time before judgment is entered in cases of issues of law or fact tried by the court."

CROSS REFERENCE

See § 13–215.

STATUTORY REFERENCE

See section 274a, Judicial Code (38 Stat. 956; U. S. C., title 28, § 397), construed in *District of Columbia* v. *Washington Terminal Co.* (47 App. D. C. 570).

RULES OF CIVIL PROCEDURE

See Rules 15, 60, and 61.

NOTES TO DECISIONS

ADMINISTRATOR AS SUBSTITUTED PARTY

Although this section should be liberally construed, a suit begun in the name of a deceased plaintiff is a nullity (and this is true, although the plaintiff is merely a formal, nominal, use plaintiff); hence there can be no amendment substituting the administrator of the deceased plaintiff as party plaintiff. *Karrick* v. *Wetmore* (22 App. D. C. 487). For the further history of this litigation, see 205 U. S. 141, 51 L. Ed. 745, 27 Sup. Ct. 434, affg. 25 App. D. C. 415 and 26 App. D. C. 124.

AMENDMENT DURING TRIAL

To warrant obtaining leave to amend a pleading at trial there must be some showing of surprise or some reasonable explanation of the delay in seeking to amend. *Plummer* v. *Johnson* (D. C. Mun. App. 1944, 35 A. 2d 647).

APPEALS—REMAND FOR AMENDMENT

"In the case of *Wiggins Ferry Co.* v. *Ohio & M. R. Co.* (142 U. S. 396, 35 L. Ed. 1055, 12 Sup. Ct. 188), it was held by the Supreme Court that where the facts showed that the plaintiff had an equitable title to relief, but that court, on the state of pleadings before it, was unable to afford relief it could and would remand the case to the court below for amendment of pleadings and further proceedings, in order that the right might be availed of." *Wagenhurst* v. *Wineland* (22 App. D. C. 356). See also *Alfred Richards Brick Co.* v. *Atkinson* (16 App. D. C. 462).

APPLICATION TO AMEND

Appellant was without right to complain that order sustaining motion to dismiss complaint did not allow him opportunity to amend where he made no application for leave to amend, since reviewing court cannot assume that he would have been denied the right of amendment had he sought it. *Johnson* v. *M. J. Uline Co.* (D. C. Mun. App. 1945, 40 A. 2d 260).

COMPARING COMMON-LAW RULE

Quaere: Whether this section modifies common-law rule that "the finding in favor of the plaintiff of an issue of fact raised by a plea in abatement, entitles the plaintiff to a judgment on the merits." *Brown* v. *Savings Bank* (28 App. D. C. 351).

COMPLAINT

Where complaint sought recovery of possession under § 5 of District Rent Act by reason of "substantial altering and remodeling and replacement with new construction of commercial property," no reversible error was committed in allowing an amendment to change body of complaint under a permissive statute where the original complaint stated that the property was "commercial property", since statement that possession was sought

under § 5 which applies only to housing accommodations was mere surplusage. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

Where original complaint described the plaintiff as executrix, it was not reversible error to permit amendment describing her as suing individually and as executrix, where the record was clear that it was the intention to sue in her individual capacity. The descriptive word "executrix" in the amended complaint was surplusage. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

DISCRETION OF COURT

"There is nothing in section 399 of the Code (this section) to make it mandatory on the courts to allow amendments." *Schrot* v. *Schoenfeld* (23 App. D. C. 421).

"The grant or refusal of leave to amend is a power entrusted to the trial court that injustice and hardship may be prevented and the merits of the case fairly tried. Whether in the particular instance the leave should be granted or refused is a matter within the discretion of the trial court, and is not reviewable in the appellate court." *Chunn* v. *City & S. R. Co.* (23 App. D. C. 551, revd. on other grounds 207 U. S. 302, 52 L. Ed. 219, 28 Sup. Ct. 63), citing *German Soc.* v. *Prospect Hill Cemetery* (2 App. D. C. 310); *Brown* v. *Baltimore & O. R. Co.* (6 App. D. C. 237).

"After the appearance of defendant, the granting of additional time to plead and leave to amend affidavits was within the discretion of the court." *Armour* v. *Flook* (44 App. D. C. 415).

Where defendant filed an additional plea of equitable estoppel to which plaintiff demurred, the granting of leave to file a substituted amended plea within a few days thereafter was within the court's discretion. *Daly* v. *Sacks* (59 App. D. C. 216, 38 Fed. (2d) 388).

Under this section an amendment of a plea, after the jury was sworn, but before the statement of the case or the admission of evidence, is in the discretion of the court. *Kinchlow* v. *Peoples Rapid Transit Co.* (66 App. D. C. 382, 88 Fed. (2d) 764, cert. den. 301 U. S. 693, 81 L. Ed. 1349, 57 Sup. Ct. 926).

To same effect as second paragraph of original annotation, see *Plummer* v. *Johnson* (D. C. Mun. App. 1944, 35 A. 2d 647).

Where action on renewal note more than eight months before trial had been at issue under answer containing a general denial and affidavit of defense alleging absence of consideration, and defendant during his testimony asked leave to amend answer to show fraud and undue influence in making the original note, but offered no excuse for not seeking the desired amendment prior to trial, trial court did not abuse its discretion in refusing amendment. *Plummer* v. *Johnson* (D. C. Mun. App. 1944, 35 A. 2d 647).

A reasonable discretion is reposed in trial courts in the allowance or refusal of amendments to pleadings. *Plummer* v. *Johnson* (D. C. Mun. App. 1944, 35 A. 2d 647).

The trial court has wide discretion in the allowance of amendments to pleadings both before and during trial. *Peake* v. *Ramsey* (D. C. Mun. App. 1945, 43 A. 2d 763).

It was not an abuse of discretion for trial court to refuse moving party leave to amend after verdict where she knew or should have known what the pending litigation would probably develop. Having lost on one defense, she had no right to have case reopened to assert a new one. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

Court rules were designed to allow amendments and changes in pleadings liberally; pleadings are to be liberally construed to do substantial justice and the trial court is allowed wide discretion in determining such matters. *Pyramid National Van Lines, Inc. v. Goetze* (D. C. Mun. App. 1949, 66 A. 2d 693).

Where a motion was made to strike out counterclaims on grounds of omission from the original answer and allegedly filed too late, it was held that since the counterclaims were compulsory, they should not be stricken and the amendments should be allowed with great liberality at any stage unless they prejudiced the rights of the opposing party. *Pyramid National Van Lines, Inc. v. Goetze* (D. C. Mun. App. 1949, 66 A. 2d 693).

It was entirely proper for trial court to permit amendments to conform to the evidence is in accordance with modern practice and is specifically authorized by the court rules. *Hillyard* v. *Smither & Mayton, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 166).

While the rules of the court contemplate that leave to amend shall be freely given, it is not their purpose to allow amendments under any and all circumstances. *Buchanan v. Farmer* and *Light v. Farmer* (D. C. Mun. App. 1948, 62 A. 2d 367).

Where, in action for breach of contract, case was tried on issues presented by the original complaint, amendment advancing a new theory for recovery after evidence was closed would not be permitted where it would prejudice defendant. *Buchanan* v. *Farmer* and *Light* v. *Farmer* (D. C. Mun. App. 1948, 62 A. 2d 367).

PLEA IN ABATEMENT

"That the amendment may relate to the withdrawal of a plea in bar and its substitution by one in abatement, or the reverse, does not alter the rule." *Chunn* v. *City & S. R. Co.* (23 App. D. C. 551, revd. on other grounds 207 U. S. 302, 52 L. Ed. 219, 28 Sup. Ct. 63).

PRIOR LAW

Under R. S., § 954 (U. S. C., title 28, § 777), and the Maryland Act of 1785, ch. 80, § 4, the lower court may allow a change, by amendment, of one form of action to another, provided the claim or cause of action sued for be the same in both. *Magruder* v. *Belt* (7 App. D. C. 303).

SCIRE FACIAS

"The power of amendment is equally applicable and to the same extent in the case of a scire facias as in the case of an ordinary execution." *Otterbach* v. *Patch* (5 App. D. C. 69).

STATUTE OF LIMITATIONS

Where a declaration is filed within the period of the statute of limitations, an amendment made after the statute has run which charges the same cause of action in a different form is not open to the defense of the statute. *Beasley* v. *Baltimore & O. R. Co.* (27 App. D. C. 595). See also *District of Columbia* v. *Frazer* (21 App. D. C. 154).

In an action in ejectment, where the defense was the general issue, it is not error to permit defendant to amend by pleading the statute of limitations (after the evidence has been introduced and a motion by plaintiff for a directed verdict has been overruled). "Plaintiff was not taken by surprise; no additional evidence was introduced; plaintiff sustained no possible legal injury." *McMillan* v. *Fuller* (41 App. D. C. 384).

§ 13–302 [24: 62]. Continuances after amendment—Discharge of jury.

No such amendment shall entitle either party, as of course, to a postponement of the trial or to a continuance of the case to the next term of the court; but the court shall allow a postponement or continuance in case the ends of justice require it, and upon such terms as the court shall deem proper. If such amendment is ordered and a postponement or continuance is allowed after the jury have been sworn the jury shall be discharged. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 400.)

NOTES TO DECISIONS

DISCONTINUANCE OF COUNT

A discontinuance of a count in a declaration setting up a distinct cause of action is not an amendment, but treating it as such, it creates no necessity for a continuance. *Crandall* v. *Lynch* (20 App. D. C. 73).

§ 13–303 [24: 63]. Costs on amendment at discretion of court.

In all cases of amendment such costs shall be allowed the party against whom the amendment is

made as the court may determine. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 401.)

§ 13–304 [24: 64]. Process not annulled or discontinued by clerk writing one syllable or one letter too much or too little—Such errors amendable.

By the misprision of a clerk in any place whereso-ever it be, no process shall be adnulled, or discontinued, by mistaking in writing one syllable, or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be hastily amended in due form, without giving advantage to the party that challengeth the same because of such misprision. (14 Edw. 3, ch. 6, § 1, 1340; Kilty Rep., p. 216; Alex. Br. Stat., p. 167; Comp. Stat., D. C., p. 460, § 88.)

§ 13–305 [24: 65]. Justices may authorize amendments of record and process after judgment as long as the record is before them.

The justices before whom plea or record is made, or shall be depending, as well by adjournment, as by way of error, or otherwise, shall have power and authority to amend such record and process, as well after judgment in any such plea, record, or process given, as before judgment given in any such plea, record, or process, as long as the same record and process is before them, in the same manner as the justices had power to amend such record and process before judgment given by force of section 13–304. (9 Hen. 5, ch. 4, § 1, 1421; Kilty Rep., p. 226; Alex. Br. Stat., pp. 221, 222; Comp. Stat., D. C., p. 461, § 90.)

§ 13–306 [24: 66]. Justices may authorize amendments of record and process after judgment on verdict as well as upon matter in law pleaded.

The effect of section 13–305 shall hold strength, force, and effect, in every record and process of the same, as well after judgment given upon a verdict passed, as upon a matter in law pleaded. (4 Hen. 6, ch. 3, § 1, 1425; Kilty Rep., p. 226; Alex. Br. Stat., p. 224; Comp. Stat., D. C., p. 461, § 91.)

§ 13–307 [24: 67]. Record and proceedings not amendable after term at which judgment given and enrolled.

The records and process of pleas real and personal, and of assises of novel disseisin, or mortdancester, and certifications, and of others, whereof judgment is given and inrolled, or things touching such plea, shall in no wise be amended nor impaired by new entring of the clerks, or by the record or thing certified in witness or commandment of any justice, in no term after that such judgment in such pleas is given and inrolled. (11 Hen. 4, ch. 3, § 1, 1409; Kilty Rep., p. 225; Alex. Br. Stat., pp. 211, 212; Comp. Stat., D. C., p. 461, § 89.)

§ 13–308 [24: 68]. Judges may reform and amend misprisions of clerk in record, process, word, plea, warrant of attorney, writ, panel, and return, except appeals, indictments of treason and felonies, so that by such misprision no judgment shall be reversed or annulled.

The judges of the courts and places in which any record, process, word, plea, warrant of attorney, writ, panel, or return, which for the time shall be, shall have power to examine such records, process, words, pleas, warrants of attorney, writs, panels, or return, by them and their clerks, and to reform and amend (in affirmance of the judgments of such records and processes) all that which to them in their discretion seemeth to be misprision of the clerks in such record, processes, word, plea, warrant of attorney, writ, panel, and return; except appeals, indictments of treason and of felonies, so that by such misprision of the clerk no judgment shall be reversed nor adnulled. (8 Hen. 6, ch. 12, § 2, 1429; Kilty Rep., p. 227; Alex. Br. Stat., p. 233; Comp. Stat., D. C., p. 462, § 93.)

§ 13–309 [24: 69]. Judges may order amended or reformed erroneous or defective certification of record, process, writs, warrants of attorney, and return—Party may show certification varies from first writing.

If any record, process, writ, warrant of attorney, return, or panel be certified defective, otherwise than according to the writing which thereof remaineth in the courts or places from whence they be certified, the parties in affirmance of the judgments of such record and process shall have advantage to alledge, that the same writing is variant from the said certificate, and that found and certified, the same variance shall be by the said judges reformed and amended according to the first writing. (8 Hen. 6, ch. 12, § 2, 1429; Kilty Rep., p. 227; Alex. Br. Stat., p. 234; Comp. Stat., D. C., p. 462, § 93.)

§ 13–310 [24: 70]. No judgment of records and process reversed nor annulled after exemplification under great seal enrolled.

If any record, process, writ, or warrant of attorney, panel, or return, or parcel of the same, referred to in sections 13–308 and 13–309, be now, or hereafter shall be exemplified under the great seal, and such exemplification there of record inrolled without any raising of the same place in the exemplification and the inrollment of the same, that another time for any error assigned, or to be assigned in the said record, process, writ, warrant of attorney, panel, or return, in any letter, word, clause, or matter of the same varying, or contrary to the said exemplification and the inrollment, there shall be no judgment of the said records and process reversed nor adnulled. (8 Hen. 6, ch. 12, § 4, 1429; Kilty Rep., p. 227; Alex. Br. Stat., p. 234; Comp. Stat., D. C., p. 462, § 94.)

§ 13–311 [24: 71]. Justices have power to amend defaults, errors, and misprisions in the record, process, or returns by the marshal, coroner, or clerk, in writing one letter or syllable too much or too little.

The justices, before whom any misprision or default is or shall be found, be it in any records and processes which now be, or shall be depending before them, as well by way of error as otherwise, or in the returns of the same, made or to be made by the marshal, coroner, or any other, by misprision of the clerks of courts, or by misprision of the marshal, coroner, their clerks, or other officers, clerks, or other

ministers whatsoever, in writing one letter or one syllable too much or too little, shall have power to amend such defaults and misprisions according to their discretion, and by examination thereof by the said justices to be taken where they shall think needful. (8 Hen. 6, ch. 15, § 1, 1429; Kilty Rep., p. 227; Alex. Br. Stat., p. 242; Comp. Stat., D. C., p. 462, § 95.)

§ 13–312 [24: 72]. Writs of error variant from the original record, or otherwise defective, amendable by the court where returnable—Judgment shall not be stayed or reversed for defect or fault, in form or substance, in bill, writ, original, or judicial, or variance in said writs from other proceedings, except process upon indictment, presentment, or information, of or for any offense or misdemeanor.

All writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended and made agreeable to such record, by the respective courts where such writ or writs of error shall be made returnable; and where any verdict hath been or shall be given in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ, original or judicial, or for any variance in such writs from the declaration or other proceedings.

Provided nevertheless, that nothing in this section contained shall extend, or be construed to extend to any process upon any indictment, presentment, or information, of or for any offence or misdemeanor whatsoever. (5 Geo. 1, ch. 13, § 1, 1718; Kilty Rep., p. 248; Alex. Br. Stat., p. 697; Comp. Stat., D. C., p. 463, § 99.)

§ 13–313 [24: 73]. After verdict, judgment shall be given, notwithstanding lack of color, insufficient pleading, jeofail, miscontinuance, discontinuance, misconveyance of process, misjoining of issue, lack of warrant of attorney, or other default or neglect of parties, counsel, or attorneys—Such judgment shall stand in full force according to the verdict, without reversal as though such default or negligence had not been.

If any issue be tried by the oath of twelve indifferent men, for the party plaintiff or demandant, or for the party tenant or defendant, in any manner of action or suit at common law, in any of the courts of record, that then the justice or justices by whom judgment thereof ought to be given, shall proceed and give judgment in the same; any mispleading, lack of colour, insufficient pleading, or jeofail, any miscontinuance or discontinuance, or misconveying of process, misjoining of the issue, lack of warrant of attorney for the party against whom the same issue shall happen to be tried, or any other default or negligence of any of the parties, their counsellors, or attorneys, had or made to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error, or of false judgment, in like form as though no such default or negligence had never been had or committed. (32 Hen. 8, ch. 30, § 2, 1540; Kilty Rep., p. 232; Alex. Br. Stat., p. 327; Comp. Stat., D. C., p. 448, § 37.)

§ 13–314 [24: 74]. After verdict judgment shall not be stayed or reversed for default in form, lack of form, false Latin, variance from register—Default in form of writ, count, declaration, plaint, bill, suit or demand, want of writ, imperfect return or default in process, except indictment or presentment of felony, murder, treason, or process upon them, actions popular and upon penal statutes.

If any verdict of twelve men shall be given in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any default in form, or lack of form, touching false Latin, or variance from the register, or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit, or demand, or for want of any writ original or judicial, or by reason of any imperfect or insufficient return of any marshal or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon or after any aid prier or voucher, nor any such record or judgment after verdict to be given hereafter, shall be reversed for any of the defects or causes aforesaid.

Provided always, That this section or any thing herein contained, shall not extend to any indictment, or presentment of felony, murder, treason, or other matter, nor to any process upon any of them, nor to any writ, bill, action or information upon any popular or penal statute. (18 Eliz. ch. 14, §§ 1 and 2, 1576; Kilty Rep., p. 235; Alex. Br. Stat., p. 411; Comp. Stat., D. C., p. 287, §§ 3 and 4.)

§ 13–315 [24: 75]. After verdict judgment shall not be stayed nor reversed for issuance of process to the wrong officer, that any juror is misnamed, no return to writs, that the marshal's name does not appear, that infant plaintiff appeared by attorney, if he won—Except as to indictment or presentment of felony, murder, or treason, or process upon them, and popular and penal statutes.

If any verdict of twelve men, shall be given for the plaintiff or defendant, in any action, suit, bill, plaint, or demand in any court of record, the judgment thereupon shall not be stayed nor reversed by reason of any lack of an averment of any life or lives of any person or persons, so as upon examination, the said person be proved to be in life; or by reason that the venire facias, or habeas corpora is awarded to a wrong officer, upon any insufficient suggestion; or by reason that any of the jury which tried the said issue is misnamed, either in the sirname or addition in any of said writs, or in any return upon any of the said writs, so as upon examination it be proved to be the same man that was meant to be returned; or by reason that there is no return upon any of the said writs, so as a pannel of the names of jurors be returned and annexed to the said writ; or for that the marshal's name or other officer's name having the return thereof, is not set to the return of any such writ, so as upon examination it

be proved that the said writ was returned by the marshal or deputy marshal, or any such other officer; or by reason that the plaintiff in an ejection firmæ, or in any personal action or suit (being an infant under the age of one and twenty years) did appear by attorney therein, and the verdict pass for him.

Provided always, that this section, or any thing herein contained, shall not extend to any indictment or presentment of felony, murther or treason, nor to any process upon any of them; nor to any writ, bill, action or information upon any popular or penal statute. (21 Jac. 1, ch. 13, §§ 2 and 3, 1623; Kilty Rep., p. 237; Alex. Br. Stat., pp. 442, 443; Comp. Stat., D. C., p. 448, §§ 38 and 39.)

§ 13–316 [24: 76]. After verdict, judgment shall not be stayed or reversed for default in or lack of form, want of profert, allegation of vi et armis or contra pacem, mistake in name of party, sum of money, time, or for other named formal defects, all of which may be amended.

If any verdict of twelve men shall be given in any action, suit, bill or demand, judgment thereupon shall not be stayed or reversed, for default in form, or lack of form; or for default of alledging the bringing into court of any bond, bill, indenture, or other deed whatsoever mentioned in the declaration, or other pleading; or for default of allegation of bringing into court of letters testamentary, or letters of administration; or by reason of the omission of vi et armis, or contra pacem; or for or by reason of the mistaking of the christian name or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk in any bill, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, plaint, roll, or record preceding, or in the same roll or record where the mistake is committed, is or are once truly and rightly alledged, whereunto the plaintiff might have demurred and shewn the same for cause; nor for want of the averment of hoc paratus est verificare; or for hoc paratus est verificare per recordum; or for not alledging prout patet per recordum; nor any judgment after verdict, confession by cognovit actionem, or relicta verificatione, shall be reversed for want of misericordia, or capiatur; or by reason that a capiatur is entred for a misericordia, or a misericordia is entred where a capiatur ought to have been entred; nor for that ideo concessum est per curiam is entred for ideo consideratum est per curiam; nor for that the increase of costs after a verdict in an action, or upon a nonsuit in replevin are not entred to be at the request of the party for whom the judgment is given; nor by reason that the costs in any judgment whatsoever are not entred to be by consent of the plaintiff; but that all such omissions, variances, defects, and all other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended by the justices or other judges of the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by writ of error. (16 and 17 Car. 2, ch. 8, § 1 (1664); Kilty Rep., p. 239; Alex. Br. Stat., pp. 484 and 485; Comp. Stat., D. C., p. 287, § 5.)

§ 13–317 [24: 77]. Section 13–316 shall not extend to any indictment or presentment of felony, murder, treason, or to process upon them, penal statutes, other than subsidies of tonnage, writs of error by executors or administrators, actions popular, penal law or statute, information or appeal.

Provided always that section 13–316 or anything therein contained, shall not extend to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon any of them; nor to any writ, bill, action, or information upon any penal statute, other than concerning customs and subsidies of tonnage and poundage, nor to any writ of error to be brought by any executor or administrator; nor unto any action popular, nor unto any other action which is, or hereafter shall be brought upon any penal law or statutes. (16 and 17 Car. 2, ch. 8, §§ 2 and 5 (1664); Kilty Rep., p. 239; Alex. Br. Stat., p. 485; Comp. Stat., D. C., pp. 288 and 289, §§ 6 and 10.)

§ 13–318 [24: 78]. Statutes of jeofails extend to judgments by confession, nihil dicit and non sum informatus.

All statutes of jeofails in this chapter shall extend to judgments entred upon confession, nihil dicit, or non sum informatus, in any court of record; and no such judgment shall be reversed, nor any judgment upon any writ of enquiry of damages executed thereon be staid or reversed for or by reason of any imperfection, omission, defect, matter or thing whatsoever, which would have been aided and cured by any of the said statutes of jeofails in case a verdict of twelve men had been given in the said action or suit. (4 Ann, ch. 16, § 2 (1705); Kilty Rep., p. 245; Alex. Br. Stat., p. 660; Comp. Stat., D. C., p. 449, § 42.)

§ 13–319 [24: 79]. Criminal and penal matters.

Nothing contained in section 13–212 and section 13–318 shall extend to any writ, declaration or suit of appeal of felony or murder, or to any indictment or presentment of treason, felony or murder, or other matter, or to any process upon any of them, or to any writ, bill, action, or information upon any penal statute. (4 Ann, ch. 16, § 7, 1705; Kilty Rep., p. 246; Alex. Br. Stat., p. 660.)

§ 13–320 [24: 80]. Mandamus, quo warranto, and proceedings thereon.

All the statutes of jeofayles contained in this chapter, shall extend to all writs of mandamus and informations, in nature of quo warranto, and proceedings thereon, for any the matters in said statutes mentioned. (9 Ann, ch. 20, § 7, 1710; Kilty Rep., p. 248; Alex. Br. Stat., p. 695; Comp. Stat., D. C., p. 366, § 5.)

RULES OF CIVIL PROCEDURE

Writs of mandamus are abolished; same relief to be obtained by appropriate action or motion, see Rule 81 (b).

Chapter 4.—PARTIES

Sec.

13–401. One action and judgment against all or any defendants jointly or severally or jointly and severally obligated—Unnecessary separate actions—Motion to consolidate.

§ 13–401 [24: 251]. One action and judgment against all or any defendants jointly or severally or jointly and severally obligated—Unnecessary separate actions—Motion to consolidate.

Where money is payable by two or more persons jointly or severally or jointly and severally upon the same obligation or instrument, one action may be sustained and judgment recovered against all or any of the parties by whom the money is payable, at the option of the plaintiff; but if separate actions be brought unnecessarily against the several parties to such contract, the said actions may on motion be consolidated, and the plaintiff shall be allowed the costs of one (1) action only. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1211.)

CROSS REFERENCES

Joinder of officers or stockholders in suits by creditors against corporations, § 29–728.

Parties in actions against partnerships, §§ 41–118, 41–126.

Parties in actions to enforce mechanics' liens, § 38–110.

Suit in the name of an officer concerning property belonging to an organization of the National Guard, § 39–513.

See notes to § 13–201.

RULES OF CIVIL PROCEDURE

See Rules 14, 17–25, and 67.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

When two persons are joined as defendants upon contract, but the proof shows liability of one only, a judgment may be taken against the one liable. *Presbrey* v. *Thomas* (1 App. D. C. 171).

When two joint contractors were joined in the same action, the entry of judgment against one does not bar the action against the other. *Harris* v. *Leonhardt* (2 App. D. C. 318).

Maker and endorsers of a promissory note may properly be joined, by the holder, as defendants, and under R. S., D. C., § 827 relating to suits against joint obligors, separate judgments may be rendered against them. *Young* v. *Warner* (6 App. D. C. 433).

When contract is made with several persons, whether it is under seal or not, if their legal interest is joint, they must, if living, all join in an action on the contract, and if all have not joined the judgment will be arrested. *Magruder* v. *Belt* (7 App. D. C. 303).

In a suit against all the joint obligors on a joint and several bond, after judgment has been taken against one by confession, the suit may be continued against the others and there can be no difference between taking judgment by confession and taking judgment by default. *Bladgen* v. *United States ex rel. Preinkert* (18 App. D. C. 370).

CONSOLIDATION

Consolidation of two actions for trial does not combine them into one cause of action or effect a true consolidation where one judgment would be decisive against all parties to both actions. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

JUDGMENT AGAINST LESS THAN ALL PARTIES

In a suit against the principal and two sureties on a bond the action was discontinued as to one of the sureties. On appeal from an order overruling a motion in arrest of judgment "because the action is against but two of three joint and several obligors," and "because the action has been discontinued against one of the three joint and several obligors," and "because though one of the three joint and several obligors has died since the institution of this suit plaintiffs have failed to make his personal representative a party defendant," the court ruled: "That the action was discontinued as to Horton, who it seems had become insolvent, presents no ground for arresting the judgment. Section 1211 of the code (this section) simply provides that one action may be sustained and judgment recovered against all or any joint and several obligors. It does not require that this shall be done." *Wilkinson* v. *McKimmie* (36 App. D. C. 336, affd. 229 U. S. 590, 57 L. Ed. 1342, 33 Sup. Ct. 879).

PRINCIPAL AND AGENT

In an action in Municipal Court of District of Columbia, joinder of principal and agent where the principal's liability is predicated solely upon agency is proper. *Bailey* v. *Zlotnick*, 1942 (133 F. 2d 35, 77 U. S. App. D. C. 84).

USE PLAINTIFF

Where suit was commenced by plaintiff in his individual name and thereafter plaintiff added name of insurance company as a use plaintiff on suggestion of trial judge and without objection by defendant, and it appeared on appeal that insurance company was not a necessary party to the action but that defendant had not been harmed by addition of such party, judgment would be modified by striking name of insurance company. *Quinn* v. *Milner, to Use of Hartford Fire Ins. Co.* (D. C. Mun. App. 1943, 34 A. 2d 259).

TITLE 14.—PROOF

Chap.		Sec.
1.	Evidence in general	14–101
2.	Depositions	14–201
3.	Competency of witnesses	14–301
4.	Documentary evidence	14–401
5.	Absence for seven years	14–501

Chapter 1.—EVIDENCE IN GENERAL

Sec.
14–101. All evidence to be under oath or affirmation—Affirmation the equivalent of an oath.
14–102. Perjury—Defined.
14–103. Testimony in equity causes—Commissioners, examiners—Notice—Depositions—Perpetuam rei memoriam.
14–104. Impeachment of own witness—Surprise.

§ 14–101 [9: 1]. All evidence to be under oath or affirmation—Affirmation the equivalent of an oath.

All evidence shall be given under oath according to the forms of the common law, except that where a witness has conscientious scruples against taking an oath, he may, in lieu thereof, solemnly, sincerely, and truly declare and affirm; and wherever herein any application, statement, or declaration is required to be supported or verified by an oath it is to be understood that such affirmation is the equivalent of an oath. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1056.)

CROSS REFERENCE

Immunity of witnesses testifying in prostitution cases, § 22–2718.

RULES OF CIVIL PROCEDURE

See Rule 43.

NOTES TO DECISIONS

ADMISSIBILITY

As a general rule any evidence which is logically probative of some fact in issue is relevant and prima facie admissible unless it conflicts with the same settled exclusionary rule. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

CUSTOM AND USAGE

A custom, to be binding, must be shown to be the general usage of the trade and must be definite, uniform, well-known and established by clear and satisfactory evidence. *Lucas* v. *Auto City Parking Co.* (D. C. Mun. App. 1948, 62 A. 2d 557).

A custom to be binding must be shown to be the general usage of the trade and must be definite, uniform, well-known and established by clear and satisfactory evidence. *Goldberg* v. *Stouck* (D. C. Mun. App. 1950, 76 A. 2d 785).

EVIDENCE

To be entitled to recover commisson, broker must have produced a purchaser who was ready, able and willing to buy on the terms authorized by the principal. Purchaser's signature on contract is some evidence of willingness to proceed but not that he was financially able or ready to do so. *Long* v. *Murchison* (D. C. Mun. App. 1948, 62 A. 2d 370).

No error was committed by excluding a letter which contained no recitals of fact but merely claimed that defendant had sold the shop without his knowledge and demanded his half of the proceeds. *Boyle* v. *Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

EXAMINATION OF WITNESS

It was not prejudicial error for a police officer, in testifying, to state "It looks like he had been caught again," on the ground that this testimony referred to his prior record, since it did not refer to a prior conviction. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

EXPERT TESTIMONY

Rarely is expert testimony as to value binding on the trier of the facts and it is never binding when inconsistent with other evidence. *Urciolo* v. *Sachs* (D. C. Mun. App. 1948, 62 A. 2d 308).

It was error to exclude testimony of police officers who observed defendant that, in their opinion, defendant was under influence of intoxicating liquor, on ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions. Even though one is not an expert, he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 640).

HEARSAY

Statements made by the operator of house of ill fame in appellant's presence while they were both under arrest to the effect that appellant was visiting her and that she was operating a house of ill fame, were hearsay. But since such statements were received without objection, the trial judge had a right to consider them along with defendant's silence. *Wilson* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

HYPOTHETICAL QUESTIONS

Permitting witness to answer hypothetical question which had no basis in the evidence which preceded it was improper. *Henkel* v. *Varner,* 1944 (138 F. 2d 934, 78 U. S. App. D. C. 197).

Practice of eliciting expert testimony by having experts listen to other witnesses and give an opinion based upon such evidence is not generally approved though it is harmless when basic testimony is not voluminous nor complicated; and hypothetical questions containing salient points of previous witnesses' testimony are generally preferred to avoid confusion. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

INSTRUCTIONS

It was error for Trial Court in its charge to the jury to state "that the jury had a duty to probe the minds of the parties as to the meaning of a supplemental written contract" where the court made no amplification or explanation of this instruction. *Syndicated Constr. Corporation* v. *Ross* (D. C. Mun. App. 1948, 62 A. 2d 368). Appeal dismissed (D. C. Mun. App. 1950, 73 A. 2d 899).

IRRELEVANCY

Inclusion of an "incidental book" maintained at police precinct to prove District had notice of a depression in District road was harmless error where there was considerable other evidence covering the same subject and report would have no relevancy without testimony connecting the depression with the accident. *Bale* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 551).

MARKET VALUE

In an action for breach of contract to convey real property, evidence of market value is what a willing buyer would pay in cash to a willing seller and speculative value is not market value. *Urciolo* v. *Sachs* (D. C. Mun. App. 1948, 62 A. 2d 308).

In an action for breach of contract to convey real property, trial court is not compelled to accept speculative

transactions as evidencing true market value. *Urciolo* v. *Sachs* (D. C. Mun. App. 1948, 62 A. 2d 308).

OATHS

Where witness testified that "he did not believe in the God of the Bible, nor in rewards or punishments after death, but that he did recognize a right and duty of society to force member to speak the truth," his evidence was not inadmissible where he was permitted to testify on affirmation. *Gillars* v. *U. S.* (C. A. D. C. 1950, 182 F. 2d 962, 86 U. S. App. D. C. 386).

PAROL EVIDENCE

Where an owner signed a listing agreement with broker authorizing sale on specified terms, if and when a purchaser was found, it was not error for trial court to permit the owner to testify that she had signed on the assurance that time would be extended if she had no place to go. Such testimony does not vary a written contract by parol testimony and was not offered to contradict any written instrument, but only to show misrepresentation. *Ellis* v. *Morgan* (D. C. Mun. App. 1949, 65 A. 2d 797).

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may properly be inferred that the party did not intend the writing to be a complete and final statement of the whole transaction. *Jay's Restaurant v. Jack Stone Co.* (D. C. Mun. App. 1948, 62 A. 2d 799).

PAROL EVIDENCE RULE

In an action for breach of contract, it was error for Trial Court to permit appellee to testify that he signed a supplemental contract with the understanding that it related only to house and lot and did not include the wall or fence, where there was no explanation as to how this "understanding" was arrived at and it represented merely the mental process of the witness. *Syndicated Const. Corporation* v. *Ross* (D. C. Mun. App. 1948, 62 A. 2d 368). Appeal dismissed (D. C. Mun. App. 1950, 73 A. 2d 899).

RES GESTAE

Declaration made anywhere from a few moments to five or ten minutes after an accident neither met test of spontaneity nor closeness of time so as to be considered part of the res gestae. *Bale* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 551).

REVERSIBLE ERROR, EXCLUSION

Exclusion of testimony of a witness who did not hear the entire conversation was reversible error where it appeared that the testimony, according to the proffer of proof, went to the heart of the controversy. Hence, the witness should have been permitted to testify as to how much of the conversation he heard when subjected to cross-examination. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

SHOP BOOK RULE

It was reversible error to exclude entries made in the accounts receivable ledger regarding credit transactions of a client to prove that such client was operating as a partnership. Such ledger sheet was admissible under the Federal Shop Book Rule as a record made in the regular course of business. *Orndorff* v. *Cohen* (D. C. Mun. App. 1948, 62 A. 2d 794).

WEIGHT OF EVIDENCE

The weight of evidence is a question for the trier of the facts and a finding of fact supported by substantial evidence cannot be set aside on appeal. The weight of such evidence is not necessarily determined by the number of witnesses. *Cohen* v. *United States* (D. C. Mun. App. 1949, 63 A. 2d 854).

§ 14–102 [9: 2]. Perjury—Defined.

A person swearing, affirming, or declaring, or giving testimony in any form where an oath is authorized by law, is lawfully sworn, and will be guilty of perjury in a case where he would be guilty of said crime if sworn according to the forms of the common law. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1057.)

§ 14–103 [9: 6]. Testimony in equity causes—Commissions, examiners—Notice—Depositions—Perpetuam rei memoriam.

In equity causes in the District the testimony of the witnesses may be taken in the manner provided by the rules of the Supreme Court of the United States for practice in equity, and of the District Court of the United States for the District of Columbia not inconsistent therewith: *Provided*, The court may, in its discretion, for proper cause shown, order the testimony to be taken orally in its presence or under a commission, according to the usages of chancery, or before examiners, upon any reasonable notice as directed in section 14–203, as the court may order and direct; and according to the same usages the court may, upon application by any party interested, direct depositions to be taken in perpetuam rei memoriam, in relation to matters that may be cognizable in the court. (Mar. 3, 1901, 31 Stat. 1356, ch. 854, § 1061.)

RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

NOTE TO DECISION

REVIEW OF BOARD OF TAX APPEALS DECISION

Reviewing a decision of the Board of Tax Appeals, whose rules of practice and procedure are in accordance with the rules of evidence applicable in courts of equity of the District of Columbia, court applied Supreme Court Equity Rule 46 (U. S. C., title 28, § 723). *Garden City Feeder Co.* v. *Com. Int. Rev.* ((C. C. A. 8), 75 Fed. (2d) 804).

§ 14–104 [9: 21]. Impeachment of own witness—Surprise.

Whenever the court shall be satisfied that the party producing a witness has been taken by surprise by the testimony of such witness, such party may, in the discretion of the court, be allowed to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to such party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such statements and if so allowed to explain them. (June 30, 1902, 32 Stat. 540, ch. 1329, § 1073a.)

CROSS REFERENCE

Conviction of crime, competency, and credibility, see § 14–305.

NOTES TO DECISIONS

DISCRETION OF COURT

Granting Government permission to cross-examine witnesses as hostile was not an abuse of discretion, where witness was at time of transactions giving rise to prosecution a business associate of defendant. *Fields* v. *U. S.* (App. D. C. 1947, 164 F. 2d 97, certiorari denied 68 S. Ct. 355, 332 U. S. 851, 92 L. Ed. 421, rehearing denied 68 S. Ct. 607, 333 U. S. 893, 92 L. Ed. 1123).

HARMLESS OR PREJUDICIAL ERROR

In prosecution for conducting rooming house without a license where prosecution expected witness to testify that he paid rent and was surprised by witness' testimony that he paid no rent, but there was no other testimony by

anyone that such witness paid rent, permitting proof of prior inconsistent statement of witness was prejudicial error. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1945, 43 A. 2d 46).

IMPEACHMENT OF GOVERNMENT WITNESS

Government may impeach accomplice of accused, upon surprise, by questioning him concerning a statement made and now repudiated. *Smith* v. *United States* (57 App. D. C. 71, 17 Fed. (2d) 223); *Johnson* v. *Newton* (58 App. D. C. 118, 25 Fed. (2d) 542).

Impeaching Government's own witness by prior written statements, within discretion of court. *Bedell* v. *United States* (63 App. D. C. 31, 68 Fed. (2d) 776).

INSTRUCTIONS

Prior inconsistent statements of witness admitted for impeachment purposes are not received as affirmative proof of fact for any other purpose, and in jury cases the jury should be so instructed. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1944, 43 A. 2d 46).

PREJUDICE AS NECESSARY

Prior inconsistent statements by witness are received only for impeachment purposes and are allowed for the purpose of counteracting actual hostile testimony with which the party has been surprised, and may not be received when the witness' testimony is not prejudicial to the party's case. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1945, 43 A. 2d 46).

To justify impeachment by proof of prior inconsistent statements, it must appear that the witness testified to facts which tended to destroy or injure the party's case or contradicted evidence which he was reasonably relied on to corroborate. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1945, 43 A. 2d 46).

Chapter 2.—DEPOSITIONS

Sec.
14–201. Depositions de bene esse—Taking—Conditions—Procedure—Resident and nonresident witnesses.
14–202. Attendance of witness—Tender of fee.
14–203. Commission to take depositions—Admissibility.
14–204. Commissions from courts out of the District.

§ 14–201 [9: 3]. Depositions de bene esse—Taking—Conditions—Procedure—Resident and nonresident witnesses.

The testimony of any witness may be taken in any civil cause depending in any court of the District of Columbia, whether the cause be at issue or not, by deposition de bene esse, under any of the following conditions:

First. Where the witness lives beyond the District of Columbia.

Second. Where the witness is likely to go out of the United States or beyond the District and not return in time for the trial.

Third. Where the witness is infirm or aged, or for any other reason the party desiring his testimony fear he may not be able to secure the same at the time of trial, whether said witness resides within the District or not.

Fourth. If during the trial any witness is unable, by reason of sickness or other cause, to attend the trial, the deposition of such witness may, in the discretion of the court, be taken and read at the trial.

Any such deposition may be taken before any judge of any court of the United States; before any commissioner or clerk of any court of the United States, or any examiner in chancery of any court of the United States; before any chancellor, justice, or judge or clerk of any court of any state or territory or other place under the sovereignty of the United States, or any notary public or justice of the peace within any place under the sovereignty of the United States: *Provided,* That no such person shall be eligible to take such deposition who is counsel or attorney for any party to the cause or who is in any wise interested in the event of the cause.

Before proceeding to take the deposition reasonable written notice of the time, place, names, and addresses of the witnesses shall be given by the party or his attorney proposing to take the deposition to the attorney of record, if there be one, of the adverse party, and if not, to the party himself, which notice shall specify the name or names of the witnesses, the time and place of taking the same, and the name and official character of the person before whom the same is to be taken; but it shall not be lawful to require the adverse party to attend the taking of a deposition at more than one place on the same day.

In all cases in rem the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party until a claim shall have been put in, when the claimant and the person having the agency or possession as aforesaid shall both be entitled to the notice.

Summons to any witness to appear and testify shall be issued by the person or officer before whom the deposition is to be taken, and served by the marshal of the United States or his deputy within the place where the witness resides; and the witness may be compelled to appear and testify by the officer before whom the deposition is to be taken in the same manner as witnesses may be compelled to appear and testify in court; and for the purpose of executing the provisions of this section any of the persons authorized to take such depositions are hereby vested with all the power and authority for compelling the attendance of the witness and the giving of his testimony which by law or usage are vested in any of the judges of the courts of the United States, and shall be entitled, upon summary application, to the aid of the courts of the United States to compel such attendance and giving of testimony.

Every person deposing as herein provided shall first swear or solemnly and truly affirm to tell the truth, the whole truth, and nothing but the truth in answer to such questions as are propounded to him by the parties or their counsel; and the adverse party or his counsel shall have the right to cross-examine such witness.

The questions propounded to the witness and the answers of the witness thereto shall be taken down in writing; and the same may be taken down stenographically by the officer taking the deposition or a competent and disinterested stenographer engaged by him, and afterwards transcribed into writing or typewriting, and, in the presence of the officer taking the deposition, read over to the witness, and signed by him. If the witness be unable to write or refuse to sign the deposition, the officer taking the same shall certify the fact and the reason, if any, assigned by the witness.

The deposition of the witness or witnesses, together with the certificate of the officer taking the same, shall be by said officer sealed up and indorsed with

the title of the cause in which the deposition is taken, and the cost of taking the same and by whom paid, and by him transmitted to the court in the District of Columbia in which the cause is pending, and by him deposited, postage prepaid, in the United States mail.

If, at the time of trial, the witness can be produced to testify in open court the deposition shall not be read in evidence; but if the attendance of the witness can not be produced then the said deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten days after the return thereof, and would be valid were the witness personally present in court.

In any case where the interests of justice may require the District Court of the United States for the District of Columbia may grant a dedimus potestatem to take depositions according to common usage, and may, according to the usages of chancery, direct depositions to be taken in perpetuam rei memoriam if they relate to any matters that might be cognizable in any court of the United States.

When the testimony of any witness residing in any place not within the sovereignty of the United States is desired in any cause pending in any court of the District of Columbia, the same may be taken upon interrogatories and cross-interrogatories filed in said court, and transmitted by said court under letters rogatory, addressed to some court of record in the foreign state in which said witness is then to be found. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1058; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the section of the 1901 act and inserted in lieu thereof the above. In the 1901 act the second and third paragraphs provided as follows:

"First. Where the witness lives at a greater distance than 100 miles from the place of trial.

"Second. Where the witness is likely to go out of the United States or out of the District to a place more than 100 miles from the place of trial and not return in time for the trial."

In the seventh paragraph the provision as to notice was as follows: "Which notice shall be at least twenty days more than the time necessary to reach the place of taking such deposition, and shall specify the name or names of the witnesses, the time and place of taking the same, and the name and official character of the person before whom the same is to be taken; but it shall not be lawful to require the adverse party to attend the taking of a deposition at more than one place on the same day."

The following ninth paragraph of the 1901 act was omitted by the 1902 amendment: "When by reason of absence of the party or his attorney of record, or other cause, the giving of the notice herein required shall be impossible or impracticable, and there shall be urgent necessity for taking such deposition, the notice shall be given in such manner as a justice of the supreme court of the District of Columbia shall direct."

CROSS REFERENCES

Deposition in equity cases, § 14–103.

See §§ 23–111, 23–112 as to depositions in criminal cases and § 11–519 as to depositions in the probate court.

RULES OF CIVIL PROCEDURE

It would seem that this section is largely superseded since Rule 26 provides that "Depositions shall be taken only in accordance with these rules."

See Rules 26, 27, 28, 29, 30, 31, 32, 33, and 45.

NOTES TO DECISIONS

IN GENERAL

The code provisions relative to depositions, etc., supersede all former legislation on the subject. *Hutchins* v. *Hutchins* (41 App. D. C. 367).

DEPOSITIONS

Deposition may be offered in evidence by adverse party. *New Arcade Co.* v. *Owens* (49 App. D. C. 65, 258 Fed. 965).

Counsel had the right to read as a part of his own case so much of the deposition as he desired, which was not clearly fragmentary and misleading. *Bernhardt* v. *City & S. R. Co.* (49 App. D. C. 265, 263 Fed. 1009).

Deposition taken in New York City, pursuant to notice, wherein, witness testified that he lived in that city, is admissible without proof that witness was unavailable at time of trial. "In such a case the law presumes that the witnesses continued to live in that city and were there at the time of the trial." *Campbell* v. *Willis* (53 App. D. C. 296, 290 Fed. 271).

GENERAL INTERROGATORIES

General interrogatories which do not inform the opposing party of the answer that might be expected are improper, and "should be called attention to by motion to exclude or suppress the answer, in advance of the trial." *Walker* v. *Warner* (31 App. D. C. 76). See also *Anacostia & P. R. R. Co.* v. *Klein* (8 App. D. C. 75); *Massachusetts Mut. Acc. Assn.* v. *Dudley* (15 App. D. C. 472).

OBJECTIONS

Objections to questions and answers must be noted at the time of taking of deposition or within 10 days after the return thereof, and an objection first made when the deposition is read to the jury comes too late. *Macafee* v. *Higgins* (31 App. D. C. 355). See also *Welch* v. *Lynch* (30 App. D. C. 122).

WITNESSES IN FOREIGN COUNTRIES

Testimony of witness in foreign country must be taken on interrogatories and cross-interrogatories, under letters rogatory. *Hutchins* v. *Hutchins* (41 App. D. C. 367).

WHO ARE WITNESSES

Word "witnesses" is used in its ordinary sense, and includes all persons whose declarations under oath are received for any legal purpose, and embraces deponents in affidavits. The recorder is a representative of the Civil Service Commission, duly authorized by it to administer oaths of witnesses, and is therefore a person authorized by the laws of the United States to administer oaths. *United States* v. *Crandol* ((D. C.-Va.), 233 Fed. 331).

§ 14–202 [9: 4]. Attendance of witness—Tender of fee.

No witness shall be required, under the provisions of section 14–201, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpœna directed to him by virtue of the said section, unless his fee for going to, returning from, and one day's attendance at the place of examination are paid or tendered to him at the time of the service of the subpœna. (Mar. 3, 1901, 31 Stat. 1356, ch. 854, § 1059.)

§ 14–203 [9: 5]. Commission to take depositions—Admissibility.

On motion made in any common-law action in the District, by a party thereto, the court may order a commission to issue to such person or persons as the court may name to take the deposition of any witness residing or being out of the District orally or on interrogatories and cross-interrogatories, to be filed and accompany such commission, as may be provided by the rules of the court, and said com-

mission shall be executed, returned, and published according to the practice in courts of equity: *Provided,* That such depositions shall not be admitted at the trial of the action if, at the time, the witness be present in the District and his attendance can be obtained by the process of the court. (Mar. 3, 1901, 31 Stat. 1356, ch. 854, § 1060; June 30, 1902, 32 Stat. 540, ch. 1329.)

AMENDMENT

The 1902 act inserted the provision that depositions could be taken orally as well as on interrogatories and cross-interrogatories.

CROSS REFERENCE

See note under § 14–201. *Hutchins* v. *Hutchins* (41 App. D. C. 367).

§ 14–204 [9:7]. Commissions from courts out of the District.

When a commission is issued or notice given to take the testimony of any witness found within the District of Columbia, to be used in an action pending in any court of a State, Territory or Possession or place under the jurisdiction of the United States, such testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States District Courts. (Mar. 3, 1901, 31 Stat. 1357, ch. 854, § 1062; June 30, 1902, 32 Stat. 540, ch. 1329; June 25, 1948, 62 Stat. 992, ch. 646, § 39; May 24, 1949, 63 Stat. 109, ch. 139, § 139.)

AMENDMENTS

The act of May 24, 1949, reenacted and amended the section to its present form. Said section had formerly read: "When a commission is issued by any court of the United States or of any state or territory or of any place under the jurisdiction of the United States, for taking the testimony of witnesses within the District of Columbia, the same proceedings shall be had in relation thereto as are directed by sections 646 and 647 of title 28 of the Code of the Laws of the United States."

Chapter 3.—COMPETENCY OF WITNESSES

Sec.

14–301. Party to cause and interested party may testify.
14–302. Testimony of surviving party.
14–303. Testimony of deceased or insane party.
14–304. Partners as witnesses.
14–305. Conviction of crime not to disqualify witness—Conviction may be shown—How proved.
14–306. Husband and wife competent but not compellable witnesses.
14–307. Confidential communications between husband and wife.
14–308. Testimony of physicians—Inapplicable in criminal cases.
14–309. Testimony of assessor as expert witness in condemnation proceedings.

§ 14–301 [9:8]. Party to cause and interested party may testify.

Except as herein elsewhere provided, no person shall be incompetent to testify in any civil action or proceeding by reason of his being a party thereto or interested in the result thereof; but, if otherwise competent to testify, he shall be competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to such action or proceeding. (Mar. 3, 1901, 31 Stat. 1357, ch. 854, § 1063.)

RULES OF CIVIL PROCEDURE

Subpoena to compel attendance, see Rule 45.

NOTES TO DECISIONS

IN GENERAL

Acts of Congress relating to the admission of parties to testify in the courts of the United States apply to the courts of the District of Columbia. *Page* v. *Burnstine* (102 U. S. 664, 26 L. Ed. 268).

CHILDREN, COMPETENCY OF

The competency of a child as a witness depends upon capacity and intelligence of the child, his appreciation of difference between truth and falsehood, as well as of his duty to tell the truth. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

In order to be competent as a witness, a child should have a just appreciation of difference between right and wrong. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

The testimony of an infant may be excluded in toto on grounds of incompetency, but once the child is allowed to testify, the uncertainty of his evidence goes only to its weight and does not disqualify it. *Fowel* v. *Wood* (D. C. Mun. App. 1948, 62 A. 2d 636).

CONFIDENTIAL COMMUNICATIONS OF THIRD PERSONS

Where widow was neither a party nor interested in the suit, she was incompetent to testify to private conversations between her and her husband in his lifetime. *Hopkins* v. *Grimshaw* (165 U. S. 342, 41 L. Ed. 739, 17 Sup. Ct. 401).

In suit for custody of child, letters of the child's father's second wife, written to him before marriage, were held material, relevant, and competent, and the father was a competent witness to testify concerning them. *Halback* v. *Hill* (49 App. D. C. 127, 261 Fed. 1007).

Whether streetcar motorman's report of accident was a privileged communication which streetcar company could not be compelled to produce in passenger's action against it for injuries could not be determined by court without knowledge of circumstances under which report was made, reason and purpose for which it was made, and to whom it was made. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

That motorman's report to streetcar company of accident was in possession of streetcar company's counsel did not automatically make report a "privileged communication" which company could not be required to produce in passenger's action against it for injuries. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

QUALIFYING AS AN EXPERT

Owner of household goods who had previously operated rooming house and obviously was an experienced housewife was competent without qualifying as an expert to testify as to value of such items, and weight of testimony was for trial court. *Walsh* v. *Schafer* (D. C. Mun. App. 1948, 61 A. 2d 716).

§ 14–302 [9:9]. Testimony of surviving party.

In any civil action against a person who, from any cause, is legally incapable of testifying, or against the committee, trustee, executor, administrator, heir, legatee, devisee, assignee, or other representative of a deceased person or of the person so incapable of testifying, no judgment or decree shall be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff or of the agent, servant, or employee of the plaintiff as to any transaction with or action, declaration or admission of the deceased or incapable person; and in any such action, if the plaintiff or any agent, servant, or employee of the plaintiff testifies as to any transaction with or action, declaration, or admission of the deceased or incapable person, no entry, memorandum, or declaration, oral or written, by the deceased or incapable person, made while he was capable and upon

his personal knowledge, shall be excluded as hearsay. (Mar. 3, 1901, 31 Stat. 1357, ch. 854, § 1064; Apr. 19, 1920, 41 Stat. 567, ch. 153; June 24, 1948, 62 Stat. 579, ch. 609.)

AMENDMENT

The 1920 amendment deleted the words "or unless called to testify thereto by the court" from the end of the section.

This section was entirely rewritten by Act June 24, 1948.

NOTES TO DECISIONS

In General

"We think the statute should not be extended to prevent the living party from testifying to the truth or falsity of mere extraneous facts, which have been testified to by other witnesses, not involving declarations or admissions by the deceased party." *Lockwood* v. *Rucker* (34 App. D. C. 376).

In action by administrator against decedent's debtor, debtor having been called as a witness by administrator may testify as to transaction, for herself, or as to declarations by the intestate. *Lemon* v. *Martin* (55 App. D. C. 186, 3 Fed. (2d) 710).

To some effect as first paragraph of original annotation, see *Cafritz* v. *Corporation Audit Co.* (D. C., D. C. 1945, 60 F. Supp. 627).

This section seeks to protect only persons legally representing deceased against claims which may be fraudulent and does not seek to prevent anyone from showing who does or does not legally represent deceased. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

Admissions of Decedents

Plaintiff can not testify as to statements made by defendant's testator to a third person, in the presence of the witness. The statute "clearly forbids the surviving party to testify to any admission of the deceased made with respect to a transaction had with him." *McCurley* v. *National Sav. & Trust Co.* (49 App. D. C. 10, 258 Fed. 154), citing *Dawson* v. *Waggaman* (23 App. D. C. 428); *Patten* v. *Glover* (1 App. D. C. 466, affd. 165 U. S. 394, 41 L. Ed. 760, 17 Sup. Ct. 411); *Manogue* v. *Herrell* (13 App. D. C. 455). See also *Parish* v. *McGowan* (39 App. D. C. 184, revd. on other grounds 237 U. S. 285, 59 L. Ed. 955, 35 Sup. Ct. 543).

Corporation Controlled by Deceased

Testimony allegedly violating "surviving party" rule was not subject to objection by corporations controlled by deceased participant. *Cafritz* v. *Corporation Audit Co.* (D. C., D. C. 1945, 60 F. Supp. 627).

Corporate Transactions

The surviving witness rule under this section does not apply where transactions are between an individual and a corporation. *Corporation Audit Co.* v. *Cafritz* (App. D. C. 1946, 156 F. 2d 839).

Where plaintiff, preparing for an extended vacation, signed and left with general manager of an audit company checks payable to plaintiff's corporations, in action against audit company and estate of general manager for proceeds of checks, this section did not exclude plaintiff's testimony against audit company on account of general manager's death, but it did not permit plaintiff's testimony against manager's estate by reason of survivorship of corporation. *Corporation Audit Co.* v. *Cafritz* (App. D. C. 1946, 156 F. 2d 839).

Corroboration

Section 14–302 now enables the surviving party to testify but limits the effect of his testimony. Upon the evidence presented, appellee's testimony was sufficiently corroborated. *Rosinski* v. *Whiteford* (C. A. D. C. 1950, 184 F. 2d 700).

Cross Examination

Testimony brought out on cross-examination after calling of witness by adversary held competent. *Payne* v. *Payne* (56 App. D. C. 167, 11 Fed. (2d) 464).

Evidence

Where, in action arising from a collision between a truck of the plaintiff and defendant's taxicab, testimony of the appellant that relationship between the defendant and the driver of her taxicab was one of bailment and not one of master and servant should have been admitted because the issue was fundamental to the case. Section 14–302, which seeks to protect only persons who legally represent the deceased against claims which may be fraudulent under which the evidence was excluded is clearly inapplicable here since it is clear that defendant was not such a person. *Nash* v. *Holzbeierlein* (D. C. Mun. App. 1949, 68 A. 2d 403).

Insurance, Issues Regarding

This section providing that, if one of original parties to transaction or contract has died, the other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased, did not require exclusion of beneficiary's account of her husband's conversation with finance office clerk, to show intent to change beneficiary of National Service Life policy, particularly because change of beneficiary was not a "transaction" between insured and beneficiary but between him and his insurer. *Rosenschein* v. *Citron* (C. A., D. C. 1948, 169 F. 2d 885).

Joint Maker of Note

Quaere: Whether a joint maker of a note can testify as a witness for plaintiff as to an agreement with the deceased comaker, stopping the statute of limitations, where the suit was originally brought against the witness and the representatives of the decedent, and prosecuted only against decedent. *White* v. *Connecticut Life Ins. Co.* (34 App. D. C. 460).

Objection Not Raised at Trial

Although the testimony was not objected to, Court of Appeals did not consider objection waived and disregarded testimony on appeal; dissenting opinion states this rule to be different from that in all other jurisdictions. *Faunce* v. *Woods* (55 App. D. C. 330, 5 Fed. (2d) 753, 40 A. L. R. 208).

Offer of Proof

In action for rent, refusal to permit tenant's wife to testify as to an agreement with landlord's agent respecting acceptance of repairs in lieu of rent, on ground that agent was deceased, did not reveal error where tenant made no offer of proof as to conversation with agent, and was permitted to show all repairs that had been made and landlord's acquiescence in payment of repairs by agent. *Shlopak* v. *Davison* (D. C. Mun. App. 1943, 34 A. 2d 126).

Protection Against Fraudulent Claims

This section providing that, if one of original parties to transaction or contract has died, other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased, seeks to protect only persons legally representing deceased against claims which may be fraudulent. *Rosenschein* v. *Citron* (C. A., D. C. 1948, 169 F. 2d 885).

Stockholders or Officers of Corporation

A stockholder, officer and director of a corporation is not a "party" with reference to a contract between the corporation and decedent, and his testimony is not excluded. *Cush* v. *Allen* (56 App. D. C. 327, 13 Fed. (2d) 299, 54 A. L. R. 261).

In suit against corporation, seeking to show liability of corporation on contract of sale negotiated by deceased promoter, "Section 1064 (this section) affords no proper basis for exclusion of the evidence." *Lucas* v. *Hamilton Realty Corp.* (70 App. D. C. 277, 105 Fed. (2d) 800).

Surviving Party

Neither a corporation nor its agent can be a surviving "party" to a transaction within meaning of this section. *Corporation Audit Co.* v. *Cafritz* (App. D. C. 1946, 156 F. 2d 839).

Widows

Testimony of widow as to work done in connection with business owned jointly with her husband is not testimony

"to a transaction or contract" with the deceased. *Ellis* v. *Ellis* (51 App. D. C. 383, 280 Fed. 457), citing *Tuohy* v. *Trail* (19 App. D. C. 79).

WILLS, ISSUES REGARDING

The persons named as executors and legatees in an alleged will cannot, in order to probate the will, be permitted to utilize this section. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

Where probate of will naming testatrix' sister sole beneficiary was opposed on ground of undue influence and want of testamentary capacity, this section did not require exclusion of testimony of testatrix' brother that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

WITNESS CALLED BY COURT

It is not the duty of the court to call a party to testify whenever the party requests that it be done, but it should be done only when there is something extreme or special. *Ockstadt* v. *Bowles* (34 App. D. C. 58); *Janes* v. *Janes* (51 App. D. C. 267, 278 Fed. 576).

When appellant's deposition was regularly taken and he was fully and carefully cross-examined by counsel for appellees, the result was exactly the same as though he had been called to testify by the court. *Conkling* v. *New York Life Ins. & Trust Co.* (49 App. D. C. 166, 262 Fed. 620).

§ 14–303 [9: 10]. Testimony of deceased or insane party.

If a party, after having testified at a time when he was competent to do so, shall die or become insane or otherwise incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such case the opposite party may testify in opposition thereto. (Mar. 3, 1901, 31 Stat. 1357, ch. 854, § 1065; June 30, 1902, 32 Stat. 540, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the words "a subsequent trial" and inserted in lieu thereof the words "any trial or hearing."

NOTES TO DECISIONS

CORONER'S INQUEST

A coroner's inquest is not an action or judicial proceeding between the same parties or their legal representatives within the meaning of this section. *Capital Trac. Co.* v. *King* (44 App. D. C. 315).

§ 14–304 [9: 11]. Partners as witnesses.

Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly entitled or liable, and some of them have died or otherwise become incapable of testifying, any others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, shall not, nor shall the adverse party, be incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or otherwise become incapable of testifying. (Mar. 3, 1901, 31 Stat. 1357, ch. 854, § 1066.)

NOTES TO DECISIONS

CORPORATIONS CONTROLLED BY DECEASED

Testimony allegedly violating "surviving party" rule was not subject to objection by corporations controlled by deceased participant. *Cafritz* v. *Corporation Audit Co.* (D. C., D. C. 1945, 60 F. Supp. 627).

In action for accounting against corporations and administratrix of individual who controlled them, testimony concerning transaction between plaintiff and individual was admissible under this section applicable where original parties to transaction are jointly liable and some of them have died, especially where such testimony related to extraneous facts not involving declarations or admissions, and evidence established that individual actively participated in corporation's wrong. *Cafritz* v. *Corporation Audit Co.* (D. C., D. C. 1945, 60 F. Supp. 627).

SURVIVING PARTY

Neither a corporation nor its agent can be a surviving "party" to a transaction within meaning of this section. *Corporation Audit Co.* v. *Cafritz* (App. D. C. 1946, 156 F. 2d 839).

§ 14–305 [9: 12]. Conviction of crime not to disqualify witness—Conviction may be shown—How proved.

No person shall be incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime, but such fact may be given in evidence to affect his credit as a witness, either upon the cross-examination of the witness or by evidence aliunde; and the party cross-examining him shall not be concluded by his answers as to such matters. In order to prove such conviction of crime it shall not be necessary to produce the whole record of the proceedings containing such conviction, but the certificate, under seal, of the clerk of the court wherein such proceedings were had, stating the fact of the conviction and for what cause, shall be sufficient. (Mar. 3, 1901, 31 Stat. 1357, ch. 854, § 1067; June 30, 1902, 32 Stat. 540, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "other than perjury" following the word "crime" in the first sentence.

NOTES TO DECISIONS

CONVICTION

The remoteness of the conviction does not affect its admissibility. *Murray* v. *United States* (53 App. D. C. 119, 288 Fed. 1008).

According to this section, "the certificate is necessary only in order to prove previous convictions where the defendant being examined denies the convictions." *Gordon* v. *United States* (53 App. D. C. 154, 289 Fed. 552).

To constitute "conviction" under this section there must be plea or verdict of guilty, as well as judgment and sentence. *Crawford* v. *United States* (59 App. D. C. 356, 41 Fed. (2d) 979).

Instructions with reference to the effect of evidence of prior convictions on credibility. *Mostyn* v. *United States* (62 App. D. C. 22, 64 Fed. (2d) 145).

To same effect as third paragraph of original annotation, see *Thomas* v. *U. S.,* 1941 (121 F. 2d 905, 74 App. D. C. 167).

Charge that government asked defendant concerning his conviction of attempted murder without disclosing that he had been "pardoned" revealed no impropriety on part of prosecutor, in absence of showing that prosecution was aware of the "pardon" or indication of its existence until after sentence, particularly where paper produced was not a pardon but a document purporting to remove political disabilities arising out of the conviction. *Slaughter* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 700).

CRIMES, FELONIES, AND MISDEMEANORS

The word "crime" includes both felonies and misdemeanors. *Murray* v. *United States* (53 App. D. C. 119, 288 Fed. 1008).

The word "crime," as used in statute, includes both felonies and misdemeanors, this case involving a simple assault. *Bostic* v. *United States* (68 App. D. C. 167, 94 Fed. (2d) 636).

CROSS-EXAMINATION

Accused may be cross-examined respecting previous arrest and peace bond to refresh his memory concerning threats to deceased. *Hawkins* v. *United States* (59 App. D. C. 249, 39 Fed. (2d) 294).

In prosecution for purchase of morphine sulphate not in nor from original stamped packages, permitting district attorney to draw from accused on cross-examination admissions of his prior convictions on two occasions of grand larceny was not error. *Goode* v. *U. S.* (App. D. C. 1945, 149 F. 2d 377, 80 U. S. App. D. C. 67).

It is wholly illogical and unfair to permit a defendant to be interrogated upon a previous conviction from which an appeal is pending. The pendency of an appeal prevents the prosecution from proving a previous conviction for impeachment purposes, but though error was committed, it was not so prejudicial as to require reversal. *Campbell* v. *United States* (C. A. D. C. 1949, 176 F. 2d 45).

DENIAL BY WITNESS

Since defendant denied that he had been formerly convicted and counsel abandoned the matter, defendant was not prejudiced. *Clifton* v. *United States* (54 App. D. C. 104, 295 Fed. 925).

If denial of witness was false, counsel for prosecution could have pursued the matter and established the conviction by evidence aliunde, or by production of a certificate by the clerk of the court wherein the conviction was had. *Clifton* v. *United States* (54 App. D. C. 104, 295 Fed. 925).

EXAMINATION OF WITNESS

In discussing question of competency of witness previously convicted of crime, court cites *Murray* v. *United States* (53 App. D. C. 119, 288 Fed. 1008), and says it held no error to ask defendant, a witness for himself, if he had not been convicted of five misdemeanors. *Scaffidi* v. *United States* ((C. C. A. 1), 37 Fed. (2d) 203).

IMPEACHMENT

Impeachment in civil assault case by showing indictment for forgery is prejudicial. *Chebithes* v. *Price* (59 App. D. C. 212, 37 Fed. (2d) 1008).

Violation of ordinance against the sale of half of round trip railroad ticket not crime, to impeach credibility. *Clawans* v. *District of Columbia* (61 App. D. C. 298, 62 Fed. (2d) 383).

It is improper for impeachment purposes, to show accusation, arrest or indictment. *Sanford* v. *United States* (69 App. D. C. 44, 98 Fed. (2d) 325).

When an accused offers himself as a witness, his credibility may be impeached as in the case of any other witness, and previous convictions may be shown to that end. *Goode* v. *U. S.* (App. D. C. 1945, 149 F. 2d 377, 80 U. S. App. D. C. 67).

Defendant's admission of three prior convictions was admissible for purpose of affecting his credibility as a witness. *Slaughter* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 700).

SCOPE OF INQUIRY

Whether the witness is or is not a defendant, if the opposing party introduces his previous conviction the witness should be allowed either to extenuate his guilt or to assert his innocence of the previous charges. *U. S.* v. *Boyer* (App. D. C. 1945, 150 F. 2d 595, 80 U. S. App. D. C. 202).

In prosecution for obtaining money by false pretenses, where government brought out on cross-examination that defendant had been previously convicted of bad check charges and of embezzlement, and defendant was permitted to explain all bad check convictions, refusal to permit defendant to explain the conviction of embezzlement, although technically wrong, did not justify a reversal. *U. S.* v. *Boyer* (App. D. C. 1945, 150 F. 2d 595, 80 U. S. App. D. C. 202).

Where evidence of previous conviction of a defendant or other witness is offered for impeachment, inquiry into the previous crime should stop with any reasonably brief protestations on behalf of a defendant or witness which he may wish to make, and how far the inquiry should go is a matter in which the trial judge should be given a wide discretion. *U. S.* v. *Boyer* (App. D. C. 1945, 150 F. 2d 595, 80 U. S. App. D. C. 202).

§ 14–306 [9: 13]. Husband and wife competent but not compellable witnesses.

In both civil and criminal proceedings, husband and wife shall be competent but not compellable to testify for or against each other. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1068.)

COMPILER'S NOTE

This section is affected by § 22–904, making competent testimony as to confidential communications between husbands and wives in criminal prosecutions for non-support.

NOTES TO DECISIONS

IN GENERAL

This section must be taken "as qualified by § 964 of the 1901 Code (§ 16–420), which provides a special rule of evidence for divorce cases." *Lenoir* v. *Lenoir* (24 App. D. C. 160). See also *Hopkins* v. *Grumshaw* (165 U. S. 342, 41 L. Ed. 739, 17 Sup. Ct. 401); *Chase* v. *United States* (7 App. D. C. 149); *McCartney* v. *Fletcher* (10 App. D. C. 572); *Capital Trac. Co.* v. *Lusby* (12 App. D. C. 295); *Bergheimer* v. *Bergheimer* (17 App. D. C. 381); *Mallery* v. *Frye* (21 App. D. C. 105).

"The Code specifically provides that 'husband and wife shall be competent * * * to testify for or against each other.' Section 964 of the 1901 Code (§ 16–420) * * * has no relation to the competency of the witnesses * * *. The section (§ 16–420) deals only with the weight of the evidence." *Early* v. *Early* (49 App. D. C. 123, 261 Fed. 1003).

"The purpose of section 1068 (this section) * * * was to remove grounds of incompetency and not increase them * * *. Therefore a husband or wife, under this statute, can claim no greater privilege than existed at common law." *Halback* v. *Hill* (49 App. D. C. 127, 261 Fed. 1007).

The provisions of this section apply to all proceedings wherein it is sought to compel the testimony of the husband or wife for or against one another, including bills of discovery, interrogatories in garnishment, and like proceedings. *Commercial Credit Co.* v. *McReynolds* (63 App. D. C. 42, 68 Fed. (2d) 990).

ACTION FOR INJURIES TO WIFE

In action by husband and wife for injuries to the wife, the wife is a competent witness. *Capital Trac. Co.* v. *Lusby* (12 App. D. C. 295).

DIVORCE

No decree for divorce or the annulment of a marriage can be given upon the mere unsupported petition of either husband or wife, even though the petition should be sworn to; and it is not apparent that the conditions are altered by the substitution of a deposition for the petition. Plain purpose of this to prohibit divorce or annulment of marriage upon statement of one without corroborative evidence. *Lenoir* v. *Lenoir* (24 App. D. C. 160).

Where defendant's witness testified that he was present and saw transaction regarding which defendant had testified but on cross-examination prosecution established that witness could not possibly have witnessed the transaction, the jury might properly have disregarded the whole of defendant's testimony as unworthy of belief. *Arbuckle* v. *U. S.*, 1944 (146 F. 2d 657; 79 U. S. App. D. C. 282).

The parties to a divorce suit are competent witnesses. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

EXAMINATION OF WITNESS

Cross-examination of witness regarding conviction of crime was proper. *Hall* v. *Gordon,* 1942 (128 F. 2d 461, 76 U. S. App. D. C. 33).

HISTORICAL

At common law "in collateral proceedings not immediately affecting their mutual interests, either husband or

wife might be a witness, although the evidence of one tended to criminate the other, or to contradict the other, or to subject the other to a legal demand." *Halback* v. *Hill* (49 App. D. C. 127, 261 Fed. 1007).

INTERROGATORIES

One spouse can not be compelled to answer interrogatories, for such disclosures would amount pro tanto to testimony of witness in the case. *McGrew* v. *McGrew* (54 App. D. C. 331, 298 Fed. 204).

Interrogatories in garnishment proceedings are within the provisions of this section. *Commercial Credit Co.* v. *McReynolds* (63 App. D. C. 42, 68 Fed. (2d) 990).

LEGAL REPRESENTATIVE

Decedent's niece who was named as beneficiary in a prior will and who joined in caveat filed by her mother was not a "legal representative" within this section. *In re Cottrill's Estate* (D. C., D. C. 1941, 39 F. Supp. 689).

TESTIMONY AGAINST INTEREST

Wife being a competent witness may testify against her own interest, that she had nothing more than a naked legal title while the sole beneficial ownership was in the husband. *Mallery* v. *Frye* (21 App. D. C. 105).

TESTIMONY AS TO FACT OF MARRIAGE

Testimony of the husband as to the fact of marriage is admissible. *Chase* v. *United States* (7 App. D. C. 149).

WAIVER OF PRIVILEGE

Until a legal representative of a deceased person has been appointed, no authority exists to waive a physician's privilege under this section. *In re Cottrill's Estate* (D. C., D. C. 1941, 39 F. Supp. 689).

WIDOW

A wife shall not be compellable to disclose any communication made to her by her husband during the marriage and it applies as well after the death as during the lifetime of the husband, and it is immaterial whether the objection be taken by demurrer or answer. *McCartney* v. *Fletcher* (10 App. D. C. 572).

§ 14–307 [9: 14]. Confidential communications between husband and wife.

In neither civil nor criminal proceedings shall a husband or his wife be competent to testify as to any confidential communications made by one to the other during the marriage. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1069.)

CROSS REFERENCE

See note to § 14–306.

NOTES TO DECISIONS

CIRCUMSTANCES OF CONVERSATION

In plaintiff's action against his sister-in-law based on a debt for money loaned, it was error not to allow sister-in-law, when her husband was on the witness stand, to show on preliminary examination facts and circumstances surrounding an alleged conversation between sister-in-law and her husband in an attempt to bring out its confidential nature, since if confidential the communication was inadmissible. *Sacks* v. *Sacks,* 1942 (124 F. 2d 527, 75 U. S. App. D. C. 165).

COMMUNICATIONS PRIOR TO MARRIAGE

Communications prior to marriage are not confidential. *Halback* v. *Hill* (49 App. D. C. 127, 261 Fed. 1007).

CONFIDENTIAL NATURE

Communication of husband to wife must have been one of a confidential nature to come within this section. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257).

Where some of testimony of defendant's former wife concerned defendant's financial affairs before they were married, and other portions of testimony related to transactions or prospective transactions which by their nature required communications to third persons, the testimony did not relate to confidential communications, and admission of testimony was not error. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

GARNISHMENT PROCEEDINGS

Testimony of husband or wife for or against one another including interrogatories in garnishment can not be compelled. *Commercial Credit Co.* v. *McReynolds* (63 App. D. C. 42, 68 Fed. (2d) 990).

HUSBAND'S INSTRUCTIONS TO WIFE

Quaere, whether, in the prosecution of the husband for selling liquor on Sunday, the wife of the accused, who made the sale, will be permitted to testify as to instructions or prohibitions she had from her husband as to selling on Sunday. *Trometer* v. *District of Columbia* (24 App. D. C. 242).

§ 14–308 [9: 20]. Testimony of physicians—Inapplicable in criminal cases.

In the courts of the District of Columbia no physician or surgeon shall be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, which he shall have acquired in attending a patient in a professional capacity and which was necessary to enable him to act in that capacity, whether such information shall have been obtained from the patient or from his family or from the person or persons in charge of him: *Provided,* That this section shall not apply to evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon a human being, and the disclosure shall be required in the interests of public justice. (May 25, 1896, 29 Stat. 138, ch. 245; Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1073; Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1636.)

AMENDMENTS

The words of the above section are as they appear in the 1896 act. The 1901 act contained, as § 1073, a section similar to this one except that the word "representative" was plural and the phrase before the proviso clause which begins "whether such information" was omitted. However, § 1636 of the same 1901 act, being the repealing section thereof, expressly excepted from its application the 1896 act aforesaid.

RULES OF CIVIL PROCEDURE

Party may be forced to submit to physical or mental examination, penalty for refusal, see Rules 35, 37 (b).

NOTES TO DECISIONS

ADMISSIBILITY IN GENERAL

"It is for the court, and not the witness, to determine whether or not the facts upon which the conclusion or opinion is founded are within or without the limitations of the statute," and it is error to permit the "witness to discriminate as to matters of fact in his own mind, and merely state his conclusion to the jury." *Hutchins* v. *Hutchins* (48 App. D. C. 495).

Testimony of physician attending testatrix inadmissible; confidential relationship presumed; tender of proof out of presence of jury. *Stafford* v. *American Secur. & Trust Co.* (60 App. D. C. 380, 55 Fed. (2d) 542).

Evidence that physicians had attended insured, to contradict application denying medical attendance, is admissible. *Kavakos* v. *Equitable Life Assur. Soc.* (66 App. D. C. 380, 88 Fed. (2d) 762).

To same effect as third paragraph of original annotation, see *Eureka-Maryland Assur. Co.* v. *Gray,* 1941 (121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

Where four physicians, two representing each side, examined defendant in connection with a probable

prosecution, defendant took no ailment or complaint to them as his physicians, and defendant was told the circumstances of the mental examination and was warned against making statements that might be to his detriment, permitting the physicians who represented the government at the examination to testify in prosecution for murder and rape was not error. *Catoe* v. *U. S.*, 1942 (131 F. 2d 16, 76 U. S. App. D. C. 292).

Under this section, the type of evidence that is not admissible is that which is given in confidence by a patient to a physician, and it protects the personal nature of an ordinary patient-physician relationship. *Catoe* v. *U. S.*, 1942 (131 F. 2d 16, 76 U. S. App. D. C. 292).

Where wife sought annulment of marriage, contracted in Virginia, on ground of husband's fraudulent concealment of fact that he was suffering with a venereal disease, and wife acted promptly, as soon as she ascertained truth, and refused thereafter to continue marital status, the wife who failed to produce Virginia examining physician, counsel having been appointed by court to represent husband, did not come under rule that a party who has it peculiarly within his power to produce a witness, by failing to do so, creates an inference that if the testimony were produced it would be unfavorable. *Stone* v. *Stone*, 1943 (136 F. 2d 761, 78 U. S. App. D. C. 5).

ANNULMENT OR DIVORCE

CONSTRUCTION

The full spirit of the act regarding admissibility of testimony of physician is to be made effectual. *Catoe* v. *U. S.*, 1942 (131 F. 2d 16, 76 U. S. App. D. C. 292).

DEATH CERTIFICATE

Death certificate properly admitted in evidence. *Labofish* v. *Berman* (60 App. D. C. 397, 55 Fed. (2d) 1022).

EXECUTORS

The term "legal representative" includes "executor." *Thompson* v. *Smith* (70 App. D. C. 65, 103 Fed. (2d) 936).

Physician was not competent to testify when called by the caveatees, one of whom was the nominated executor, as the latter could not waive the privilege. *McCartney* v. *Holmquist* (70 App. D. C. 334, 106 Fed. (2d) 855).

FACTS DISCLOSED BY AUTOPSY

"It is well settled that physicians and surgeons may be compelled to testify to the facts disclosed by an autopsy, where the relation of physician and patient did not exist under the lifetime of the deceased." *Carmody* v. *Capital Trac. Co.* (43 App. D. C. 245).

To same effect as original annotation, see *Eureka-Maryland Assur. Co.* v. *Gray*, 1941 (121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

HOSPITAL RECORD

A properly authenticated hospital record of patient's name, address, age, and the like, is admissible, provided there is no disclosure of diagnosis or treatment. *Kaplan* v. *Manhattan Life Ins. Co.* (71 App. D. C. 250, 109 Fed. (2d) 463).

LEGAL REPRESENTATIVE

As used in this section disqualifying physician from giving testimony disclosing confidential information without consent of patient or his "legal representative", the quoted term refers to persons who are entitled to enforce the particular substantive right of the patient which is involved in a particular case. *Calhoun* v. *Jacobs*, 1944 (141 F. 2d 729, 79 U. S. App. D. C. 29).

PUBLIC JUSTICE

Under this section the application of the criterion "public justice" is a matter of discretion with the trial judge, *Catoe* v. *U. S.*, 1942 (131 F. 2d 16, 76 U. S. App. D. C. 292).

PURPOSE

This section is intended to protect interests of the patient, and person with whom patient deals cannot insist upon the disqualification of physician to prejudice and over objections of persons who stand in the patient's shoes. *Calhoun* v. *Jacobs*, 1944 (141 F. 2d 729, 79 U. S. App. D. C. 29).

SUBSEQUENT EXAMINATION BY PHYSICIAN

Plaintiff calling a physician to testify as to his physical condition at a certain time does not waive the right to object to the testimony of a physician who made an examination at a different time. *Mays* v. *New Amsterdam Cas. Co.* (40 App. D. C. 249, 46 L. R. A. (N. S.) 1108, cert. den. 238 U. S. 624, 59 L. Ed. 1494, 35 Sup. Ct. 662), citing *Prudential Ins. Co.* v. *Lear* (31 App. D. C. 184); *Baltimore & O. R. Co.* v. *Morgan* (35 App. D. C. 195).

WAIVER, SUFFICIENCY OF

Life policy provision waiving privilege against disclosure of information acquired through confidential treatment by physician was sufficient waiver of statutory privilege regarding testimony of physician. *New York Life Ins. Co.* v. *Taylor*, 1944 (147 F. 2d 297, 79 U. S. App. D. C. 66).

Statute does not apply where there was an application for the policy, signed by insured, and a purported waiver of the privilege. Moreover, it is not important whether the hospital records were privileged before trial because it is clear that any privilege which might have existed was fully waived when they were put in evidence by plaintiff at the trial. *Mutual Benefit Health and Accident Association* v. *McGinn* (D. C. Mun. App. 1950, 75 A. 2d 643).

WAIVER, WHO MAY EXERCISE

Under this section, in suit by grantor's heirs to set aside, on ground of grantor's mental incapacity, a conveyance of realty to a stranger, the heirs were entitled to exercise, as against the grantee, the patient-grantor's privilege of waiver so that medical testimony and hospital records that grantor was insane were properly admitted. *Calhoun* v. *Jacobs*, 1944 (141 F. 2d 729, 79 U. S. App. D. C. 29).

WAR RISK INSURANCE

In action on war risk insurance policy by the mother of insured, who claimed that insured had become permanently and totally disabled, by failure of his mind, at and before the time the policy lapsed, the report of the examination of insured by a physician was admissible in evidence, the insured himself having sent it to the Veterans' Bureau, but so far as the physician's opinions were based on information received in professional confidence, they should be excluded. *United States* v. *Witbeck* (72 App. D. C. 231, 113 Fed. (2d) 185).

§ 14–309 [9: 23]. Testimony of assessor as expert witness in condemnation proceedings.

In any action for the condemnation of lands in the District of Columbia the assessor of the District shall not be disqualified, by reason of the fact that he holds the office of assessor, from testifying as an expert witness to the market value of such lands, and as to benefits. (Feb. 11, 1932, 47 Stat. 48, ch. 39.)

Chapter 4.—DOCUMENTARY EVIDENCE

Sec.

14–401. Proof of record.
14–402. Record of deeds and wills.
14–403. Record of will to be prima facie evidence of contents and execution.
14–404. Force in District of Columbia of wills probated elsewhere.
14–405. Production of books and papers.
14–406. Proof of municipal ordinances and regulations.

§ 14–401 [9: 15]. Proof of record.

An exemplification of the record under the hand of the keeper of the same, and the seal of the court or office where such record may be made, shall be good and sufficient evidence to prove any record made or entered in any of the states or territories of the United States; and the certificate of the party pur-

porting to be the keeper of such record, accompanied by such seal, shall be prima facie evidence of that fact. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1070.)

CROSS REFERENCES

Articles of association of fraternal benefit association as prima facie evidence of existence and due incorporation, § 35–909.

Authentication of papers by superintendent of insurance, effect, § 35–401.

Certified copies of certificate of incorporation presumptive evidence of facts therein stated, § 29–236.

Corporate stock books presumptive evidence of fact contained therein, § 29–226.

Stock book of domestic life insurance company presumptive evidence of facts therein contained, § 35–515.

Transcribed copy of proceedings before public utilities commission admissible as evidence, § 43–421.

Upon division of insurance business of fraternal benefit association, original policies prima facie evidence of liability of successor corporation, § 35–925.

RULES OF CIVIL PROCEDURE

See Rule 44.

NOTES TO DECISIONS

PROOF OF JUDGMENT

Where no issue is raised regarding the jurisdiction of the justice of the peace rendering the judgment, a properly certified transcript of the docket entries showing service of process upon the defendant and jurisdiction of the subject matter is sufficient to support a judgment in another state. *Koehne* v. *Price* (D. C. Mun. App. 1949, 68 A. 2d 806).

§ 14–402 [9: 16]. Record of deeds and wills.

The copy of the record of any deed or other instrument of writing, not of a testamentary character, where the laws of the state, territory, or country where the same may be recorded require such record, and which has been recorded agreeably to such laws, and the copy of any will which such laws require to be admitted to probate and record, by judicial decree, and of the decree of the court admitting the same to probate and record, under the hand of the clerk or other keeper of such record and the seal of the court or office in which such record has been made, shall be good and sufficient prima facie evidence to prove the existence and contents of such deed, or will, or other instrument of writing, and that it was executed as it purports to have been. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1071.)

CROSS REFERENCES

Certain irregular deeds legalized and declared to be admissible as evidence, § 45–504.

Transcripts of surveyor's records, § 1–611.

NOTES TO DECISIONS

BURDEN OF PROOF

When will is contested for want of mental capacity, proponent who introduces it in support of her title, has burden of proof. *Prall* v. *Prall* (56 App. D. C. 333, 13 Fed. (2d) 305).

MARYLAND PROBATE

Sufficiency of authentication under this section of copy of will probated in Maryland. *Scott* v. *Herrell* (27 App. D. C. 395). See also *Droop* v. *Ridenour* (11 App. D. C. 224).

§ 14–403 [9: 17]. Record of will to be prima facie evidence of contents and execution.

The record of any will or codicil recorded in the office of the register of wills of the District of Columbia, which shall have been admitted to probate by the District Court of the United States for the District of Columbia, or by the late orphans' court of said District, or the record of the transcript of the record and probate of any will or codicil elsewhere, or of any certified copy thereof filed in the office of said register of wills shall be prima facie evidence of the contents and due execution of such wills and codicils. (July 9, 1888, 25 Stat. 246, ch. 597.)

NOTES TO DECISIONS

IN GENERAL

The statute assumes the probates to have been lawfully made; and it no more undertakes to define or to regulate the jurisdiction of the courts of probate of the District for the future, than it does the jurisdiction of those courts in the past, or the jurisdiction of the courts elsewhere whose proceedings filed in the District are equally made evidence. *Campbell* v. *Porter* (162 U. S. 478, 40 L. Ed. 1044, 16 Sup. Ct. 871).

§ 14–404 [9: 18]. Force in District of Columbia of wills probated elsewhere.

The record in the office of the register of wills for the District of Columbia of a duly certified copy, or transcript of the record of proceedings, admitting any will or codicil to probate outside of the District of Columbia; and the record in said office of any will or codicil admitted to probate in said District before June 8, 1898, and which shall not have been annulled or declared void according to law prior to June 8, 1898, shall be deemed and held, at law and in equity, as of the same and like force and effect as if such will or codicil had been duly proved and admitted to probate and record under and in accordance with the provisions of sections 19–301 to 19–303. (June 8, 1898, 30 Stat. 437, ch. 394, § 10.)

COMPILER'S NOTE

The 1898 act contained a proviso which read: "*Provided,* That the provisions of this section shall not apply to any proceedings at law or in equity pending at the date of passage of this act, or commenced within one year after the passage of this act, wherein or whereby the validity of such will or codicil is or shall be called in question."

§ 14–405 [9: 19]. Production of books and papers.

In an action at common law the court may, on motion, and on reasonable notice thereof, require the parties to produce books and writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might heretofore have been compelled to produce the same by the ordinary rules of proceeding in chancery. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1072.)

RULES OF CIVIL PROCEDURE

See Rules 34, 37 (b), 45 (b), 45 (f).

NOTES TO DECISIONS

BILL OF DISCOVERY

Bill in equity for discovery is not proper, merely because books, papers, and documents are in possession of defendant, as such evidence can be obtained by legal process. *Curriden* v. *Middleton* (37 App. D. C. 568).

Where joint tenant applied for equitable relief, the proper procedure was to file bill of discovery rather than

motion to produce books and records. *Arms* v. *Burg* (67 App. D. C. 155, 90 Fed. (2d) 400).

POWER OF COURT

Where no notice to produce is served and the paper is not present at trial, court may decline to order its production where such order would unreasonably delay progress of trial or work legal prejudice to adverse party. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

A subpoena for attendance as witness or for production of documentary evidence is for the purpose of having witness or document present at trial and if witness or document is present in court, though no subpoena is served, court can order witness to take the stand or order production of the document. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

Trial court erred in ruling that it could not compel production of documentary evidence admittedly in the possession of defense counsel merely because notice to produce or subpoena duces tecum had not been served. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

PRIVILEGED COMMUNICATIONS

Whether streetcar motorman's report of accident was a privileged communication which streetcar company could not be compelled to produce in passenger's action against it for injuries could not be determined by court without knowledge of circumstances under which report was made, reason and purpose for which it was made, and to whom it was made. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

That motorman's report to streetcar company of accident was in possession of streetcar company's counsel did not automatically make report a "privileged communication" which company could not be required to produce in passenger's action against it for injuries. *Wolff* v. *Capital Transit Co.* (D. C. Mun. App. 1944, 35 A. 2d 454).

REASONABLE NOTICE

The reasonable notice of motion to require party to produce documentary evidence in his possession or control provided for by this section contemplates that party shall not be required to produce papers at trial unless he has had notice and a reasonable time in which to produce them, what constitutes a reasonable time depending on the circumstances of each case. *Wolff* v. *Capital Transit* Co. (D. C. Mun. App. 1944, 35 A. 2d 454).

§ 14–406 [9: 22]. Proof of municipal ordinances and regulations.

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified by the secretary or an assistant secretary of the Board of Commissioners of the District of Columbia, and such certified copy shall be prima facie evidence of the due adoption and promulgation of such ordinances and regulations. (Apr. 19, 1920, 41 Stat. 567, ch. 153, § 1073b.)

CROSS REFERENCES

Certified copies of orders of Public Utilities Commission prima facie evidence of facts stated therein, § 43–713.

Rules, ordinances and regulations, publication and effect, §§ 4–177, 4–178.

Transcript of records of optometry board prima facie evidence of the facts stated, § 2–508.

NOTES TO DECISIONS

ADMISSIBILITY

In action for injuries sustained in automobile collision, court properly refused to receive traffic regulations defining intersection in evidence, where both parties conceded that collision occurred out of intersection. *Coleman* v. *Chudnow* (D. C. Mun. App. 1944, 35 A. 2d 925).

JUDICIAL NOTICE

In prosecution for violating ordinance regulating blackouts, the ordinance was not required to be introduced in evidence, since the municipal court would take notice of the ordinance. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

Chapter 5.—ABSENCE FOR SEVEN YEARS

Sec.
14–501. Presumption of death.
14–502. Person presumed dead found living.

§ 14–501 [9: 31]. Presumption of death.

If any person shall leave his domicile without any known intention of changing the same, and shall not return or be heard from for seven years from the time of his so leaving, he shall be presumed to be dead, in any case where his death shall come in question, unless proof be made that he was alive within that time. (Mar. 3, 1901, 31 Stat. 1230, ch. 854, § 252.)

CROSS REFERENCES

Administration of estates, of absentees and absconders, § 20–701 et seq.

This chapter was not repealed by provisions of administration of estates of absentees and absconders, § 20–715.

NOTES TO DECISIONS

GENERALLY

Under this section enacting common-law presumption of death arising from absence for seven years, in order to raise presumption of death the absentee must leave his domicile, without any known intention of changing it, and not return or be heard from for seven years. *Jemison* v. *Metropolitan Life Ins. Co.* (D. C. 1943, 32 A. 2d 704).

COMMON LAW

The statutory presumption of death arising from absence of seven years is but a declaration of the common-law rule. *Jemison* v. *Metropolitan Life Ins. Co.* (D. C. 1943, 32 A. 2d 704).

EVIDENCE

Evidence was insufficient to support statutory presumption of insured's death arising from absence for seven years, so as to authorize recovery on life policy, where insured was not living with his family at time of his disappearance but had a fixed abode in another State, and it did not appear that any inquiry concerning insured's whereabouts had been made in city in which he had his abode at the time of his disappearance. *Jemison* v. *Metropolitan Life Ins. Co.* (D. C. 1943, 32 A. 2d 704).

FAILURE TO HEAR

Mere failure of insured's family to hear from insured for more than seven years was not sufficient to raise presumption of death, so as to authorize recovery on life policy, where insured was not living with his family but had a fixed abode in another State. *Jemison* v. *Metropolitan Life Ins. Co.* (D. C. 1943, 32 A. 2d 704).

FOREIGN INSURANCE COMPANY

Insurance company, although incorporated elsewhere, can not effectively adopt by-law seeking to overcome presumption of death from long-continued absence. *National Union* v. *Sawyer* (42 App. D. C. 475).

HISTORICAL

There is no presumption of death from an absence of less than seven years, unless it appears that during that time the absent person "encountered some specific peril, or within that period came within the range of some impending or immediate danger, which might reasonably be expected to destroy life," or that he disappeared under circumstances inconsistent with a continuation of life. *Groff* v. *Groff* (36 App. D. C. 560). See also *Angell* v. *Groff* (42 App. D. C. 198). See also *Hamilton* v. *Rathbone* (9

App. D. C. 48, revd. on other grounds 175 U. S. 414, 44 L. Ed. 219, 20 Sup. Ct. 155) (holding that there is no presumption as to the time of death).

"The common-law presumption of death was made statutory, and the statute declares the public policy of the District in that respect." *National Union* v. *Sawyer* (42 App. D. C. 475).

PRESUMPTION REBUTTED

Presumption of death after seven years under § 252 of 1901 Code (this section) is rebutted by the appearance of insured at the trial. *La Raw* v. *Prudential Ins. Co.* (57 App. D. C. 289, 22 Fed. (2d) 717).

TIME OF DEATH

Under this section, there is no presumption concerning the time when the person died. *Jones* v. *Metropolitan Life Ins. Co.*, 1940 (116 F. 2d 555, 73 App. D. C. 92).

§ 14–502 [9: 32]. Person presumed dead found living.

If the person so presumed to be dead be found to have been living, any person injured by such presumption shall be restored to the rights of which he shall have been deprived by reason of such presumption. (Mar. 3, 1901, 31 Stat. 1230, ch. 854, § 253.)

TITLE 15.—JUDGMENTS AND EXECUTION OF JUDICIAL POWERS

Chap.		Sec.
1.	Judgments and decrees	15–101
2.	Executions	15–201
3.	Proceedings in aid of execution	15–301
4.	Exemptions	15–401

Chapter 1.—JUDGMENTS AND DECREES

Sec.
15–101. Limitations.
15–102. Expiration of judgment or decree.
15–103. Lien of judgment or decree—Recognizance.
15–104. Judgment to be dated—Shall not relate back to beginning of term.
15–105. Judgment docket.
15–106. Judgments not docketed, shall not affect purchasers or mortgagees, or have preference.
15–107. Scire facias.
15–108. Purchase-money mortgage superior to prior judgment.
15–109. Decree confirming sale vests title in purchaser and is notice when registered in land records—Court may order conveyance.
15–110. Decree to have effect of conveyance when defendant refuses to convey.
15–111. Payment of amount of judgment and costs into court stays execution, and property discharged—Judgment remains for further breaches.

§ 15–101 [24: 321]. Limitations.

Every final judgment at common law and every final decree in equity for the payment of money rendered in the District Court of the United States for the District of Columbia, and every judgment of the municipal court certified to and docketed in the clerk's office of the said District Court of the United States for the District of Columbia, as herein elsewhere directed, shall be good and enforceable, by an execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last revival thereof under scire facias, except as provided in section 15–102; but the time during which the judgment creditor is stayed by agreement in writing filed in the cause or injunction, or other order, or by the operation of an appeal from enforcing the judgment is not to be computed as part of said period of twelve years. (Mar. 3, 1901, 31 Stat. 1381, ch. 854, § 1212; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

Amendments

The 1902 amendment inserted the words "in writing filed in the cause" after the word "agreement."

The 1909 act changed the name of the "justice of the peace court" to "municipal court."

Cross References

Interest on judgments, §§ 28–2707 to 28–2709.

Judgment and interlocutory decree in adoption, § 16–203.

Judgments on accountings, § 16–106.

Term of judgments against partnerships, §§ 41–118, 41–127.

See note to § 12–203. *McKay* v. *Bradley* (26 App. D. C. 449).

Rules of Civil Procedure

Clerk required to keep civil docket, civil-order book, indices, and calendars, Rule 79.

See Rules 52, 54, 55, 56, 57, 58, and 70.

NOTES TO DECISIONS

Decisions Under Prior Laws

See *Mann* v. *Cooper* (2 App. D. C. 226); *Galt* v. *Todd* (5 App. D. C. 350); *Mann* v. *McDonald* (6 App. D. C. 548).

Abrogation of Common Law

Sections 1212 to 1215, inclusive (§§ 15–101 to 15–103, 15–107), and § 1078 of the code (§ 15–205) completely abrogate the rule of the common law on the subject of the limitation and revival of judgments in the District of Columbia. "Twelve years is fixed by statute as the life of a judgment under our code, and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson* v. *Minnix* (30 App. D. C. 582).

Municipal Court Judgment

A judgment of the municipal court docketed in the Supreme Court is enforceable for 12 years from the date it was so docketed. *Brown* v. *Allen E. Walker & Co.* (58 App. D. C. 173, 26 Fed. (2d) 545).

Revival

Judgment becomes extinct at expiration of 12 years unless revived by scire facias within that time. *Dutton* v. *Parish* (34 App. D. C. 393).

Tolling of Statute of Limitations

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitations was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson* (C. A. D. C. 1950, 181 F. 2d 615, 86 U. S. App. D. C. 227, certiorari denied, 70 S. Ct. 1030, 339 U. S. 981, 94 L. Ed. 922).

§ 15–102 [24: 322]. Expiration of judgment or decree.

At the expiration of said period of twelve years the said judgment or decree shall cease to have any operation or effect, and no action shall be brought on the same nor any scire facias or execution issued on the same thereafter; but this provision shall in no wise affect any proceeding that may be then pending for the enforcement of the said judgment or decree. (Mar. 3, 1901, 31 Stat. 1381, ch. 854, § 1213.)

Cross Reference

See notes to § 15–101. *Brown* v. *Allen E. Walker & Co.* (58 App. D. C. 173, 26 Fed. (2d) 545).

Rules of Civil Procedure

Writ of scire facias abolished similar relief to be obtained by action or motion as prescribed by court rules, Rule 81 (b).

NOTES TO DECISIONS

Tolling of Statute of Limitations

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitations was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson*

(C. A. D. C. 1950, 181 F. 2d 615, 86 U. S. App. D. C. 227, certiorari denied, 70 S. Ct. 1030, 339 U. S. 981, 94 L. Ed. 922).

§ 15–103 [24: 323]. Lien of judgment or decree—Recognizance.

Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered, every judgment of the municipal court when docketed in the clerk's office of the District Court of the United States for the District of Columbia, and every recognizance taken by said District Court, or a justice thereof, from the time when it shall be declared forfeited, shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognizance, in any lands, tenements, or hereditaments in the District, whether such estates be in possession or be reversions or remainders, vested or contingent, but such liens or equitable interest shall be enforced by bill in equity. And any recognizance taken in the police court, after being forfeited, may be transmitted to the clerk's office of said District Court and therein docketed in the same manner as the judgment of the municipal court as aforesaid, and thereupon shall have the same effect as if taken in the said District Court; and said lien shall continue as long as such judgment, decree, or recognizance shall be in force or until the same shall be satisfied or discharged. (Mar. 3, 1901, 31 Stat. 1381, ch. 854, § 1214; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENTS

The 1902 amendment inserted after the word "contingent" the words "but such liens on equitable interests shall be enforced by bill in equity."

The 1909 act changed the name of the "justice of the peace court" to "municipal court."

CROSS REFERENCES

Docketing judgments rendered in municipal court, § 11–743.

Execution on forfeited recognizance, § 11–607.

Issuance of execution, § 15–201.

Lien of purchase money, § 15–108.

Other provision concerning bail, § 11–602 and notes.

NOTES TO DECISIONS

EQUITABLE ESTATE

A final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered. *Reilly* v. *Sabin* (65 App. D. C. 125, 81 Fed. (2d) 259).

LIEN ON REALTY

Where judgment was obtained for nonpayment of cost of an oil burner and a copy of the judgment was filed in the District Court as permitted by law, it became a lien upon appellant's real property. *Clark* v. *General Electric Credit Corp.* (D. C. Mun. App. 72 A. 2d 43).

PRIORITY IN TIME

A judgment prior in time will take priority over a subsequent judgment, as a lien against defendant's property, although the subsequent judgment debtor has been to considerable trouble and expense in uncovering debtor's equitable interests. *Ginder* v. *Giuffrida* (61 App. D. C. 338, 62 Fed. (2d) 877).

REAL ESTATE ACQUIRED AFTER JUDGMENT

Judgment lien attaches to after-acquired real estate by the judgment debtor, but only to the extent of actual title which the debtor has therein. *Atlas Portland Cement Co.* v. *Fox* (49 App. D. C. 292, 265 Fed. 444). See also 49 App. D. C. 292, 266 Fed. 1021.

REAL ESTATE CONVEYED BEFORE JUDGMENT

A judgment at law is not a lien upon real estate in the City of Washington, which, before the judgment was rendered, had been conveyed to trustees with a power of sale to secure the payment of the debts of the grantor described in the deed of trust. *Morsell* v. *First Nat. Bank* (1 Otto (91 U. S.) 357, 23 L. Ed. 436).

REAL ESTATE ENCUMBERED BY TRUST

Where the real estate involved was encumbered by two trusts, the provisions of this section are directly applicable, citing *Biggs* v. *Campbell* and *Redman* v. *Campbell* (46 App. D. C. 288). *Carroll* v. *Elkins* (58 App. D. C. 265, 29 Fed. (2d) 638).

§ 15–104 [24: 324]. Judgment to be dated—Shall not relate back to beginning of term.

Any judge or officer of any court, that shall sign any judgments, shall at the signing of the same, without fee for doing the same, set down the day of the month and year of his so doing, upon the paper, book, docket, or record which he shall sign; which day of the month and year shall be also entered upon the margent of the roll of the record where the said judgment shall be entered; and such judgments as against purchasers bona fide for valuable consideration of lands, tenements, or hereditaments to be charged thereby, shall in consideration of law, be judgments only from such time as they shall be so signed, and shall not relate to the first day of the term whereof they are entered. (29 Car. 2, ch. 3, §§ 14 and 15, 1676; Kilty's Rep., p. 241; Alex. Br. Stat., p. 511; Comp. Stat., D. C., p. 290, §§ 16 and 17.)

NOTES TO DECISIONS

PROBATE COURT

This section does not apply to judgments or decrees of the Probate Court. *Fidelity & Deposit Co. of Maryland* v. *McQuade*, 1941 (123 F. 2d 337, 74 App. D. C. 383).

§ 15–105 [24: 325]. Judgment docket.

The clerk of said District Court of the United States for the District of Columbia shall keep and maintain a docket, to be known as the judgment docket, in which shall be entered the titling of every cause and proceeding in which any judgment or decree may be entered or any recognizance taken, as aforesaid, including recognizances transmitted from the police court, as aforesaid, with a minute of the dates and amounts thereof, and said judgments, decrees, and recognizances shall be indexed in the names of all the principals and sureties bound thereby. (Mar. 3, 1901, 31 Stat. 1381, ch. 854, § 1217.)

CROSS REFERENCE

See notes to § 15–103.

§ 15–106 [24: 326]. Judgments not docketed, shall not affect purchasers or mortgagees, or have preference.

No judgment not docketed, and entered in the books, shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators, in their administration of their ancestors, testators, or intestates estates. (4 and 5 W. and M. ch. 20, § 3, 1692;

Kilty's Rep., p. 243; Alex. Br. Stat., p. 581; Comp. Stat., D. C., p. 291, § 19.)

§ 15–107 [24: 327]. Scire facias.

If during the period of twelve years from the rendition of the judgment or decree, or from judgment upon a scire facias thereon, the creditor shall cause a scire facias to be issued upon the judgment or decree and a fiat shall be issued thereupon, the effect of such fiat shall be to extend the effect and operation of said judgment or decree with the lien thereby created and all the remedies for the enforcement of the same for the period of twelve years from the date of such fiat. (Mar. 3, 1901, 31 Stat. 1381, ch. 854, § 1215.)

CROSS REFERENCE

Execution against specific property, § 15–311.

RULES OF CIVIL PROCEDURE

Writ of scire facias has been abolished, same relief to be obtained by appropriate action or motion as prescribed by rules, Rule 81 (b).

See Rule 69.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

To support the scire facias, it is incumbent upon the plaintiff in the judgment to show that the judgment debtor had title to the land. *Roller* v. *Carithers* (5 App. D. C. 368).

A plea to scire facias to revive a judgment entered upon power of attorney to confess judgment is sufficient which states that the defendant was never served with process, hadn't authorized anyone to appear for him. nor confessed judgment, nor waived service of process, nor submitted himself to the jurisdiction of the court. *Harper* v. *Cunningham* (8 App. D. C. 430).

CONVERSION INTO ACTION

Scire facias is a judicial writ, which may, however, be converted into an action by appearance and plea thereto by defendant. If not so converted, it remains a judicial writ merely, the life of which is ended and its force spent after a year and a day from the date of issuance. *Collins* v. *McBlair* (29 App. D. C. 354).

SUFFICIENCY

A scire facias to enforce a judgment, addressed to named parties as devisees of judgment debtor is fatally defective as it does not allege that judgment debtor was dead at the time the writ was issued, that he left a will under which addressees succeeded as sole devisees, and failed to describe this realty. *Waters* v. *Taylor* (52 App. D. C. 135, 284 Fed. 639).

TOLLING OF STATUTE OF LIMITATIONS

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitation was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson* (C. A. D. C. 1950, 181 F. 2d 615, 86 U. S. App. D. C. 227, certiorari denied, 70 S. Ct. 1030, 339 U. S. 981, 94 L. Ed. 922).

§ 15–108 [24: 328]. Purchase-money mortgage superior to prior judgment.

Where real property is sold and conveyed and, at the same time, a mortgage or deed of trust thereupon is given by the purchaser to secure the payment of the whole or any part of the purchase-money, the lien of the said mortgage or deed of trust on the property shall be superior to that of a previous judgment or decree against the purchaser. (Mar. 3, 1901, 31 Stat. 1381, ch. 854, § 1216.)

§ 15–109 [24: 329]. Decree confirming sale vests title in purchaser and is notice when registered in land records—Court may order conveyance.

In case of the sale of things, real or personal under a decree in equity, the decree confirming the sale shall divest the right, title, or interest sold out of the former owner, party to the suit, and vest it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale; and the decree shall be notice to all the world of this transfer of title when a copy thereof shall be registered among the land-records of the District; but the court may, nevertheless, order its officer or agent to make a conveyance, if that mode be deemed preferable, in particular cases. (R. S., D. C., § 793; Comp. Stat., D. C., p. 75, § 6.)

CROSS REFERENCE

Judgment in mortgage foreclosure, § 45–616.

§ 15–110 [24: 330]. Decree to have effect of conveyance when defendant refuses to convey.

In all cases where a decree shall be made for a conveyance, release, or acquittance, and the party against whom such decree shall pass shall neglect or refuse to comply therewith, such decree shall stand, be considered and taken, in all courts of law and equity, to have the same operation and effect as if the conveyance, release, or acquittance had been executed conformably to such decree. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 101.)

§ 15–111 [24: 331]. Payment of amount of judgment and costs into court stays execution, and property discharged—Judgment remains for further breaches.

In any action upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed or writing contained in case the defendant or defendants, after judgment entred, and before any execution executed, shall pay unto the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages, so to be assessed, by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entred upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expences for executing the said execution, the lands, or goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entred upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing, contained, upon which the plaintiff or plaintiffs may have a scire facias upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or administrators suggesting other breaches of the said covenants, or

agreements, and to summon him or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof, upon a writ to be awarded in manner as aforesaid; and upon payment or satisfaction in manner as aforesaid, of such future damages, costs, and charges, as aforesaid, all further proceedings on the said judgment are again to be stayed, and so toties quoties, and the defendant's lands or goods shall be discharged out of execution, as aforesaid. (8 and 9 W. 3, ch. 11, § 8, 1697; Kilty's Rep., p. 244; Alex. Br. Stat., p. 604; Comp. Stat., D. C., p. 69, § 14.)

Chapter 2.—EXECUTIONS

Sec.

15–201. Execution—When issued—Within three years after removal of suspension—Returnable in sixteen days.
15–202. Alias writs.
15–203. Return.
15–204. Scire facias.
15–205. Fiat.
15–206. Lien of execution.
15–207. Marshal, deputy marshal, and coroner to indorse date of receipt on writs of execution.
15–208. Death of judgment debtor after delivery to marshal.
15–209. Judgment of municipal court—As a lien—Not levied on real property.
15–210. On what fieri facias may be levied.
15–211. Levy on money.
15–212. Levy on equitable interest in chattels pledged.
15–213. Land or rent not to be seized for debt if chattels sufficient to pay.
15–214. Appraisement—Notice by advertisement.
15–215. Change of marshal.
15–216. Defective sale—Subrogation of purchaser—No refund.
15–217. Remedy of marshal.
15–218. Decree in equity—Revival.

§ 15–201 [24: 271]. Execution—When issued—Within three years after removal of suspension—Returnable in sixteen days.

Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter; and where the right to issue the same is suspended by any of the causes aforesaid said writ may be issued within three years after the removal of the suspension, and every such writ shall be returnable on or before the sixtieth day after its date. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1074.)

Cross References

Benefits from fraternal benefit association not subject to execution, § 35–911.

Benefits payable under Unemployment Compensation Law not subject to execution except for necessaries, § 46–318.

Execution against money deposited in court under Owners Financial Responsibility Act, § 40–404.

Execution on forfeited recognizance, § 11–607.

Execution to enforce landlord's lien, §§ 45–916, 45–917.

Exemption of insurance benefits from execution, §§ 35–717, 35–718.

Exemption of proceeds from life insurance, § 30–213.

Exemption of recovery for wrongful death, § 16–1203.

Exemptions, § 15–401 et seq.

Old-age assistance given under the Social Security Act not subject to execution, § 46–204.

Payment of rent before goods may be seized by execution, § 45–918.

Teacher's retirement annuity not subject to execution, § 31–718.

Rules of Civil Procedure

See Rules 62, 69–71.

NOTES TO DECISIONS

Appeal as a Supersedeas

"Unless an appeal operates as a supersedeas, execution of the judgment may be had immediately." *Byrne* v. *Morrison* (25 App. D. C. 72); *Sechrist* v. *Bryant* (52 App. D. C. 286, 286 Fed. 456).

The appellant appealed from the decree entered in the equity suit; but filed no supersedeas bond for a stay of execution upon the decree, and consequently a writ of execution might have issued at any time thereafter. *Fletcher* v. *Kellogg* (55 App. D. C. 97, 2 Fed. (2d) 315).

Construction With Other Laws

If this section regarding issuance of execution was in conflict with subsequently adopted District of Columbia Emergency Rent Act, § 45–1601 et seq., to the extent of the conflict this section was required to give way to said § 45–1601 et seq. *Myers* v. *H. L. Rust Co.*, 1943 (134 F. 2d 417, 77 U. S. App. D. C. 218).

Decree Must Be Final

Decree of the Supreme Court of the District of Columbia in general term was not a final decree in the sense that a writ of execution can be issued upon it. *Bieber* v. *Fechheimer* (9 App. D. C. 548).

Executors and Administrators

The code provides expressly for actions and judgments against executors and administrators and for the issuance of writs of fieri facias thereon, and there is no reason to doubt that this contemplates the use of attachment and garnishment. *Fishel* v. *Kite* (69 App. D. C. 360, 101 Fed. (2d) 685).

Power of Court to Vacate Sale

Until the sheriff or marshal makes return of the writ and of the manner of his service of it, and the court is enabled to judge of the propriety of such service, the debtor can not be barred of his right of objection and to have the sale vacated on the ground of irregularity. It is only required of him that he should act promptly before any rights of innocent parties have intervened. *Hart* v. *Hines* (10 App. D. C. 366).

There is a difference between an attempt by a court to revise one of its judgments, after the expiration of the term in which that judgment was entered, and the assertion by the court of power to set aside an execution sale. This is especially true when the sale had not been confirmed by judicial order. *Shipley* v. *Shamwell* (41 App. D. C. 267).

Property Subject to Execution

No property but that in which the judgment debtor has a legal title is subject to execution at law. *Starr* v. *United States* (8 App. D. C. 552).

Satisfaction by Garnishee

A garnishee who, in good faith, satisfied a claim of attaching creditor without waiting for judgment against him, is not liable on a subsequent attachment. *Smith* v. *Shapiro* (61 App. D. C. 66, 57 Fed. (2d) 432).

§ 15–202 [24: 272]. Alias writs.

If the execution be issued and returned unsatisfied, in whole or in part, within said period of three years, an alias writ may be issued at any time during the life of the judgment. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1075.)

§ 15–203 [24: 273]. Return.

If the return shall be omitted to be made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date. (Mar. 3, 1901, 31 Stat. 1358, ch. 854, § 1076.)

§ 15–204 [24: 274]. Scire facias.

If said writ shall not be issued within the time allowed therefor, as aforesaid, it shall not be issued until a scire facias has been issued upon said judgment and a fiat has been rendered thereupon. Said fiat shall be deemed a renewal of the judgment, and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1077.)

CROSS REFERENCES

Decrees in equity, § 15–218.
Extension of time of lien, § 15–107.

RULES OF CIVIL PROCEDURE

Scire facias has been abolished in so far as the District Court of the United States for the District of Columbia is concerned, similar relief may be obtained by appropriate action or motion as prescribed by rules, Rule 81 (b).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

"Twelve years is fixed by statute as the life of a judgment * * * and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson* v. *Minnix* (30 App. D. C. 582).

DEFENSE

Bankruptcy of defendant may be pleaded as a defense, but such defense does not inure to the benefit of a co-defendant. *Simpson* v. *Minnix* (30 App. D. C. 582). See also *Otterback* v. *Patch* (5 App. D. C. 69); *Galt* v. *Todd* (5 App. D. C. 350); *Roller* v. *Caruthers* (5 App. D. C. 368); *Green* v. *Mann* (19 App. D. C. 243); *Moses* v. *United States* (19 App. D. C. 290).

§ 15–205 [24: 275]. Fiat.

At any time during the life of the original judgment the plaintiff may elect, instead of issuing execution thereon within the time allowed therefor, to issue a scire facias on the same and obtain a new judgment as aforesaid. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1078.)

CROSS REFERENCE

See notes to § 15–204.

§ 15–206 [24: 276]. Lien of execution.

A writ of fieri facias issued upon a judgment of the District Court of the United States for the District of Columbia shall be a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except such as may be exempted from levy and sale by express provision of law, and shall also be a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1079; June 30, 1902, 32 Stat. 540, ch. 1329.)

AMENDMENT

The 1902 amendment added to the end of this section the words beginning "and shall also be a lien."

CROSS REFERENCE

Service of process and lien in attachment and garnishment proceedings, §§ 16–308 to 16–310.

§ 15–207 [24: 276a]. Marshal, deputy marshal, and coroner to indorse date of receipt on writs of execution.

The marshal, deputy marshal, and coroner, their deputies and agents, shall, upon the receipt of any writ of fieri facias or other writ of execution (without fee for doing the same), endorse upon the back thereof the day of the month or year whereon he or they received the same. (29 Car. II, 1676, ch. 3, § 16; Alex. Br. Stat., p. 511; Comp. Stat., D. C., p. 222, § 1.)

RULES OF CIVIL PROCEDURE

Scire facias has been abolished insofar as the District Court of the United States for the District of Columbia is concerned, similar relief to be obtained by appropriate action or motion as prescribed by rule, Rule 81 (b).

§ 15–208 [24: 277]. Death of judgment debtor after delivery to marshal.

The death of the judgment debtor after the execution has been delivered to the marshal shall not affect his authority to proceed against the property bound by it. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1080.)

§ 15–209 [24: 278]. Judgment of municipal court—As a lien—Not levied on real property.

An execution issued on a judgment of the municipal court shall not be a lien on the personal property of the judgment defendant except from the time when it is actually levied, and then it shall have priority over any execution issued out of said District Court of the United States for the District of Columbia after said levy. It shall not be levied on real estate. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1081; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

The 1909 act changed the name of the "justice of the peace court" to "municipal court."

NOTES TO DECISIONS

SUPERIORITY OF LIENS

A lien of garnishment is superior to lien of subsequent attachment against the same property. *International Finance Corp.* v. *Jawish* (63 App. D. C. 262, 71 Fed. (2d) 985).

§ 15–210 [24: 279]. On what fieri facias may be levied.

The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt as aforesaid, and upon gold and silver coin, bank notes or other money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by said debtor, and upon money owned by him in the hands of the marshal or of a constable (coroner) charged with the execution of such writ, and such fieri facias issued from said District Court of the United States for the District of Columbia may be levied on all legal leasehold and freehold estates of the debtor in land. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1082; June 30, 1902, 32 Stat. 540, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the word "legal" after the word "all" in the last clause of the sentence.

CROSS REFERENCE

Certain income and benefits not subject to execution, see notes to § 15–201.

NOTES TO DECISIONS

LICENSES

Where §§ 25–106 and 25–107 providing for issuance of license to sell alcoholic beverages also provided for transfer and assignment of such license, the license was a "property right" subject to levy, under execution, to satisfy a judgment of Municipal Court. *Rowe* v. *Colpoys*, 1943 (137 F. 2d 249, 78 U. S. App. D. C. 75, 148 A. L. R. 488, certiorari denied 64 S. Ct. 190, 320 U. S. 783, 88 L. Ed. 470).

§ 15–211 [24: 280]. Levy on money.

If the fieri facias is levied on money belonging to the judgment defendant the marshal shall not expose the same to sale, but shall account for it as money collected, but bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal is hereby authorized and empowered to indorse the same to pass title to the purchaser. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1083.)

CROSS REFERENCE

Certain income or benefit not subject to execution, see notes to § 15–201.

§ 15–212 [24: 281]. Levy on equitable interest in chattels pledged.

The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and the lien thus obtained may be enforced by proceedings in equity. In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by proceedings in equity. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1084; June 30, 1902, 32 Stat. 541, ch. 1329.)

AMENDMENT

The 1902 amendment added the last sentence.

§ 15–213 [24: 282]. Land or rent not to be seized for debt if chattels sufficient to pay.

Land or rent shall not be seized for any debt, as long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefor. (9 Hen. 3, ch. 8, § 1, 1225; Kilty's Rep., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D. C., p. 223, § 4.)

CROSS REFERENCE

See note to § 13–201.

§ 15–214 [24: 283]. Appraisement—Notice by advertisement.

Where not herein otherwise provided all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash; personal property after ten days' notice by advertisement, and leasehold and freehold estate in land after a twenty days' previous notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of the title. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1085; June 30, 1902, 32 Stat. 541, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the words "where not herein otherwise provided."

§ 15–215 [24: 297]. Change of marshal.

If the marshal or coroner die, be removed from office, or become otherwise disqualified from executing a writ of execution received by him, the same may be executed and returned by his deputy or successor in office. (Mar. 3, 1901, 31 Stat. 1361, ch. 854, § 1101; June 30, 1902, 32 Stat. 541, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the words "or coroner" in the first line.

§ 15–216 [24: 298]. Defective sale—Subrogation of purchaser—No refund.

If upon the sale of property under execution the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent shall have a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor shall not be required to refund the purchase money on account of the invalidity of the sale. (Mar. 3, 1901, 31 Stat. 1361, ch. 854, § 1102.)

§ 15–217 [24: 299]. Remedy of marshal.

Where the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of said value, may, on motion and due notice thereof to the defendant, have the satisfaction of said judgment vacated, and execution shall issue thereon for his use as if said levy and sale had not been made. (Mar. 3, 1901, 31 Stat. 1362, ch. 854, § 1103.)

§ 15–218 [24: 300]. Decree in equity—Revival.

The aforegoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment. (Mar. 3, 1901, 31 Stat. 1362, ch. 854, § 1104.)

CROSS REFERENCE

Other provisions concerning effect of equity decrees, §§ 15–107, 15–109 to 15–311.

RULES OF CIVIL PROCEDURE

Scire facias has been abolished insofar as the District Court of the United States for the District of Columbia is concerned. Similar relief may be obtained by appropriate action or motion as prescribed by rules, rule 81 (b).

Chapter 3.—PROCEEDINGS IN AID OF EXECUTION

Sec.

15–301. Attachment after judgment, when issued—Costs.
15–302. Scire facias unnecessary.
15–303. On what attachment may be levied.

Sec.
15–304. Interrogatories—Answers under oath within ten days—Oral examination.
15–305. How attachments levied—Copy of writ—Notice—Garnishee's liability for retention.
15–306. Money in hands of marshal, coroner, executor, and administrator attachable.
15–307. Preservation of property seized—Perishable property.
15–308. Pleading to the attachment—Right to jury trial.
15–309. Traversing garnishee's answers—Costs and counsel fee.
15–310. Trial of right to attached property—Right to jury trial.
15–311. Judgment of condemnation of property—Sale—Application of funds.
15–312. Judgment against garnishee.
15–313. Refusal to deliver possession of property sold—Order to show cause—Possessor may show superior title.

§ 15–301 [24: 284]. Attachment after judgment, when issued—Costs.

An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias: *Provided,* That if costs are unnecessarily multiplied thereby they shall be charged to the party causing the same to be issued. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1086.)

Cross References

Attachment and garnishment before judgment, §§ 16–301 to 16–335.

Provisions for attachment and garnishment do not prevent a bill in equity to enforce a judgment against equitable interests in property, § 16–332.

Rules of Civil Procedure

Writ of scire facias abolished so far as District Courts are concerned, similar relief may be obtained by action or motion as prescribed by court rules, Rule 81 (b).

See Rules 64, 69–71.

NOTES TO DECISIONS

Executors and Administrators

The code provides expressly for actions and judgments against executors and administrators and for the issuance of writs of fieri facias thereon, and there is no reason to doubt that this contemplates the use of attachment and garnishment. *Fishel* v. *Kite* (69 App. D. C. 360, 101 Fed. (2d) 685).

§ 15–302 [24: 285]. Scire facias unnecessary.

Attachment may be issued at any time during the life of the judgment, without issuing a scire facias previously thereto. (Mar. 3, 1901, 31 Stat. 1359, ch. 854, § 1087.)

§ 15–303 [24: 286]. On what attachment may be levied.

An attachment may be levied upon the judgment debtor's goods, chattels, and credits. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1088; June 30, 1902, 32 Stat. 541, ch. 1329.)

Amendment

The 1902 amendment struck out the section of the 1901 act and inserted in lieu thereof the above. The former section read: "An attachment may be levied upon the judgment debtor's credits due him from third persons and upon his interest in letters patent for inventions issued by the United States."

Cross References

Certain incomes and benefits not subject to execution, see notes to § 15–201.

See note to § 15–301. *Fishel* v. *Kite* (69 App. D. C. 360, 101 Fed. (2d) 685).

§ 15–304 [24: 287]. Interrogatories — Answers under oath within ten days—Oral examination.

In all cases of attachment the plaintiff may exhibit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee concerning any property of the defendant in his possession or charge or any indebtedness of his to the defendant at the time of the service of the attachment or between the time of such service and the filing of his answers to said interrogatories; and the garnishee shall file his answers, under oath, to such interrogatories within ten days after service of the same upon him. In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1089.)

NOTES TO DECISIONS

In General

Statute contemplates (1) "the garnishee answering interrogatories, (2) oral examination of the garnishee, supplementing the answers to the interrogatories, (3) traverse by plaintiff of the garnishee's answer, after the oral examination, and (4) the determination of the issue joined by traverse." When the record shows only the first of these steps the trial court is correct in denying the motion for summary judgment. *Dickinson* v. *Brooks* (71 App. D. C. 106, 108 Fed. (2d) 4).

When the usual written interrogatories were directed to the garnishee and she answered that she was indebted to defendant in the principal suit and that this indebtedness, in the amount of $300, had been established by stipulation filed in an equity suit between her and the defendant then pending in the District Court, and when the stipulation was filed as an exhibit and recited that the named amount was "in compromise of all the various claims and counterclaims between the parties" and if plaintiff was not satisfied with this answer, he had means of testing its accuracy and truthfulness. *Dickinson* v. *Brooks* (71 App. D. C. 106, 108 Fed. (2d) 4).

Form

A garnishee is not excused from answering a proper question, merely because it is inaptly combined with improper queries in a single interrogatory where the proper question is clear and easily separable. *Ostrow* v. *McNeal* (68 App. D. C. 69, 93 Fed. (2d) 228).

Oral Examination

The provision in this section and § 15–309 do not affect the right of the plaintiff to examine the garnishee orally under oath, without waiting for a traverse of the answer. *Flynn* v. *Potomac Elec. Power Co.* (60 App. D. C. 82, 47 Fed. (2d) 978).

The right to oral examination supplementing the information obtained in the garnishee's answer is permitted in express statutory terms. *Young* v. *Nicholson* (70 D. C. App. 351, 107 Fed. (2d) 177).

Where the garnishee's answer on its face shows the uncertainty as to the ownership of deposits, it is error to refuse plaintiff the right to examine the garnishee orally. *Young* v. *Nicholson* (70 D. C. App. 351, 107 Fed. (2d) 177).

§ 15–305 [24: 288]. How attachments levied—Copy of writ—Notice—Garnishee's liability for retention.

Attachments shall be levied upon credits of the defendant in the hands of a garnishee by serving him with a copy of the writ of attachment and of the interrogatories accompanying the same, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment. It

may be levied upon debts due to the defendant upon any judgment or decree by a similar service upon the debtor owing the same.

The garnishee, in any case in which the property or credits attached or sought to be attached is held by him in the name of or for the account of another than the defendant, shall retain such property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of such property or credits, and, during such period, shall incur no liability whatsoever for such retention. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1090; Apr. 5, 1939, 53 Stat. 567, ch. 37, § 8 (b).)

AMENDMENT

The 1939 amendment added the second paragraph.

NOTES TO DECISIONS

PERSONAL PROPERTY IN HANDS OF TRUST COMPANY

Personal property in the hands of a trust company may be garnished. *International Finance Corp.* v. *Jawish* (63 App. D. C. 262, 71 Fed. (2d) 985).

SUBSEQUENT CREDITOR

To rule that after writ of attachment has been served on garnishee a subsequent attaching creditor might seize the property so garnished would be inconsistent with the intent and purpose of the law. *International Finance Corp.* v. *Jawish* (63 App. D. C. 262, 71 Fed. (2d) 985).

§ 15–306 [24: 289]. Money in hands of marshal, coroner, executor, and administrator attachable.

Attachments may be levied upon money or property of the defendant in the hands of the marshal or coroner, and shall bind the same from the time of service, and shall be a legal excuse to such officer for not paying or delivering the same as he would otherwise be bound to do. Attachments may also be levied upon money or property of the defendant in the hands of an executor or administrator, and shall bind the same from the time of service; but if the executor or administrator shall make return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, no judgment of condemnation shall be rendered as against such executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1091; June 30, 1902, 32 Stat. 541, ch. 1329.)

AMENDMENT

The 1902 amendment added the second sentence.

NOTES TO DECISIONS

DEFENDANT

The "defendant" referred to is one who has a right to money in the hands of an administrator or executor of an estate which is subject to a judgment against him. *Sanford* v. *Sanford* (52 App. D. C. 315, 286 Fed. 777).

§ 15–307 [24: 290]. Preservation of property seized—Perishable property.

The court may make all orders necessary for the preservation of the property attached, and if the same be perishable or for other reasons a sale of the same shall be expedient, may order that the same be sold and the proceeds paid into court and held subject to its order. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1093.)

§ 15–308 [24: 291]. Pleading to the attachment—Right to jury trial.

Any garnishee or stranger to the suit who may make claim to the property attached as hereinafter provided, may plead to the attachment, and such plea shall be considered as raising an issue without replication, and any issue of fact thereby made may be tried by the court or by a jury impaneled for the purpose, if either party desire it. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1094.)

NOTES TO DECISIONS

ADMISSION OF OWNERSHIP

Where answers of bank disclosed deposits in the names of appellants individually, and appellants in their affidavits in support of their motion to quash as well as in their verified pleas averred that the said deposits belonged to them, they can not complain if court takes their statements as true and condemns such deposits to satisfy a default judgment against them personally. *Ostrow* v. *McNeal* (68 App. D. C. 69, 93 Fed. (2d) 228).

OWNERSHIP OF FUND

Neither the answer of the garnishee nor the information obtained in the oral examination is conclusive upon the court in respect of the true ownership of the fund. *Young* v. *Nicholson* (70 App. D. C. 351, 107 Fed. (2d) 177).

§ 15–309 [24: 292]. Traversing garnishee's answers—Costs and counsel fee.

If any garnishee shall answer to interrogatories that he has no property or credits of the defendant or less than the amount of the plaintiff's judgment, the plaintiff may traverse such answer as to the existence or amount of such property or credits, and the issue thereby made may be tried as provided in the last aforesaid section; and in such case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to his taxed costs, a reasonable counsel fee; and if such issue be found for the plaintiff, judgment shall be rendered as if possession of the property or credits had been confessed by the garnishee. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1095.)

CROSS REFERENCE

See note to § 15–304. *Dickinson* v. *Brooks* (71 App. D. C. 106, 108 Fed. (2d) 4).

NOTES TO DECISIONS

PLAINTIFF MAY TRAVERSE

The plaintiff may traverse the garnishee's answer, and the issue thereby made may be tried before the court or by a jury if either party so desire. *Young* v. *Nicholson* (70 App. D. C. 351, 107 Fed. (2d) 177).

If plaintiff is not satisfied with answer to written interrogatories, he has means of testing its accuracy and truthfulness. *Dickinson* v. *Brooks* (71 App. D. C. 106, 108 Fed. (2d) 4).

§ 15–310 [24: 293]. Trial of right to attached property—Right to jury trial.

Any person may file his petition in the cause, under oath, at any time before the final disposition of the property attached or its proceeds, not being real estate, setting forth a claim thereto or an interest in or lien upon the same; and the court, without other pleadings, shall inquire into the claim, and, if either

party request it, impanel a jury for the purpose, who shall be sworn to try the question involved as an issue between the claimant as plaintiff and the parties to the suit as defendants, and the court may make all such orders as may be necessary to protect any rights of the petitioner. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1096.)

NOTES TO DECISIONS

ADMISSION OF OWNERSHIP

Where appellants have stated in affidavits and in verified pleadings that deposits in bank belonged to them absolutely, they can not complain that the issue as to such credits was not determined as provided in this section. *Ostrow* v. *McNeal* (68 App. D. C. 69, 93 Fed. (2d) 228).

§ 15–311 [24: 294]. Judgment of condemnation of property—Sale—Application of funds.

Where the attachment has been levied upon specific property, on the return by the marshal judgment of condemnation of the same may be entered, and so much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a fieri facias; or, if said property shall have been sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Mar. 3, 1901, 31 Stat. 1361, ch. 854, § 1097.)

CROSS REFERENCES

Other provisions concerning effect and enforcement of equity decrees, §§ 15–107 to 15–110, 15–218.

See notes to § 15–301.

§ 15–312 [24: 295]. Judgment against garnishee.

If a garnishee shall have admitted credits in his hands, in answer to interrogatories served upon him, or the same shall have been found upon an issue made as aforesaid, judgment shall be entered against him for the amount of credits admitted or found as aforesaid, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands; but if said credits shall not be immediately due and payable, execution shall be stayed until the same shall become due; and if the garnishee shall have failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, such judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution shall be had thereon. (Mar. 3, 1901, 31 Stat. 1361, ch. 854, § 1098.)

CROSS REFERENCE

See notes to §§ 15–301, 15–309.

NOTES TO DECISIONS

ANSWERS TO INTERROGATORIES

The garnishee, wife of the judgment debtor, may not be compelled to answer interrogatories that would compel her to testify against her husband. *Commercial Credit Co.* v. *McReynolds* (63 App. D. C. 42, 68 Fed. (2d) 990).

Appellants having failed to make answer to the proper and separable portion of the third interrogatories within the time limited, judgment was properly entered against them. *Ostrow* v. *McNeal* (68 App. D. C. 69, 93 Fed. (2d) 228).

BY DEFAULT

The lower court may not enter judgment by default against the garnishee unless it failed to appear and show cause, or to answer. *Mutual Benefit Life Ins. Co.* v. *Flynn* (60 App. D. C. 108, 48 Fed. (2d) 1020).

§ 15–313 [24: 296]. Refusal to deliver possession of property sold—Order to show cause—Possessor may show superior title.

When real estate is sold by virtue of any execution, and the judgment defendant or any person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, it shall be lawful for the court, on the application of the purchaser, to require the person so in possession to show cause why possession should not be delivered according to said demand, and, if no good cause be shown, to issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession. If the party in possession shall allege under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, said writ shall not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy in the municipal court as herein provided in sections 11–703, 11–704, 11–710, 11–713, 11–724 to 11–729, 11–731, 11–732, 11–735 to 11–748 and 22–805, 22–806. (Mar. 3, 1901, 31 Stat. 1361, ch. 854, § 1100; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

The 1909 act changed the name of the "justice of the peace court" to "municipal court."

Chapter 4.—EXEMPTIONS

Sec.

15–401. Exempt property of householder—Property in transitu—Exception—Debt for wages.
15–402. Mortgage by husband of exempt property.
15–403. Earnings—Exemptions.

§ 15–401 [24: 311]. Exempt property of householder—Property in transitu—Exception—Debt for wages.

(a) The following property, being the property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, shall be free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia.

First. All wearing apparel provided for all persons within the household, being members of the immediate family of the household, not in excess of $300 per person.

Second. All beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding $300 in value.

Third. Provisions for three months' support, whether provided or growing.

Fourth. Fuel for three months.

Fifth. Mechanics' tools and implements of the debtor's trade or business amounting to $200 in value, with $200 worth of stock or materials for car-

rying on the business or trade of the debtor. This exemption shall also apply to merchants.

Sixth. The library, office furniture, and implements of a professional man or artist, to the value of $300.

Seventh. One horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding $500 in value if used principally by the debtor in his trade or business.

Eighth. All family pictures; and all the family library, not exceeding in value $400.

(b) Such exemptions shall be valid when the property is in transitu the same as if at rest; but no property named and exempted in this section shall be exempted from attachment or execution for any debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section the person who is the principal provider for the family shall be deemed to be the head thereof. (Mar. 3, 1901, 31 Stat. 1362, ch. 854, § 1105; Dec. 20, 1944, 58 Stat. 817, ch. 610, § 1.)

AMENDMENTS

The act of Dec. 20, 1944, cited to text, amended section generally.

CROSS REFERENCES

Certain income and benefits not subject to execution, § 15–201 and notes.

Exemption after death, § 18–406.

Notary's seal and official documents exempt from execution, § 1–507.

NOTES TO DECISION

ACTUAL RESIDENCE

Under this section, the requirement as to actual residence relates to the time of the issuance of the writ, and if a wage earner then is an actual resident, he is entitled to the protection of the statute. *Fidelity Sav. Co.* v. *Fawcett* (57 App. D. C. 285, 22 Fed. (2d) 591).

UNLAWFUL SEIZURE

In action for damages for unlawful seizure of plaintiff's truck on writ of fieri facias, that court had quashed the levy, deciding that truck was exempt from seizure was not res judicata of existence of malice or want of probable cause, nor was it competent evidence for plaintiff on such issues. *Lee* v. *Dunbar* (D. C. Mun. App. 1944, 37 A. 2d 178).

Where question whether this section comprehended a motor vehicle had not been authoritatively decided, and there was substantial authority for view that motor vehicles were not exempt, "probable cause" existed for judgment creditor to seize a motor dump truck on writ of fieri facias, so as to preclude recovery of damages, notwithstanding return of truck was ordered by court which decided that truck was exempt from seizure and sale under this section. *Lee* v. *Dunbar* (D. C. Mun. App. 1944, 37 A. 2d 178).

Where only evidence of actual damages was loss of use of truck wrongfully attached during 5-day period, judgment had remained unpaid more than 30 days and truck owner's operator's permit and registration certificate had been suspended so that operation of truck during 5-day period would have constituted a criminal offense, recovery would be limited to nominal damages, if any. *Lee* v. *Dunbar* (D. C. Mun. App. 1944, 37 A. 2d 178).

§ 15–402 [24: 312]. Mortgage by husband of exempt property.

No deed of trust, assignment for the benefit of creditors, bill of sale, or mortgage upon any exempted articles shall be binding or valid unless signed by the wife of the debtor, if he be married and living with his wife. (Mar. 3, 1901, 31 Stat. 1362, ch. 854, § 1106.)

§ 15–403 [24: 313]. Earnings—Exemptions.

(a) The earnings, salary, insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed $100 each month, of any person residing in the District of Columbia, or of any person who earns the major portions of his or her livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in said District, shall be exempt from attachment, levy, seizure, or sale upon such process, and the same shall not be seized, levied on, taken, reached, or sold by attachment, execution, or any other process or proceedings of any court, judge, or other officer of and in said District: *Provided, however,* That where husband and wife are living together, the aggregate of the earnings, salaries, insurance, annuities, and pension or retirement payments of the husband and wife shall be the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings, salary, insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed $60 each month for two months preceding the date of attachment of all persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, shall be entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding $300 in value, and mechanic's tools not exceeding $200 in value, shall also be exempt.

(c) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee, and thereupon the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption. (Mar. 3, 1901, 31 Stat. 1363, ch. 854, § 1107; Dec. 20, 1944, 58 Stat. 818, ch. 610, § 2.)

AMENDMENTS

The act of Dec. 20, 1944, cited to text, amended section generally.

TITLE 16.—SPECIAL REMEDIES AND PROCEEDINGS

Chap.		Sec.
1.	Account	16–101
2.	Adoption	16–201
3.	Attachment and garnishment	16–301
4.	Divorce and separation	16–401
5.	Ejectment	16–501
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11.	Change of name	16–1101
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13.	Partition and assignment of dower	16–1301
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Chapter 1.—ACCOUNT

Sec.
16–101. Parties to action.
16–102. Accounts at law referred to auditor—Discharge of jury—Procedure as in equity—Report filed and notice given—Judgment after thirty days, unless exceptions filed—Form of exceptions—Certificate of counsel and affidavit of exceptant.
16–103. Trial of exceptions—Part not excepted adjudged conclusive.
16–104. Where issues at trial of exceptions are numerous, may be considered separately by the same jury or by different jury.
16–105. General, frivolous, immaterial, or informal exceptions.
16–106. Judgment entered after trial of exceptions by jury.

§ 16–101 [24: 51]. Parties to action.

Actions of account shall and may be brought and maintained against the executors and administrators of every guardian, bailiff and receiver; and also by one joint-tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint-tenant or tenant in common. (4 Ann, ch. 16, § 27, 1705; Kilty Rep., p. 247; Alex. Br. Stat. p. 664; Comp. Stat., D. C., p. 447, § 34.)

CROSS REFERENCE

See note to § 13–201.

§ 16–102 [24: 52]. Accounts at law referred to auditor—Discharge of jury—Procedure as in equity—Report filed and notice given—Judgment after thirty days, unless exceptions filed—Form of exceptions—Certificate of counsel and affidavit of exceptant.

In actions at common law grounded upon an account, or in which it may be necessary to examine and determine upon accounts between the parties, the court, in its discretion, at any stage of the cause, may order the accounts and dealings between the parties to be audited and stated by the auditor of the court or by a special auditor to be appointed by the court for the purpose; in which case, if a jury shall have been sworn, they shall be discharged. The course of proceedings before the auditor shall be the same as in cases in equity referred to him. When his audit is completed the auditor shall file his report and account in the clerk's office and give notice thereof to the parties or their attorneys, and at the expiration of thirty days after said notice judgment may be entered, on motion of either party, in accordance with said report and account, unless exceptions are filed thereto for errors in law or fact therein. The party excepting thereto shall point out particularly the item or items in such report and account excepted to, and state the grounds of such exception, and annex to his exceptions a certificate of counsel that, in his opinion, the matters of law therein stated are well founded in law, and an affidavit of such party that the exceptions are not filed for delay, and that the allegations of fact in said exceptions are true to the best of his knowledge and belief, and a copy of said exceptions shall be served on the opposite party or his attorney. (Mar. 3, 1901, 31 Stat. 1230, ch. 854, § 254; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "true" the words "to the best of his knowledge and belief."

RULES OF CIVIL PROCEDURE

Masters, reference to, see Rule 53.

NOTES TO DECISIONS

IN GENERAL

This chapter of the code does not deprive a party, in a proper case, of a trial by the common law triers of fact, but provides a simple and workable method by which he may secure it. *Lincoln* v. *Virginia Portland Cement Co.* (49 App. D. C. 33, 258 Fed. 505), citing, with approval, *Simmons* v. *Morrison* (13 App. D. C. 161).

APPLICATION OF STATUTE

The statute applies only to actions at law wherein a mutual accounting between the parties is involved. *Eichberg* v. *United States Shipping Bd.* (51 App. D. C. 44, 273 Fed. 886).

CONSENT TO REFERENCE

A failure to object to an order of reference is equivalent to a consent thereto. *Eichberg* v. *United States Shipping Bd.* (51 App. D. C. 44, 273 Fed. 886).

Consent to a common-law reference, however, which does not amount to a stipulation of reference for a finding of law and fact, does not amount to a waiver of a trial by jury, if by proper exception issues of fact can be framed for submission to a jury. *Eichberg* v. *United States Shipping Bd.* (52 App. D. C. 194, 285 Fed. 928).

EXCEPTIONS

"It is the right of parties who file exceptions to withdraw them. They are not bound to let them stand because other parties may find it to their advantage to have

them retained." Other parties could have taken their own exceptions. *Gilbert* v. *Washington Benefit Assn.* (21 App. D. C. 344). See also *United States* v. *Groome* (13 App. D. C. 460); *American Ice Co.* v. *Eastern Trust & Banking Co.* (17 App. D. C. 422, affd. 188 U. S. 626, 47 L. Ed. 623, 23 Sup. Ct. 432).

The allowance of amendments to exceptions is also within the court's discretion. *Lincoln* v. *Virginia Portland Cement Co.* (49 App. D. C. 33, 258 Fed. 505).

If there are no disputed facts, it is not error to refuse to submit an exception to the jury. *Lincoln* v. *Virginia Portland Cement Co.* (49 App. D. C. 33, 258 Fed. 505).

"The exceptions, to be sufficient to avoid judgment on the report, must respond to the original issues made by the pleadings, as further defined and limited by the approved findings of the auditor. If proper exceptions are filed, in so far as they dispute the findings of fact by the auditor, they created issues to be submitted to the jury. and, upon the issues so defined, the trial will proceed in all respects as if no reference or report had been made." *Eichberg* v. *United States Shipping Bd.* (51 App. D. C. 44, 273 Fed. 886).

"Failure to except to a finding (of the auditor), as we understand the statute, is equivalent to an admission that it is correct." *Weinstein* v. *Julius Lansburgh Furn. & Carpet Co.* (51 App. D. C. 271, 278 Fed. 580).

"As we understand chapter 4 of the Code (§§ 16–102 to 16–106), the party defeated before the auditor must except to his ultimate finding, and to every other finding which he believes prejudicially affects that finding, and must state with particularity the grounds of each exception. In other words, he must show the relation between the subordinate finding and the ultimate one, and that, if his theory is correct, the ultimate one is wrong in whole or in part." *Weinstein* v. *Julius Lansburgh Furn. & Carpet Co.* (51 App. D. C. 271, 278 Fed. 580).

Exceptions cannot be to matters de hors the report. *Weinstein* v. *Julius Lansburgh Furn. & Carpet Co.* (51 App. D. C. 271, 278 Fed. 580).

FINDINGS OF AUDITOR

"The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest." *France* v. *Coleman* (29 App. D. C. 386, dism. 207 U. S. 601, 52 L. Ed. 359, 28 Sup. Ct. 258), citing *Richardson* v. *Van Auken* (5 App. D. C. 209); *Grafton* v. *Paine* (7 App. D. C. 257, dism. 168 U. S. 704, 42 L. Ed. 1212, 18 Sup. Ct. 942); *Smith* v. *American Bonding & Trust Co.* (12 App. D. C. 192); *Hutchins* v. *Munn* (28 App. D. C. 271, affd. 209 U. S. 246, 52 L. Ed. 776, 28 Sup. Ct. 504). See also *Consaul* v. *Cummings* (24 App. D. C. 36).

In the absence of exceptions under a general submission, the auditor's report when admitted on trial before a jury is prima facie evidence both of the facts and conclusions of fact therein contained. *Eichberg* v. *United States Shipping Bd.* (51 App. D. C. 44, 273 Fed. 886). (See also 52 App. D. C. 194, 285, Fed. 928.)

POWER TO MAKE REFERENCE

Court has inherent power to make references in actions at law to the same extent as in equity. A compulsory reference with power to determine issue is impossible in view of constitutional provisions. But no reason exists why a compulsory reference to simplify and clarify the issues and to make tentative findings cannot be made at law, when occasion arises, as freely as in equity. *Eichberg* v. *United States Shipping Bd* .(51 App. D. C. 44, 273 Fed. 886).

Reference of complicated questions of fact to an auditor to hear the evidence and make findings of fact has long been recognized as an appropriate proceeding in an action at law, and, in this case, no reason is shown why it should be transferred from law to equity side. *United States Shipping Bd. Merchant Fleet Corp.* v. *United States Fidelity & Guar. Co* (64 App. D. C. 247, 77 Fed. (2d) 370).

SELECTION OF AUDITOR

The selection of a special auditor is within the discretion of the trial court. *Lincoln* v. *Virginia Portland Cement Co.* (49 App. D. C. 33, 258 Fed. 505).

§ 16–103 [24: 53]. Trial of exceptions—Part not excepted adjudged conclusive.

When such exceptions are filed, the court shall enter the cause on the trial calendar of the term in which they are filed in its proper place, and the issues made by said exceptions shall be tried and determined in the same manner as other issues of law or fact made by the pleadings in an action at common law, and any part of such report and account not so excepted to shall be adjudged to be conclusive between the parties on such trial. **(Mar. 3, 1901, 31 Stat. 1231, ch. 854, § 255.)**

CROSS REFERENCE

See notes to § 16–102.

NOTES TO DECISIONS

CONSTRUCTION WITH FEDERAL COURT RULES

Rule 53 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., under which absence of exceptions to auditor's report does not make auditor's findings conclusive, invalidates contrary provision of this section. *Shima* v. *Brown,* 1942 (133 F. 2d 48; 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

LAW GOVERNING

Under Rule 53 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., the absence of exceptions to a master's report in jury action does not make the master's findings conclusive. *Shima* v. *Brown,* 1942 (133 F. 2d 48, 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

In jury action to recover for board including room, defendant was not prejudiced by district court's refusal to let defendant withdraw exceptions to auditor's report, since presence or absence of exceptions was immaterial under Rule 53 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C. which makes auditor's findings mere evidence unless parties stipulate that they shall be final. *Shima* v. *Brown,* 1942 (133 F. 2d 48, 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

In jury action to recover for board including room, the district court was bound by Rule 53 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C. under which absence of exceptions to auditor's report does not make his findings conclusive, and properly refused to confirm the auditor's report. *Shima* v. *Brown,* 1942 (133 F. 2d 48, 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

§ 16–104 [24: 54]. Where issues at trial of exceptions are numerous, may be considered separately by the same jury or by different jury.

If, in the opinion of the court, such issues are so numerous as to create confusion the court may, in its discretion, direct evidence to be received and considered by the jury as to a part of said issues, and direct the jury to retire and conclude as to the same before hearing the evidence as to the other issues, and this to repeat as often as may be necessary, the final conclusion of the jury as to all the issues to be announced as their verdict; or may submit the different issues to the same jury at different times for their separate verdicts thereon, or submit such issues to different juries; or may pursue such other course as the rules of the court may pre-

scribe to facilitate the determination of such issues. (Mar. 3, 1901, 31 Stat. 1231, ch. 854, § 256.)

CROSS REFERENCE

See notes to § 16–102.

§ 16–105 [24: 55]. General, frivolous, immaterial, or informal exceptions.

If only general, immaterial, or frivolous exceptions are made or they are filed without the certificate of counsel and affidavit of exceptant, required as aforesaid, they may be overruled by the court or a justice at chambers, on notice and motion, and judgment entered as if no exceptions had been filed. (Mar. 3, 1901, 31 Stat. 1231, ch. 854, § 257.)

CROSS REFERENCE

See notes to § 16–102.

RULES OF CIVIL PROCEDURE

Formal exceptions unnecessary, see Rule 46.

§ 16–106 [24: 56]. Judgment entered after trial of exceptions by jury.

Upon the conclusion of such trial or trials the court shall enter judgment upon the auditor's report as affirmed or corrected by the findings of the jury. (Mar. 3, 1901, 31 Stat. 1231, ch. 854, § 258.)

NOTES TO DECISIONS

FORM OF AUDITOR'S REPORT

As to modification by Court of Appeals of decree approving auditor's report, because defective in form, see *Eclipse Bicycle Co.* v. *Farrow* (23 App. D. C. 411, revd. on other grounds 199 U. S. 581, 50 L. Ed. 317, 26 Sup. Ct. 150).

Chapter 2.—ADOPTION

Sec.

16–201. Jurisdiction—Consent of petitioner's spouse—Residence requirements—Data to be furnished—Investigation and report—Exceptions.
16–202. Persons who must consent—Adoptee—Parents, natural and adoptive—Consent of father of illegitimate adoptee not necessary—Circumstances.
16–203. Decree of adoption—Satisfaction of court—Adoptee to have lived with adopter six months—Board of Public Welfare.
16–204. Notice to Vital Statistics Bureau, Health Department—New record made—Original birth certificate sealed.
16–205. Relationship of adoptee and adopter—Rights of inheritance and succession qualified—Adoptee's family name—Given name.
16–206. Records open to inspection upon court order only—Records sealed—Application for leave to inspect—Docket of adoption proceedings.
16–207. Provisions not retroactive—Former orders and decrees valid.

§ 16–201 [15: 1a]. Jurisdiction—Consent of petitioner's spouse—Residence requirements—Data to be furnished—Investigation and report—Exceptions.

Jurisdiction is hereby conferred upon the District Court of the United States for the District of Columbia to hear and determine petitions and decrees of adoption of any adult or child (hereinafter called adoptee) with authority to make such rules, not inconsistent with this section and sections 16–202 to 16–207, as shall bring fully before the court for consideration the interests of the adoptee, the natural parents, the petitioner, and any other properly interested party. No petition shall be considered by the court unless petitioner's spouse joins in the petition or consents to the adoption.

Jurisdiction is conferred if either of the following circumstances exist:

(1) If petitioner is a legal resident of the District of Columbia;

(2) If petitioner has actually resided in the District of Columbia for at least one year.

The petition shall state, so far as known, the name, age, race, occupation, and address of the natural parents, when known, and of the petitioner, whether the petitioner is married or single, the age and sex of the adoptee, the property owned by the adopted, and such other facts as the court may require.

The court shall thereupon, if the adoptee is under twenty-one years of age, issue a rule with copy of the petition attached, which shall be served in such manner as the court shall therein direct, directed to all parties to the petition who do not appear and consent to the adoption, and to the Board of Public Welfare to verify the allegations of the petition, to make a thorough investigation for the purpose of ascertaining if the adoptee is a proper subject for adoption and if the home of the petitioner is a suitable one for the adoptee and within a period not in excess of ninety days to report its findings with recommendations to the court. If an investigation already has been made by a social agency approved by the court, the Board of Public Welfare shall accept it instead of making one itself: *Provided,* That the foregoing provisions of this section relating to investigations and reports by the Board of Public Welfare or an approved social agency shall not apply, if an investigation has already been made by a recognized religious or fraternal organization, having under its care minors for adoption, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and if such organization appears in the proceeding and reports to the court the results of its investigation and its recommendations with respect to the adoption. (Aug. 25, 1937, 50 Stat. 806, ch. 774, § 1; June 20, 1939, 53 Stat. 844, ch. 226.)

COMPILER'S NOTE

The former section conferring jurisdiction of adoptions was repealed by § 7 of the 1937 act, and is set out as a compiler's note to § 16–207.

AMENDMENT

The 1939 amendment changed the word "thirty" in the last paragraph to "ninety."

CROSS REFERENCES

Act not retroactive, § 16–207.

Other provisions concerning power of Board of Public Welfare in adoption proceedings, § 3–116 et seq.

Placing of children in family homes, see §§ 32–781 to 32–789.

NOTES TO DECISIONS

CONTROL OF CHILD BY COURT

The court was without jurisdiction of adoption proceeding where both the child and the child's custodian were in Virginia and so not in court's control. *Wathen* v. *Ugast,* 1944 (143 F. 2d 160, 79 U. S. App. D. C. 162).

FUNCTION OF COURT

In adoption proceeding, it is function of District Court, not of appellate court, to determine the best interests of the infant. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

The provision of this section that the court shall, by special rules, insure that the interests of natural parents are fully before it, means that the court shall insure, to the fullest practicable extent, that the failure of the father of an adoptee born out of wedlock to acknowledge the adoptee is a definitive act. *In re Adoption of a Minor.* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

NOTICE

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

This section requires that known natural father receive official notice unless he voluntarily appears and consents pursuant to some unofficial notice or knowledge. *In re Adoption of a Minor* (App. D. C. 1947, 160 F. 2d 928).

PROCEEDING AS STATUTORY

Adoption proceedings are statutory in character. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

PURPOSE OF STATUTE

Protection of adoptees and their interests is a dominant purpose of the adoption act. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

The process of adoption is for the protection of the child when the natural parents, if living, either repudiate, in the case of the mother, or fail to admit, in the case of the father, their responsibilities. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

REPORT OF BOARD OF PUBLIC WELFARE

An investigation by and the report of the Board of Public Welfare may not, in all cases, satisfy the statutory requirement that the interests of the adoptee be fully protected, as where no report was made as to the character of an absentee natural parent when this was a vital issue, assuming that the board was authorized to make such an investigation. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

§ 16–202 [15: 1b]. Persons who must consent—Adoptee—Parents, natural and adoptive—Consent of father of illegitimate adoptee not necessary—Circumstances.

If adoptee is under twenty-one years of age, no decree of adoption shall be made unless the court shall find that the following persons have consented to the adoption: Adoptee, if fourteen or more years of age; and the natural parents or adoptive parents by a previous adoption, if living. The consent of the father of an adoptee born out of wedlock shall not be necessary unless he has both acknowledged the adoptee and contributed voluntarily to its support. The consent of a parent who is a minor shall not be voidable because of that minority.

If adoptee shall have attained the age of twenty-one years or over, the only consents which shall be required are those of such adoptee, and its spouse, if any.

The consent of a natural parent, or parents, or adoptive parents by a previous adoption, may be dispensed with (1) where after such notice as the court shall direct it shall appear to the court that such person or persons can not be located; (2) where they have been permanently deprived of custody of the adoptee by court order; (3) where it shall appear to the court that they have abandoned the adoptee and voluntarily failed to contribute to his or her support for a period of at least one year next preceding the date of the filing of the petition; or (4) where investigation has shown to the satisfaction of the court extraordinary cause why such consent should be dispensed with. (Aug. 25, 1937, 50 Stat. 807, ch. 774, § 2.)

NOTES TO DECISIONS

ACKNOWLEDGMENT

"Acknowledgment," within this section is a definitive acknowledgment. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

Natural father's acknowledgment of child, making it necessary to obtain his consent to adoption, must be established by definitive act and not by testimony concerning his actions and attitude from his initial knowledge of probable birth of child until the hearing. *In re Adoption of a Minor* (App. D. C. 1947, 160 F. 2d 928).

A natural father's failure to acknowledge child need not be affirmatively registered with court to permit adoption of child without his consent, but father cannot be concluded thereby if he is unaware that occasion for action has arisen. *In re Adoption of a Minor* (App. D. C. 1947, 160 F. 2d 928).

APPEARANCE OF ADOPTEES

Boys 12 and 14 years old, respectively, in proceedings to adopt them, should appear for examination by the court in order to bring their interests before it, when no one legally capable of representing them appears. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

APPLICATION FOR STAY

In proceeding for adoption of minor, where father's application for stay on ground that his ability to defend was seriously affected by reason of his military service, was supported by uncontested affidavits, denial of the application without finding whether father's ability to conduct defense was materially affected by reason of his military service was error. *In re Adoption of a Minor,* 1943 (136 F. 2d 790, 78 U. S. App. D. C. 48).

DISCRETIONARY POWER OF COURT

Since "extraordinary cause" must be established to the satisfaction of the court, a broad measure of discretion is vested in the District Court, and its decision on "this question" will be disturbed only on a showing that there has been a grave abuse of this discretion. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

FATHER'S RIGHTS

Under this section, the rights of the father of an illegitimate child in respect to adoption are the same as if the child were legitimate, if the father chooses to assert those rights. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

FEDERAL LAWS STAYING PROCEEDINGS

50 U. S. C. App., § 521, making mandatory the staying of proceeding when application is made on behalf of one in military service unless in court's opinion ability of "defendant" to conduct defense is not materially affected by reason of his military service, includes proceeding for adoption of minor child of person in military service. *In re Adoption of a Minor,* 1943 (136 F. 2d 790, 78 U. S. App. D. C. 48).

In proceeding for adoption of a minor wherein the minor's father filed application for stay on ground that his ability to defend was seriously affected by reason of his military service, the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App., §§ 501 et seq., and 521, made it trial judge's duty to find whether the father's ability to conduct defense was materially affected by reason of his military service. *In re Adoption of a Minor,* 1943 (136 F. 2d 790, 78 U. S. App. D. C. 48).

The father of an illegitimate child, if he had been formally notified of adoption proceedings, would have had rights under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U. S. C. App. § 521. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

GUARDIAN AD LITEM

A request for the appointment of a guardian ad litem made by an absentee natural parent should be granted, in the absence of a rule otherwise providing. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

NATURAL PARENTS

"Natural parents" within this section includes the father of an illegitimate child, particularly in view of provision of this section specifying circumstances under which consent of father need not be secured. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

In this section prohibiting adoption decree unless court finds that natural parents have consented, use of plural "parents" confers basic right of consent upon natural father. *In re Adoption of a Minor* (App. D. C. 1947, 160 F. 2d 928).

NOTICE

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

PRESENCE OF CONSENTING PERSON AT HEARING

Under this chapter, consent of natural mother accompanying petition for adoption of an illegitimate infant is sufficient, and she need not be actually present, consenting at time of hearing. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

PROCEDURE GENERALLY

In adoption proceedings, the existence of consents of the parents, facts which justify failure to secure them and circumstances which permit their being dispensed with, are part of the procedure of reaching a just judgment. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

QUESTIONS OF FACT

Whether natural father acknowledged child and contributed voluntarily to its support, so as to require his consent to adoption, are questions of fact. *In re Adoption of a Minor* (App. D. C. 1947, 160 F. 2d 928).

SUFFICIENCY OF CONSENT

Where, two months prior to birth of illegitimate child, mother signed paper consenting to adoption after having obtained advice of her family physician and the mother acknowledged execution of the consent the day after the birth of the child, the consent was sufficient to satisfy statutory requirements. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

In adoption proceeding, record established that consent of natural mother was voluntarily given and was given with knowledge of its consequences. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

SUFFICIENCY OF EVIDENCE

Evidence warranted refusal to permit adoption of illegitimate child whose natural father was in naval service when child was born and when mother consented to adoption, on ground that he acknowledged child, contributed to its support and definitively refused to consent to adoption when official opportunity was offered. *In re Adoption of a Minor* (App. D. C. 1947, 160 F. 2d 928).

VOLUNTARY CONTRIBUTIONS

Payments which father voluntarily sent to mother of child born out of wedlock, which were large in proportion to his pay, and which were sent during period from beginning of his receipt of pay until after child had been placed in custody of proposed adopters, were "voluntary contributions" within this section. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

The provision, in this section, that consent of the father of an adoptee born out of wedlock shall not be necessary unless he has both acknowledged the adoptee and contributed voluntarily to its support, does not require that the contribution occur after birth of the child. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

In proceedings for adoption of illegitimate child, whether payments by father were voluntary contributions to support of the child, within meaning of this section, was a question of law. *In re Adoption of a Minor* (App. D. C. 1946, 155 F. 2d 870, 81 U. S. App. D. C. 138).

WITHDRAWAL OF CONSENT

A natural mother, who has freely and voluntarily given consent to adoption of her illegitimate child, cannot, without cause, withdraw that consent and thus prevent the adoption when the adoptive parents have accepted the child, paid expenses of pre-natal and post-natal care, made a home for the child, and in all respects satisfied requirements of this chapter governing adoption. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

In adoption proceeding involving question whether natural mother, who had freely and voluntarily given consent to adoption of her illegitimate child, could withdraw that consent, the fact that Board of Public Welfare and guardian ad litem appointed to represent the interest of the infant recommended against adoption was not controlling where both recommendations were made on assumption that the natural mother, as a matter of law, rightfully withdrew her consent. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

§ 16–203 [15: 1c]. Decree of adoption—Satisfaction of court—Adoptee to have lived with adoptor six months—Board of Public Welfare.

After considering the petition, the consents, and such evidence as the parties and any other properly interested person may wish to present, the court may enter a final decree of adoption if it is satisfied (a) that adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner; (b) that the petitioner is fit and able to give the adoptee a proper home and education; and (c) that the change will be for the best interests of adoptee.

No final decree of adoption shall be entered unless the adoptee shall have been living with the adoptor at least six months prior to the filing of the petition. If, however, it shall appear in the interests of the adoptee, the court may enter an interlocutory decree for adoption, which decree shall by its terms automatically become a final decree of adoption on a day therein named, which shall not be more than six months from the entry of such interlocutory decree unless such decree shall be set aside for cause shown. If it shall appear in the interests of the adoptee, the Board of Public Welfare shall visit the adoptee during the period of the interlocutory decree at regular intervals. (Aug. 25, 1937, 50 Stat. 807, ch. 774, § 3.)

NOTES TO DECISIONS

APPEALS

An aggrieved party may appeal from a final order of the District Court in an adoption proceeding. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

APPEARANCE

Where summons in adoption proceeding was delivered to child's legal custodian in another jurisdiction, his letter to clerk of court stating that he was not interested in outcome of suit and that letter was to be treated as his answer to the summons was not an "appearance," but a mere acknowledgement of summons. *Wathen* v. *Ugast,* 1944 (143 F. 2d 160, 79 U. S. App. D. C. 162).

CONTROL OF CHILD BY COURT

The provision of this section that no final decree in adoption proceedings shall be entered unless child has lived for at least six months with adopting parents, and that an interlocutory decree may become final at the end of six months, contemplates placing child in custody of adopting parents at time of interlocutory decree, and indicates intent that child must be within the court's control. *Wathen* v. *Ugast,* 1944 (143 F. 2d 160, 79 U. S. App. D. C. 162).

The court was without jurisdiction of adoption proceeding where both the child and the child's custodian were in Virginia and so not in court's control. *Wathen* v. *Ugast,* 1944 (143 F. 2d 160, 79 U. S. App. D. C. 162).

EVIDENCE, ADMISSIBILITY

In adoption proceeding, reports from guardian ad litem appointed to represent interest of infant and from Board of Public Welfare, and such other information and advice as might be available, were admissible on issue of best interests of infant. *In re Adoption of a Minor,* 1944 (144 F. 2d 644, 79 U. S. App. D. C. 191, 156 A. L. R. 1001).

§ 16–204 [15: 1d]. Notice to vital Statistics Bureau, Health Department—New record made—Original birth certificate sealed.

Notice of a final decree of adoption shall be sent to the Bureau of Vital Statistics of the Health Department. This Bureau shall cause to be made a new record of the birth in the new name and with the names of the adopter and shall then cause to be sealed and filed the original birth certificate with the order of the court and such sealed package shall be opened only by order of court. If the adoption occurred outside of the District of Columbia, upon filing with the Bureau of Vital Statistics of the Health Department a certified copy of the final decree of adoption, the Bureau shall cause to be made a new record of the birth in the new name with the names of the adopters, and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption; and such sealed package shall be opened only by order of a court of competent jurisdiction. If the birth occurred outside of the District of Columbia, the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption. (Aug. 25, 1937, 50 Stat. 807, ch. 774, § 4; June 6, 1940, 54 Stat. 235, ch. 244; June 26, 1946, 60 Stat. 314, ch. 499.)

AMENDMENTS

The act of June 6, 1940, added to the last sentence.

The act of June 26, 1946, cited to text, added the third sentence relating to adoptions occurring outside the District of Columbia.

§ 16–205 [15: 1e]. Relationship of adoptee and adopter—Rights of inheritance and succession qualified—Adoptee's family name—Given name.

Entry of a final decree of adoption shall establish the relation of natural parent and natural child between adoptor and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adoptor, except that adoptee shall not inherit from collateral relatives of or the parents of adoptor although such collateral relatives and parents of adoptor shall have the right of inheritance from adoptee. All rights and duties including those of inheritance and succession between adoptee, his or her natural parents, their issue, collateral relatives, and so forth, shall be cut off. In the event one of the natural parents shall be the spouse of petitioner, then the rights and relations as between adoptee, such natural parent, and his or her parents and collateral relatives, including mutual rights of inheritance and succession, shall in nowise be altered.

The family name of the adoptee shall be changed to that of adoptor unless the decree shall otherwise provide, and the given name of the adoptee may be fixed or changed at the same time. (Aug. 25, 1937, 50 Stat. 808, ch. 774, § 5.)

NOTES TO DECISIONS

APPLICATION OF STATUTE

Although the petiitoner is an adopted child of decedent, her maternal grandmother, and was such at the time of decedent's death, the adoption decree being prior to August 25, 1937, § 16–205 does not cut off her right of distribution from the estate of the decedent and she is entitled to the sole distribution. *In Re Penfield's Estate* (D. C. D. C., 1949, 81 F. Supp. 622).

CONSTRUCTION

The question of the right of petitioner to inherit from her natural aunt, though her relationship to her natural father was cut off by the 1937 Act, is governed by provisions of section 16–205, which by its very terms is prospective since the whole concept of adoption was altered by the new act and relates to the decrees entered under it. *Hall* v. *Scarlett* (C. A. D. C. 1950, 181 F. 2d 277, 86 U. S. App. D. C. 165).

§ 16–206 [15: 1f]. Records open to inspection upon court order only—Records sealed—Application for leave to inspect—Docket of adoption proceedings.

Records and papers in adoption proceedings, after the petition is filed and prior to the entry of a final decree, shall be open to inspection by the parties or their attorneys and members of the Board of Public Welfare or their agents, upon order of the court. Upon the entry of a final decree the Board of Public Welfare and the clerk of the court shall seal all papers in the proceedings. Said seals shall not be broken, and said papers shall not be inspected by any person, including the parties to the proceeding, except upon order of the court. Application for leave to inspect papers in adoption proceedings shall be by petition and shall be granted only for extraordinary cause shown. The court may appoint a master to consider and investigate the facts upon which such a petition is based, who shall make his findings and recommendations to the court.

The clerk of the court shall keep a docket of all adoption proceedings which shall only be inspected upon order of the court upon the same conditions hereinabove set out for the inspection of papers. (Aug. 25, 1937, 50 Stat. 808, ch. 774, § 6.)

§ 16–207 [15: 1g]. Provisions not retroactive—Former orders and decrees valid.

The provisions of sections 16–201 to 16–207 shall have no retroactive effect and shall not be construed as affecting in any way the rights and relations obtained by any decree of adoption entered prior to August 25, 1937, and all proceedings instituted and pending on August 25, 1937, shall be carried to their

final determination in accordance with the provisions of section 395 of the Act of March 3, 1901, 31 Stat. 1252, ch. 854, as if sections 16–201 to 16–207 had not been enacted, and all orders and decrees entered therein shall remain valid and binding on all parties thereby affected. (Aug. 25, 1937, 50 Stat. 808, ch. 774, § 7.)

COMPILER'S NOTE

Section 7 of the act of 1937 contains the following as its first sentence: "Section 395 (title 15, sec. 1, New Code) of the Code of Law of the District of Columbia is hereby repealed." This is the section referred to above and was set out as follows in D. C. Code, 1929 Edit., title 15, § 1: "*Section 1. Adoption.*—Jurisdiction is hereby conferred on any judge of the supreme court of the District of Columbia to hear and determine any petition that may be presented by a person or a husband and wife residing in the District of Columbia, praying the privilege of adopting any minor child as his or her or their own child, and making such minor child an heir at law. If the judge shall find, upon the hearing of such petition, that the petitioner is a proper person to have custody of such child, and that the parent or parents or guardian of such child have given their permission for such adoption, he shall enter an order upon the records of the court legalizing such adoption and making such child an heir at law of such petitioner, the same as if such child was born to such petitioner. If the child has no parent or guardian the judge shall appoint a guardian ad litem. (Feb. 26, 1895, 28 Stat. 687, ch. 134; Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 395.)"

NOTES TO DECISIONS

APPLICATION OF STATUTE

The non-retroactive provisions of § 16–207 have application only to proceedings in the District under the 1901 Act, completed before or pending at the time of the effective date of the Act of August 25, 1937, but they clearly evidence its policy that other provisions of the latter Act, including those cutting off the rights of the adoptee to inherit from natural parents and collateral relatives, should not be construed as having application contrary to such policy. *In Re Penfield's Estate* (D. C. D. C., 1949, 81 F. Supp. 622).

CONSTRUCTION

The question of the right of petitioner to inherit from her natural aunt, though her relationship to her natural father was cut off by the 1937 Act, is governed by provisions of section 16–205 which by its very terms is prospective since the whole concept of adoption was altered by the new act and relates to the decrees entered under it. *Hall* v. *Scarlett* (C. A. D. C. 1950, 181 F. 2d 277, 86 U. S. App. D. C. 165).

Chapter 3.—ATTACHMENT AND GARNISHMENT

Sec.

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§ 16–301 [24: 121]. Attachment before judgment—Bond and affidavit—Causes.

In any action at law in the District Court of the United States for the District of Columbia or the municipal court of said District, for the recovery of specific personal property, or a debt, or damages for the breach of a contract, express or implied, if the plaintiff, his agent or attorney, either at the commencement of the action or pending the same, shall file an affidavit showing the grounds of his claim and setting forth that the plaintiff has a just right to recover what is claimed in his declaration, and where the action is to recover specific personal property stating the nature and, according to affiant's belief, the value of said property and the probable amount of damages to which the plaintiff is entitled for the detention thereof, and where the action is to recover a debt stating the amount thereof, and where the action is to recover damages for the breach of a contract setting out, specifically and in detail, the breach complained of and the actual damage resulting therefrom, and also stating either, first, that

the defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months; or, second, that the defendant evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District; or, third, that he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him; or, fourth, that he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or, fifth, that the defendant fraudulently contracted the debt or incurred the obligation respecting which the action is brought, the clerk shall issue a writ of attachment and garnishment, to be levied upon so much of the lands, tenements, goods, chattels, and credits of the defendant as may be necessary to satisfy the claim of the plaintiff: *Provided,* That the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may sustain by reason of the wrongful suing out of the attachment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 445; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

Compiler's Note

Section 9 of act of March 3, 1921, 41 Stat. 1312, ch. 125, provided as follows: "The provisions of the Code of Law for the District of Columbia relating to attachments shall apply to attachment proceedings in said Municipal Court." This is set out as § 16–335 hereof.

Amendment

The 1920 amendment deleted the words "supported by the testimony of one or more witnesses" after the word "affidavit," and added the words "or municipal court."

Cross References

Attachment and garnishment after judgment §§ 15–301 to 15–313.

Attachment of money deposited in court under Owners Financial Responsibility Act, § 40–404.

Attachment to enforce landlord's lien, § 45–916.

Benefits from fraternal benefit association not subject to attachment or garnishment, § 35–911.

Benefits payable under unemployment compensation law not subject to levy or attachment, § 46–318.

Bonds generally, § 28–2401 et seq.

Exemption of insurance benefits from attachments and garnishment, §§ 35–717, 35–718.

Exemption of proceeds from life insurance, § 30–213.

Exemption of sums recovered for wrongful death, § 16–1203.

Garnishment of goods in possession of warehouseman, surrender of receipt, §§ 28–1919, 28–1920.

Old-age assistance given under the Social Security Act not subject to attachment or levy, § 46–204.

Teacher's retirement annuity not subject to attachment, § 31–718.

The provisions of this chapter relating to attachment apply to proceedings in municipal court, § 11–733.

NOTES TO DECISIONS

Affidavits

Affidavits in an attachment proceeding become a part of the record on appeal. *Barbour* v. *Paige Hotel Co.* (2 App. D. C. 174).

An affidavit fully complies with the statute which states the ultimate fact substantially in its terms, without stating in connection therewith the probative facts which may be necessary to be shown in case of traverse. The same rule applies also to the allegation of the intent with which the act may have been done. *Wielar* v. *Garner* (4 App. D. C. 329).

It is ordinarily sufficient in an affidavit for attachment to follow the words of the statute substantially without stating the probative facts which go to show the ultimate conclusion. *Cissell* v. *Johnston* (4 App. D. C. 335).

Though the affidavit preceding the issuance of the writ may be so defective as to warrant a reversal of the judgment by an appellate court, such defect will not deprive the court of the jurisdiction acquired by the writ levied upon defendant's property. The proceeding being in rem, the levy of the writ "is the one essential requisite to jurisdiction." *Moses* v. *Hayes* (36 App. D. C. 194).

Affidavit in attachment before judgment required need not employ the precise language of this section, but words must be sufficiently similar to those of this section to allow drawing of conclusion which is called for by the exact language of this section. *Rieffer* v. *Home Indem. Co.* (D. C. Mun. App. 1948, 61 A. 2d 26, modified, 1948, 62 A. 2d 371).

Affidavit in support of attachment before judgment alleging that defendant left the District of Columbia at a time shown by affidavit to be within six months before filing of affidavit, that defendant's present whereabouts were unknown, and that defendant had temporarily withdrawn himself from district, was fatally defective for not alleging that defendant was evading the service of ordinary process by his withdrawal. *Rieffer* v. *Home Indem. Co.* (D. C. Mun. App. 1948, 61 A. 2d 26, modified, 1948, 62 A. 2d 371).

Bond

Where an attachment is issued against the property of one of several defendants, the bond properly runs to him and not to the other defendants against whom attachment did not issue. *Bradford* v. *Brown* (22 App. D. C. 455).

If the bond is defective, the defendant may move to quash the attachment. *Moses* v. *Hayes* (36 App. D. C. 194). See also *Hayes* v. *Conger* (36 App. D. C. 202).

Bond is sufficient if it is twice the amount sued upon; "uncertain costs and interest which may accrue during litigation are no part of a plaintiff's claim at the date of suit." *Rhodes* v. *Bowling Green White Stone Co.* (43 App. D. C. 298).

A surety on a bond given under section 454 of the Code (§ 16–310) can not object, except in case of fraud, to defects in original affidavits which render the attachment merely voidable. *National Surety Co.* v. *Poates* (43 App. D. C. 334).

The requirements of this section as to the filing of a bond are not superseded by the act of April 19, 1920 (41 Stat. 564), section 479a of the Code (§ 28–2403). *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (51 App. D. C. 109, 276 Fed. 631).

Breach of Contract

Where defendant did not sound his case in tort, as he might have done, but sued specifically for breach of the lease agreement, charging that defendant had damaged the premises in breach of the lease agreement, such allegations brought his claim within the provisions of the attachment statute. *Fink* v. *Katz* (D. C. Mun. App. 1949, 68 A. 2d 813).

Burden of Proof

To sustain writ of attachment, plaintiff had burden of proving that defendant was a nonresident. *D'Elia & Marks Co.* v. *Lyon* (D. C. 1943, 31 A. 2d 647).

Construction

In order for an attachment before judgment to be issued, the defendant must not be a resident of the District. The statute clearly prescribes residence, as distinguished from domicile, as the controlling factor. A man's residence is where he actually dwells and must be a fixed and permanent abode. *Fink* v. *Katz* (D. C. Mun. App. 1949, 68 A. 2d 813).

Executors and Administrators

"Neither executors nor administrators are named in the section as subject to attachment, and as the attachment

of the property of an estate is obviously inconsistent with the law of administration, nothing less, we think, than express authorization would warrant." *Jordan* v. *Landram* (35 App. D. C. 89), citing *Graham* v. *Fitch* (13 App. D. C. 569), referring to foreign executors, compare § 16-313.

FOREIGN CORPORATION

A foreign corporation, notwithstanding its exclusive engagement in business in the District, its organization for that purpose only, and the continuous presence of its secretary and treasurer therein, is a nonresident and subject to attachment as such. *Barbour* v. *Paige Hotel Co.* (2 App. D. C. 174).

INTEREST IN TRUST

In suit by divorced wife of trust beneficiary to establish interest in trust fund, wife could not recover fund due as alimony or for the benefit of creditors, in absence of personal service on beneficiary or an attachment of his equitable interest in fund after execution of bond. *Buchanan* v. *National Sav. & Trust Co.*, 1944 (146 F. 2d 13, 79 U. S. App. D. C. 278).

JURISDICTION

When debtor leaves city taking all cash with him and leaves no information as to where he is going or when he will return, a creditor after making unsuccessful attempts to locate him is justified in assuming that he left for the purpose of evading the process and a writ of attachment will lie. *Wilkins & Co.* v. *Hillman* (8 App. D. C. 469).

The question of the jurisdiction of the court to issue the attachment must be decided solely upon the sufficiency of the declaration, regardless of defenses available to defendant since these are waived by its motion to dissolve the attachment. *Orenstein & Koppel, Aktiengesellschaft* v. *Koppel Industrial Car Equipment Co.* (59 App. D. C. 221, 38 Fed. (2d) 532).

MEMBER OF CONGRESS

A member of Congress, present in the District to attend its sessions, is to be regarded (in the absence of a plain, unequivocal statement to the contrary) as a resident of the state which he represents, and therefore a nonresident of the District within the meaning of the attachment statute. *Howard* v. *Trust Co.* (12 App. D. C. 222), citing *Robinson* v. *Morrison* (2 App. D. C. 105).

NONRESIDENT

"Nonresident", as used in this section, must be taken in its ordinary and usual signification. *D'Elia & Marks Co.* v. *Lyon* (D. C. 1943, 31 A. 2d 647).

Whether defendant was subject to attachment as a nonresident would be determined as of time of issuing and serving writ of attachment. *D'Elia & Marks Co.* v. *Lyon* (D. C. 1943, 31 A. 2d 647).

That defendant had an established office in the District of Columbia and presumably was available for personal service was not material in determining whether he was a "nonresident" within this section. *D'Elia & Marks Co.* v. *Lyon* (D. C. 1943, 31 A. 2d 647).

Evidence that physician with office in District of Columbia boarded up his Maryland home and, with his family, moved to expensive apartment in the District of Columbia under one-year lease, intending to move back to Maryland when he could afford it, authorized quashing of attachment of physician's property on ground that physician was not a "nonresident" of the District of Columbia. *D'Elia & Marks Co.* v. *Lyon* (D. C. 1943, 31 A. 2d 647).

Where nonresident taxicab operator's taxicab driver was lured into the District of Columbia in order that taxicab might be attached there the court would in order to protect its process quash the attachment and direct return of cash deposit which was made in lieu of bond to perform judgment of the court. *Guardian Management Corp.* v. *Huffman* (D. C. Mun. App. 1948, 61 A. 2d 472).

That defendant as a common carrier regularly sent its taxicabs into the District of Columbia would not change the effect of procuring the presence of defendant's taxicab in the District by misrepresentation in order that the taxicab might be attached. *Guardian Management Corp.* v. *Huffman* (D. C. Mun. App. 1948, 61 A. 2d 472).

PROPERTY ATTACHED

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman* v. *Richardson* (51 App. D. C. 24, 273 Fed. 752).

Under this and following sections credits may be attached as well as chattels. *United States Fidelity & Guar. Co.* v. *Wrenn* (67 App. D. C. 94, 89 Fed. (2d) 838).

REMOVAL OF PROPERTY

A mere suspicion that the defendant intends to remove his property from the District is not sufficient to justify an attachment. *Mackenzie* v. *Crouse* (35 App. D. C. 291).

SPENDTHRIFT TRUST

A spendthrift trust may under some circumstances be subjected to the obligation to support a wife or child, but enforcement of such obligation requires either personal service on beneficiary or an attachment of his equitable interest in the fund after execution of bond. *Buchanan* v. *National Sav. & Trust Co.*, 1944 (146 F. 2d 13, 79 U. S. App. D. C. 278).

STATEMENT OF DAMAGES

Attachment statute is not only meant to apply to those actions for damages for breach of contract which are precisely liquidated and ascertained. The object of the statute is to require such a statement of the damages suffered as will be informing to the defendant and enable him to prepare himself to meet the issue tendered. *Suter* v. *Lockwood Dental Co.* (45 App. D. C. 92).

§ 16-302 [24: 122]. Notice—Service—Personal and by publication—Form.

Every such writ shall require the marshal to serve a notice on the defendant, if he be found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in said court on or before the twentieth day, exclusive of Sundays and legal holidays, after service of such notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had; and the marshal's return shall show the fact of such service. If the defendant is returned "Not to be found," such notice shall be given by publication to the following effect, namely:

In the District (Municipal) Court of the United States for the District of Columbia.

A B, plaintiff,
versus
C D, defendant. } At law. Numbered —.

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this —— day of ——, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

—— ——, Justice.

And every such order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as may be ordered by the court. (Mar. 3, 1901, 31 Stat. 1259, ch. 854, § 446.)

COMPILER'S NOTE

The alternative name "Municipal" has been inserted by the compiler in conformity with § 11–703, which gives the Municipal Court jurisdiction in attachment proceedings "in which the claimed value of the personal property or the debt or damages claimed, exclusive of interest and costs does not exceed $1,000." See also compiler's note to § 16–301.

CROSS REFERENCES

Process generally, § 13–101 et seq.
See notes to § 16–301.

NOTES TO DECISIONS

CREDITS

The court cites and construes *Harriman* v. *Richardson* (51 App. D. C. 24, 273 Fed. 752), and says it is unable to discover a distinction that would permit the attachment of chattels and not of credits. *United States Fidelity & Guar. Co.* v. *Wrenn* (67 App. D. C. 94, 89 Fed. (2d) 838).

LEGISLATIVE INTENT

One purpose of this section is to protect the rights of third parties in whose possession the property may be. *Harriman* v. *Richardson* (51 App. D. C. 24, 273 Fed. 752).

PARTIES

Under this and following sections, the Attorney General must be made a party in suit to compel the payment of a judgment of condemnation, where such officer has succeeded the Alien Property Custodian. *United States ex rel. Ordmann* v. *Cummings* (66 App. D. C. 107, 85 Fed. (2d) 273).

PROPERTY IN SAFE-DEPOSIT BOX

Property in a safe-deposit box in a trust company is subject to garnishment. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D. C. 149).

§ 16–303 [24: 123]. Interrogatories — Answers within ten days—Oral examination.

In all cases of attachment the plaintiff may exhibit interrogatories in writing in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, concerning any property of the defendant in his possession or charge, or any indebtedness of his to the defendant at the time of the service of the attachment, or between the time of such service and the filing of his answers to said interrogatories; and the garnishee shall file his answers under oath to such interrogatories within ten days after service of the same upon him. In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally under oath touching any property or credits of the defendant in his hands. (Mar. 3, 1901, 31 Stat. 1259, ch. 854, § 447.)

CROSS REFERENCE

Traverse of answer of garnishee, § 16–317.

NOTES TO DECISIONS

ANSWER BY CORPORATION

Quaere: Where a corporation garnishee may answer per alium through an agent or must answer per se, through its officers. Particularly when no effort was made to examine deponent orally as to the scope of his authority. *International Seal Co.* v. *Beyer* (33 App. D. C. 172). Compare *Moses* v. *Hayes* (36 App. D. C. 194), as to authority of agent to execute bond.

An affidavit signed by the president, secretary, or other proper officer of a corporation is prima facie to be considered the act of the corporation. *International Seal Co.* v. *Beyer* (33 App. D. C. 172).

A corporation garnishee may make answer, subscribed and sworn to by a representative of the corporation as "associate counsel." *Mutual Ben. Life Ins. Co.* v. *Flynn* (60 App. D. C. 108, 48 Fed. (2d) 1020).

FAILURE TO ANSWER IN TIME

Upon failure of garnishee to answer within time limit, adverse party must apply to enforce such default. A failure to do so is a tacit consent to an extension of time within which the answer may be filed. *Banville* v. *Sullivan* (11 App. D. C. 23).

It is not necessary to secure leave of court to file the answer after expiration of time limit, when no steps have been taken to enforce default. *Banville* v. *Sullivan* (11 App. D. C. 23).

Court cites *Banville* v. *Sullivan* (11 App. D. C. 23, 29), and says the limitation there is not for the benefit of the pleader, but for his opponent, and, if the opponent fails to take advantage of the default, failure to plead in time will be deemed waived. *Shannon & Luchs Constrn. Co.* v. *Reichelderfer* (61 App. D. C. 36, 57 Fed. (2d) 402).

NOTICE

When the garnishment is served on the garnishee, the suit becomes a suit in personam against the garnishee and he is entitled to notice. *United States ex rel. Ordmann* v. *Cummings* (66 App. D. C. 107, 85 Fed. (2d) 273).

ORAL EXAMINATION

This section permits of an oral examination of the garnishee as broad as the one in writing, and can be invoked although garnishee has not admitted in his written answers that in fact he has property or credits of the defendant in his hands. *Fidelity Sav. Co.* v. *Security Sav. & Commercial Bank* (55 App. D. C. 180, 3 Fed. (2d) 351).

A traverse of the answer is not a condition precedent to the exercise of the right to require oral examination. *Flynn* v. *Potomac Elec. Power Co.* (60 App. D. C. 82, 47 Fed. (2d) 978).

SAFE-DEPOSIT BOX

Trust company must answer interrogatory as to whether or not defendant has a safe-deposit box. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D. C. 149).

§ 16–304 [24: 124]. Additional attachments.

Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court. (Mar. 3, 1901, 31 Stat. 1259, ch. 854, § 448.)

§ 16–305 [24: 125]. Sufficiency of bond.

In case the defendant or any other person interested in the proceedings is not satisfied with the sufficiency of the surety or sureties or with the amount of the penalty named in the bond aforesaid, he may apply to the court for an order requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court; and in case of the plaintiff's failure to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper. (Mar. 3, 1901, 31 Stat. 1260, ch. 854, § 449.)

NOTES TO DECISIONS

IN GENERAL

Defendant has the right when not satisfied with the sufficiency of the surety on the bond or amount of its

penalty to apply for order requiring plaintiff to give additional bond or, if the bond is defective, move to quash the writ. *Moses* v. *Hayes* (36 App. D. C. 194).

§ 16–306 [24: 126]. Debts not due — Affidavit — Supported by witnesses—Causes—Bond—Dismissal without prejudice.

A creditor may maintain an action and have an attachment against his debtor's property and credits, as aforesaid, where his debt is not yet due and payable, provided the plaintiff, his agent, or attorney shall file in the clerk's office, at the commencement of the action, an affidavit, supported by the testimony of one or more witnesses, as to the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of his property from the District with the intent or to the effect of defeating just claims against him should only the ordinary process of law be used to obtain judgment against him, and shall also comply with the condition as to filing a bond prescribed by section 16–301. The plaintiff in such case shall not have judgment before his claim becomes due; and in case the attachment is quashed the action shall be dismissed, but without prejudice to a future action. (Mar. 3, 1901, 31 Stat. 1260, ch. 854, § 450.)

§ 16–307 [24: 127]. Traversing affidavits—Counter-affidavits—Quashing writ of attachment—Trial of issue—Notice—Oral testimony—Jury.

If the defendant in any case shall file affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment; and if, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney the court shall quash the writ of attachment; and this issue may be tried by the court or a judge at chambers after three days' notice. The said issue may be tried as well upon oral testimony as upon affidavits, and, if the court shall deem it expedient, a jury may be impaneled to try the issue. (Mar. 3, 1901, 31 Stat. 1260, ch. 854, § 451.)

CROSS REFERENCES

Garnishee entitled to benefit of this section, § 16–327.
See notes to §§ 16–301, 16–327.

NOTES TO DECISIONS

EVIDENCE

Evidence sustained finding that fraud relied on as basis for attachment of automobile had not been proved and that the attachment should be quashed. *Davis* v. *Trumbull* (D. C. Mun. App. 1948, 61 A. 2d 622).

JOINDER OF DEFENDANTS

A single defendant may move to quash an attachment even though he is not joined by other defendants. *Davis* v. *Trumbull* (D. C. Mun. App. 1948, 61 A. 2d 622).

JURY TRIAL

The right to trial by jury is governed by this section and not by rule of Municipal Court dealing with right to trial by jury. *Davis* v. *Trumbull* (D. C. Mun. App. 1948, 61 A. 2d 622).

Where defendant filed an affidavit traversing plaintiff's affidavit on which writ of attachment was issued and request for jury trial was made on a Saturday, and judge offered to set motion for jury trial on the following Monday, and plaintiff's counsel said he could not be ready until the following Wednesday or Thursday, whereupon the judge ordered the hearing to proceed without a jury, there was no improper exercise of discretion. *Davis* v. *Trumbull* (D. C. Mun. App. 1948, 61 A. 2d 622).

REVIEW

The credibility of witnesses and the weight to be given to their testimony could not be determined on appeal from order of Municipal Court quashing writ of attachment. *Davis* v. *Trumbull* (D. C. Mun. App. 1948, 61 A. 2d 622).

SERVICE OF PROCESS

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance", and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D. C. Mun. App. 1948, 60 A. 2d 232).

§ 16–308 [24: 128]. Property subject to attachment—Lien.

Attachments may be levied on the lands and tenements, whether leasehold or freehold, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether said defendant's title to said property be legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business. Every attachment shall be a lien on the property attached from the date of its delivery to the marshal, and if different persons obtain attachments against the same defendant the priorities of the liens of said attachments shall be according to the dates when they were so delivered to the marshal. (Mar. 3, 1901, 31 Stat. 1260, ch. 854, § 452.)

NOTES TO DECISIONS

CHATTELS SUBJECT TO DEED OF TRUST

Attachment is proper against chattels which are subject to a deed of trust as the deed of trust is in favor of the plaintiff in the suit in which the attachment is issued. *Richmond* v. *Cake* (1 App. D. C. 447).

DEPOSITS

Where judgment creditor to collect judgment attached judgment debtor's deposit account, evidence sustained judgment rejecting debtor's contention that the funds attached were trust funds not subject to attachment. *Laughlin* v. *Bank of Commerce & Savings*, 1943 (134 F. 2d 530, 77 U. S. App. D. C. 312).

PAYMENT ON ACCOUNT—ANOTHER CONTRACT

Where judgment debtor has made a deposit with company on account of the purchase price under another contract, such funds may not be reclaimed by the judgment debtor without the seller's consent, and, being payable upon a contingency, is not subject to garnishment by the judgment creditor. *Wheeler* v. *Thomas* ((D. C.-D. C.), 31 Fed. Supp. 702).

PROCEEDS OF SALE

Proceeds of the sale of property in the hands of a purchaser from a foreign receiver who brought the property into this jurisdiction (and was vested with title and a right to sell the same) are not subject to attachment by domestic creditor of original owner. *Jenkins* v. *Purcell* (29 App. D. C. 209, 9 L. R. A. (N. S.) 1074).

RENTS ACCRUING AFTER SERVICE

Rents which accrued after service of the garnishment constituted a contingent liability when the garnishment was levied and was not subject to garnishment. *United States Fidelity & Guar. Co.* v. *Wrenn* (67 App. D. C. 94, 89 Fed. (2d) 838).

SAFE-DEPOSIT BOX

Attachment may be levied against safe-deposit box. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D. C. 149).

"THIRD PERSON" MAY BE PLAINTIFF

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman* v. *Richardson* (51 App. D. C. 24, 273 Fed. 752).

WAIVER OF EXEMPTION

Funds of an individual in possession of District of Columbia or its officers are not subject to attachment or garnishment in an ordinary proceeding to recover on a debt or other like claim, but exemption is allowed only for convenience of municipality and may be claimed by it alone and not by another, and the District of Columbia may waive it. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

The exemption of District of Columbia from attachment or garnishment, in an ordinary proceeding to recover on a debt or other like claim against an individual whose funds are held by the District, is waived by a failure or refusal to claim the exemption. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

§ 16-309 [24: 129]. How levied on real property—Service of copy and notice.

The attachment shall be sufficiently levied on the lands and tenements of the defendant by said property being mentioned and described in an indorsement on said attachment, made by the officer to whom it is delivered for service, to the following effect, namely:

Levied on the following estate of the defendant, AB, to wit: (Here describe) this —— day of ——.

C D, Marshal.

And by service of a copy of said attachment, with said indorsement, and the notice required by section 16–302 on the person, if any, in possession of said property. (Mar. 3, 1901, 31 Stat. 1260, ch. 854, § 453.)

§ 16-310 [24: 130]. How levied on personal chattels.

The attachment shall be levied upon personal chattels by the officer taking the same into his possession and custody, unless the defendant shall give to the officer his undertaking, to be filed in the cause, with sufficient security, to the following effect, namely:

A B, plaintiff,
versus
C D, defendant. } At law. Numbered —.

The defendant and ——, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the —— day of ——, anno Domini nineteen hundred ——, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, or successors or assigns, to abide by and perform the judgment of the court in the premises in relation to said property, which judgment may be rendered against all the parties whose names are hereto signed.

(Signed) C D.
E F.

Or unless the person in whose possession the property is attached shall give to the officer, to be filed in the cause, an undertaking in the following form or to the same effect, namely:

A B, plaintiff,
versus
C D, defendant. } At law. Numbered —.

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as garnishee, namely, (here describe) of the value of —— dollars; and now, therefore, the said E F and G H, as surety, appearing in said suit, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be condemned to satisfy the claim of the plaintiff, judgment may be rendered against all of the undersigned for the value of said property and costs, to be executed against them, and each of them, unless said property shall be forthcoming to satisfy the judgment of condemnation.

(Signed) E F.
G H.

And in either of said cases the attachment shall be sufficiently levied by the taking of the undertaking, as above provided for; and in the latter case the recital of the undertaking shall contain a sufficient description of the property and its value, which value shall be ascertained by an appraisement to be made under direction of the officer and returned with the writ. (Mar. 3, 1901, 31 Stat. 1261, ch. 854, § 454; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "administrators" the words "or successors or assigns," and deleted the word "seal" and the brackets inclosing the same following the signatures on both forms.

NOTES TO DECISIONS

CONSTITUTIONALITY

This section was not unconstitutional. *United Surety Co.* v. *American Fruit Product Co.* (238 U. S. 140, 59 L. Ed. 1238, 35 Sup. Ct. 828).

WAIVER

Where non-resident taxicab owner procured release of attached taxicab by cash deposit instead of giving bond as required by this section such irregularity was waived and case was required to be disposed of as if bond had been given to perform judgment of the court. *Guardian Management Corp.* v. *Huffman* (D. C. Mun. App. 1948, 61 A. 2d 472).

§ 16-311 [24: 131]. Release from attachment—Undertaking—Acceptance by marshal—Marshal's liability—Undertaking approved by court—Judgment after release.

Either the defendant or the person in whose possession the property was may obtain a release of the

same from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him as aforesaid, with security to be approved by the court.

The plaintiff may except to the sufficiency of the undertaking accepted as aforesaid by the marshal and, if the exceptions be sustained, the court shall require a new undertaking, with sufficient surety, by a day to be named, in default of which he shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through such default.

Either the defendant or the person in whose possession credits are attached may obtain a release of the same from the attachment by filing an undertaking with security to be approved by the court.

If property or credits attached be released upon an undertaking given as aforesaid, and judgment in the action be rendered in favor of the plaintiff, it shall be a joint judgment against both the defendant and all persons in said undertaking for the appraised value of the property or the amount of the credits. (Mar. 3, 1901, 31 Stat. 1261, ch. 854, § 455; June 30, 1902, 32 Stat. 530, ch. 1329; Apr. 19, 1920, 41 Stat. 564, ch. 153.)

AMENDMENTS

The 1902 amendment deleted the words "rule the marshal to file" in the second paragraph, and inserted in lieu thereof the word "require."

The 1920 amendment added the third paragraph, and changed the wording of the first sentence in the last paragraph which formerly read: "If the property attached be delivered to the defendant upon his executing an undertaking as aforesaid * * *".

NOTES TO DECISIONS

CONSTITUTIONALITY

This section was not unconstitutional. *United Surety Co.* v. *American Fruit Product Co.* (238 U. S. 140, 59 L. Ed. 1238, 35 Sup. Ct. 828).

DUTY TO OBTAIN RELEASE—MEASURE OF DAMAGES

When the plaintiff's car was taken from him, he could have procured its return immediately by giving an undertaking under this section, and it was his duty to do so and thus to reduce the defendant's liability, except if he were financially unable to do so. *Moses* v. *Lockwood* (54 App. D. C. 115, 295 Fed. 936, 33 A. L. R. 1467).

REMEDY AGAINST SURETY

Bond given under this section to obtain release of attached property is binding upon defendant's surety notwithstanding the fact that defendant was declared bankrupt within four months thereafter. *Fidelity & Deposit Co.* v. *Shepherd* (56 App. D. C. 117, 11 Fed. (2d) 563).

In taking judgment solely against the main defendant, together with the subsequent step against the garnishee as outlined, defendant in error waived his right to pursue his remedy against the surety. *Fidelity & Deposit Co.* v. *Hurley* (63 App. D. C. 377, 72 Fed. (2d) 927).

UNDERTAKING AS WARRANTING RELEASE

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, the judgment debtor was not prejudiced by court's refusal to release attachment of money, since it could make no difference to the judgment debtor whether he paid the amount out of the attached funds or out of the security which he tendered with his undertaking. *Laughlin* v. *Bank of Commerce & Savings,* 1943 (134 F. 2d 530, 77 U. S. App. D. C. 312).

UNDERTAKING—TIME FOR FILING

Under this section, right to release of attachment by filing an undertaking is granted solely where the attachment is made before judgment. *Bank of Commerce & Savings* v. *Laughlin* (D. C., D. C. 1941, 38 F. Supp. 755).

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, and asked court to release attachment, the request was properly denied, since this section authorizes release of attachment before judgment but not after judgment. *Laughlin* v. *Bank of Commerce & Savings,* 1943 (134 F. 2d 530, 77 U. S. App. D. C. 312).

§ 16–312 [24: 132]. How levied on credits—Copy of writ—Notice—Interrogatories—Partnership—Retention by garnishee—Liability—Avoidance by advance payment of salary or wages.

(a) The attachment shall be levied on credits of the defendant, in the hands of a garnishee, by serving the latter with a copy of the writ of attachment and of the interrogatories accompanying the same, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section 16–302; and the undivided interest of the defendant in a partnership business shall be levied on by a similar service on the defendant's partner or partners.

The garnishee, in any case in which the property or credits attached or sought to be attached is held by him in the name of or for the account of another than the defendant, shall retain such property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of such property or credits, and, during such period, shall incur no liability whatsoever for such retention.

(b) It shall be unlawful for any employer to pay salary or wages to an employee in advance of the time the same shall be due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of such employee, and such advance payment, as to the attaching creditor, shall be void: *Provided,* That after the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when said salary or earnings are due and payable, made within a period of six months after the date of service of said writ or before the earlier satisfaction of such judgment, whichever is the earlier, shall as to such attaching creditor be presumed to be in violation of this subsection and shall cast upon the said employer the burden of proving that such advance payment or payments were not for the purpose of avoiding the attachment of such salary or earnings. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 456; Apr. 5, 1939, 53 Stat. 567, ch. 37, § 8 (a); Dec. 20, 1944, 58 Stat. 819, ch. 610, § 4.)

AMENDMENTS

The act of Apr. 5, 1939, cited to text, added the second paragraph.

The act of Dec. 20, 1944, cited to text, amended section by inserting "(a)" preceding "The attachment", and by adding subsec. (b).

NOTES TO DECISIONS

ADVANCE PAYMENTS

Evidence is quite clear that employer did not make an advance payment to employee on last working day and hence the code provision does not apply. *American Nat. Red Cross* v. *Jameson* (C. A. D. C. 1949, 178 F. 2d 717; 85 U. S. App. D. C. 381).

ALIEN PROPERTY CUSTODIAN

The writ of attachment and interrogatories served upon Alien Property Custodian whose office was later abolished and whose duties descended to Attorney General were not binding upon Attorney General. *United States ex rel. Ordmann* v. *Cummings* (66 App. D. C. 107, 85 Fed. (2d) 273).

EFFECT OF SERVICE

Court cites *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D. C. 149) and says the effect of the service of the writ of garnishment was to place the property of the judgment debtor in the garnishee's hands in custodia legis. *International Finance Corp.* v. *Jawish* (63 App. D. C. 262, 71 Fed. (2d) 985).

MONEY PAYABLE UPON CONTINGENCY OR CONDITION

Money payable upon a contingency or condition is not subject to garnishment until the contingency has happened or the condition has been fulfilled. *Wheeler* v. *Thomas* ((D. C.-D. C.), 31 Fed. Supp. 702).

PROPERTY IN SAFE-DEPOSIT BOX

"Property of a defendant in a safe-deposit box of a trust company is either in the possession of the defendant or in the possession of the trust company. If it is in the possession of the defendant, under the code, it appears liable to attachment and execution. If it is in the possession of the trust company, such company may be garnisheed therefor, as in possession of personal property of the defendant capable of being seized and sold on execution." *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D. C. 149).

§ 16–313 [24: 133]. Levy upon judgment or decree—Money in hands of marshal, coroner, executor, and administrators—No judgment against executor or administrator, until passing of account.

Attachments may be levied upon debts owing by any person to the defendant upon judgment or decree by a similar service upon such party as in section 16–312 directed; but execution may issue for the enforcement of such judgment or decree, notwithstanding the attachment, provided that the money collected upon the same be required to be paid into court to abide the event of the proceedings in attachment and applied as the court may direct.

It may also be levied upon money or property of the defendant in the hands of the marshal or coroner, and shall bind the same from the time of service, and shall be a legal excuse to the officer for not paying or delivering the same, as he would otherwise be bound to do.

The attachment may also be levied upon money or property of the defendant in the hands of an executor or administrator, and shall bind the same from the time of service; but if the executor or administrator shall make return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, no judgment of condemnation shall be rendered as against such executor or administrator until the passage by the probate court of his final or other account showing money or property in his hands to which the defendant is entitled. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 457; June 30, 1902, 32 Stat. 530, ch. 1329.)

COMPILER'S NOTE

The name "orphan's court" was used in the 1902 act; this name has been changed to the "probate court." See § 11–501.

AMENDMENT

The 1902 amendment added the last paragraph.

CROSS REFERENCE

See note to § 16–301. *Jordan* v. *Landram* (35 App. D. C. 89).

NOTES TO DECISIONS

AGENT, ATTACHMENT AGAINST

This section authorizes attachment of money or property in the hands of an agent or custodian of an executor. *Frank* v. *Malone,* 1942 (126 F. 2d 651, 75 U. S. App. D. C. 296).

JUDGMENT RENDERED IN ANOTHER COURT

Money judgment secured by dry dock company against the United States Shipping Board could not be attached by another corporation which held a money judgment against the dry dock company, because the debt was evidenced by a judgment rendered in another court. *United States Shipping Board Merchant Fleet Corp.* v. *Hirsch Lbr. Co.* (59 App. D. C. 116, 35 Fed. (2d) 1010).

§ 16–314 [24: 134]. Property attached—Preservation—Sale of perishables—Receiver.

The court may make all orders necessary for the preservation of the property attached during the pendency of the suit; and if the property be perishable, or for other reasons a sale of the same shall appear expedient, the court may order that the same be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

And if it shall seem expedient, the court may appoint a receiver to take possession of the property, who shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in equity. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 458.)

NOTES TO DECISIONS

RESTRAINING SALE

This section quoted in full and applied in suit to restrain sale of property to satisfy original trust thereon. *Jackson* v. *Finance Corp.* (59 App. D. C. 309, 41 Fed. (2d) 103, cert. den. 282 U. S. 851, 75 L. Ed. 754, 51 Sup. Ct. 29).

§ 16–315 [24: 135]. Pleas by garnishee.

A garnishee in any attachment may plead any plea or pleas which the defendant might or could plead if he had appeared to the suit. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 459.)

NOTES TO DECISIONS

NOTICE

The garnishee is entitled to notice and an opportunity to be heard. *United States ex rel. Ordmann* v. *Cummings* (66 App. D. C. 107, 85 Fed. (2d) 273).

§ 16–316 [24: 136]. Who may defend—Issue—Trial by jury.

Any defendant, any garnishee, any party to a forthcoming undertaking, or the officer who might be adjudged liable to the plaintiff by reason of such undertaking being adjudged insufficient, or any stranger to the suit who may make claim, as hereinafter provided, to the property attached, may plead to the attachment; and such pleas shall be considered as raising an issue without replication, and any issue of fact thereby made may be tried by the court or by a jury impaneled for the purpose, if either party desires to. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 460.)

CROSS REFERENCE

See note to § 16–315. *United States ex rel. Ordmann* v. *Cummings* (66 App. D. C. 107, 85 Fed. (2d) 273).

NOTES TO DECISIONS

CONSTITUTIONALITY

Provision of §§ 454, 455, D. C. Code 1901 (§§ 16–310, 16–311), that surety submits to the jurisdiction of the court, and to a joint judgment, does not deprive surety of property without due process of law. *United Surety Co.* v. *American Fruit Product Co.* (238 U. S. 140, 59 L. Ed. 1238, 35 Sup. Ct. 828, dism. writ of error 40 App. D. C. 239).

§ 16–317 [24: 137]. Traverse of answers of garnishee—Trial of issue—Costs and counsel fee.

If any garnishee shall answer to interrogatories that he has no property or credits of the defendant, or less than the amount of the plaintiff's claim, the plaintiff may traverse such answer as to the existence or amount of such property or credits, and the issue thereby made may be tried as provided in section 16–316; and in all such cases where judgments shall be entered for the garnishee the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable counsel fee. And if such issue be found for the plaintiff, judgment shall be rendered as if possession of the property or credits has been confessed by the garnishee. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 461.)

CROSS REFERENCE

Interrogatories, § 16–303.

NOTES TO DECISIONS

PROCEDURE FOR INTERROGATORIES

The procedure permitted by § 447, D. C. Code 1901 (§ 16–303) is not limited or modified by this section. *Fidelity Sav. Co.* v. *Security Sav. & Commercial Bank* (55 App. D. C. 180, 3 Fed. (2d) 351).

TIME FOR RETURN

"In the absence of a statutory limitation, an attachment return must be made within a reasonable time, or it will be held to be discontinued." *Simpson* v. *Minnix* (30 App. D. C. 582).

Where attachment had been outstanding for 11 years, and no issue joined on garnishee's return, it will be deemed abandoned and the action discontinued, and a scire facias may issue to revive the judgment. *Simpson* v. *Minnix* (30 App. D. C. 582).

TRAVERSE NOT NECESSARY FOR ORAL EXAMINATION

Court cites *Fidelity Sav. Co.* v. *Security Sav. & Commercial Bank* (55 App. D. C. 180, 3 Fed. (2d) 351), and says it was not necessary for the plaintiff to traverse the answer of the garnishee, in order to exercise the right of examining the garnishee orally under oath. *Flynn* v. *Potomac Elec. Power Co.* (60 App. D. C. 82, 47 Fed. (2d) 978).

§ 16–318 [24: 138]. Claimant to attached property may petition—Right to trial—Issue—Jury trial.

Any person may file his petition in the cause, under oath, at any time before the final disposition of the property attached or its proceeds, except where it is real estate, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment; and the court, without other pleading, shall inquire into the claim, and, if either party shall request it, impanel a jury for the purpose, who shall be sworn to try the question involved as an issue between the claimant as plaintiff, and the parties to the suit as defendants, and the court may make all such orders as may be necessary to protect any rights of the petitioner. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 462.)

NOTES TO DECISIONS.

RECOVERY AFTER "FINAL DISPOSITION"

In a replevin action against the United States marshal to recover goods seized under writ of attachment, a plea that the plaintiff should have proceeded under this section comes too late when made after close of plaintiff's case. *Splain* v. *B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

§ 16–319 [24: 139]. No judgment against garnishee until action against defendant is determined—Release of garnishee.

If the defendant in the action has been served with process, final judgment shall not be rendered against the garnishee until the action against the defendant is determined. If in such action judgment is rendered for the defendant, the garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 463.)

NOTES TO DECISIONS

NO JUDGMENT AGAINST DEFENDANT

Where no judgment has been rendered against defendant a judgment by default against garnishee is void. *James E. Colliflower & Co.* v. *McCallum-Sauber Co.* (61 App. D. C. 390, 63 Fed. (2d) 366).

§ 16–320 [24: 140]. Judgment of condemnation of attached property.

If in such action judgment is rendered in favor of the plaintiff against the defendant, and it shall appear that the plaintiff is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as in sections 16–321 to 16–332 directed. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 464.)

CROSS REFERENCE

See note to § 16–319. *James E. Colliflower & Co.* v. *McCallum-Sauber Co.* (61 App. D. C. 390, 63 Fed. (2d) 366).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Section 30 of the Trading with the Enemy Act (45 Stat. 254), providing that money or property in the hands of the Alien Property Custodian should be subject to attachment in accordance with the provisions of the Code of the District of Columbia, was construed to authorize a decree of condemnation against such money or property, notwithstanding the further provision in section 30 that "nothing in this section shall be construed as authorizing the taking of actual possession, by any officer of the court, of any money or other property held by the Alien Property Custodian or by the Treasurer of the United States." *Sutherland* v *Kreisch* (59 App. D. C. 351, 41 Fed. (2d) 974).

§ 16–321 [24: 141]. Attachment in replevin action.

If the action be to replevy specific personal property and the same has not been replevied, other property may be attached in said action to recover damages and costs, and if the same be adjudged, the proceedings shall be the same as herein provided in other cases of money claims. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 465.)

§ 16–322 [24: 142]. Condemned property sold under fieri facias—Proceeds of sale under interlocutory order applied to claims.

If, in any form of action, specific property has been attached and remains under the control of court, judgment of condemnation of the same shall be entered, and so much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri facias; or if the said property shall have been sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 466; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the following last paragraph: "If the property attached be an undivided interest in a partnership business, judgment of condemnation thereof shall be entered and the same shall be sold in the same manner as last aforesaid."

NOTES TO DECISIONS

MAY DISREGARD ATTACHED PROPERTY

Where there are two judgments, one a personal judgment and the other one of condemnation, "it would be unreasonable to hold that the plaintiff must look for his satisfaction to the latter alone. He is entitled to realize his personal judgment out of any property of the judgment debtor which he finds available for the purpose; and he may wholly disregard the attached property, if he so desires." *Adriance, Platt & Co.* v. *Heiskell* (8 App. D. C. 240).

§ 16–323 [24: 143] Judgment against garnishee for credits admitted or found, less reasonable attorney's fee and costs—Judgment for whole amount if garnishee defaults.

If a garnishee shall have admitted credits in his hands, in answer to interrogatories served upon him, or the same shall have been found upon an issue made as aforesaid, judgment shall be entered against him for the amount of credits admitted or found as aforesaid, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution had thereon; but if said credits shall not be immediately due and payable, execution shall be stayed until the same shall become due; and if the garnishee shall have failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution had thereon. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 467.)

CITED

Referred to but not construed in *International Seal Co.* v. *Beyer* (33 App. D. C. 172).

NOTES TO DECISIONS

FAILURE TO APPEAR AND SHOW CAUSE

The lower court was without power to enter judgment against the garnishee unless it failed to appear and show cause, or to answer. *Mutual Ben. Life Ins. Co.* v. *Flynn* (60 App. D. C. 108, 48 Fed. (2d) 1020).

MOTION TO VACATE

Motion to vacate default judgment against garnishee was addressed to discretion of trial court. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

In considering merits of garnishee's motion to vacate default judgment, garnishee's conduct is for court's consideration in determining whether delay in answering writ was due to inadvertence or indifference. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

Where motion to vacate default judgment against garnishee was based on grounds of misunderstanding that garnishee was required to answer garnishment in ten days after service, and advice of counsel that garnishment did not have to be answered until trial of another suit, but neither motion nor its amendment was verified or accompanied by affidavit and record did not disclose that evidence was offered to support the allegations, denial of motion was not an abuse of discretion. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

RENTS ACCRUING AFTER SERVICE NOT CREDITS

Rents not accrued before service of garnishment are not credits but merely contingent liabilities. *United States Fidelity & Guar. Co.* v. *Wrenn* (67 App. D. C. 94, 89 Fed. (2d) 838).

REVIEW

Appellate court cannot reverse trial court's denial of garnishee's motion to vacate default judgment against garnishee unless denial of motion was an abuse of discretion. *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

Order denying motion, filed within term at which judgment was entered, to vacate default judgment against garnishee, is not an "appealable order". *Ray* v. *Bruce* (D. C. 1943, 31 A. 2d 693).

§ 16–324 [24: 144]. After undertaking, judgment of condemnation of chattels and against garnishee and surety—Judgment satisfied if chattels delivered to marshal.

If the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided in section 16–310, judgment of condemnation of said property shall be rendered, as provided in section 16–322, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of said property, not exceeding the plaintiff's claim, the said judgment to be entered satisfied if said property be forthcoming and delivered to the marshal, undiminished in value, within ten days after said judgment; otherwise, execution thereof to be had against said garnishee and his surety or sureties; and if said property shall be so delivered to the marshal the same shall be sold by him under fieri facias to satisfy said judgment of condemnation. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 468.)

§ 16–325 [24: 145]. Judgment protects garnishee.

Any judgment of condemnation against a garnishee, and execution thereon, or payment by such garnishee in obedience to the judgment or any order of the court, shall be a sufficient plea in bar in any action brought against him by the defendant in the suit in which the attachment is issued, for or concerning the property or credits so condemned. (Mar. 3, 1901, 31 Stat. 1263, ch. 854, § 469.)

§ 16–326 [24: 146]. Fraudulent assignments.

If the ground upon which an attachment is applied for be that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 470.)

CROSS REFERENCE

Fraudulent conveyances generally, § 12–401 et seq.

NOTES TO DECISIONS

DISCLOSURE OF SAFE-DEPOSIT BOX

Upon an allegation that defendant has made a fraudulent assignment to his wife and son to defraud his creditors, a garnishee may be compelled to disclose whether the wife or son has rented a safe deposit box from it. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (26 App. D. C. 149).

PRESUMPTION OF INTENT

"Where an instrument contains provisions, the necessary legal effect of which is to work a fraud upon creditors, the assignor is conclusively presumed to have intended the reasonable consequences of his own act," and the property in his hands is subject to attachment. *Cissell* v. *Johnston* (4 App. D. C. 335).

§ 16–327 [24: 147]. Garnishee entitled to benefit of section 16–307—Attachment quashed at instance of garnishee.

The said garnishee may have the same benefit of section 16–307 as the defendant in the action; and if the court shall be of opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been levied on the property claimed by said garnishee, the said attachment may be quashed as to the said garnishee and the said levy set aside. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 471.)

NOTES TO DECISIONS

COUNSEL FEES

Where there is no finding by the court in favor of the garnishee upon the issue made between him and the plaintiff, and by agreement sale was made and distributed, garnishee is not entitled to counsel fee. *Russell* v. *Moderns Restaurant* (65 App. D. C. 90, 80 Fed. (2d) 533).

§ 16–328 [24: 148]. Garnishee may plead that he was bona fide purchaser—Trial of issue.

If the said levy shall not be so set aside, the said garnishee may plead that he was a bona fide purchaser from the defendant for value without notice of any fraud on the part of said defendant, and such plea shall be held to make an issue, without any further pleading in reply thereto; and said issue may be tried as directed in section 16–316. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 472.)

NOTES TO DECISIONS

IN GENERAL

This section provides that if the levy shall not be set aside, the garnishee may plead that he was a bona fide purchaser without notice of any fraud on the part of the defendant, and said plea shall make an issue to be tried by the court or by the jury if either party desires it. *Morimura* v. *Samaha* (25 App. D. C. 189).

ISSUE MADE

An issue may be made between the attaching creditor and the garnishee as to whether the attachment should have been issued and levied on the property. *Russell* v. *Moderns Restaurant* (65 App. D. C. 90, 80 Fed. (2d) 533).

§ 16–329 [24: 149]. Judgment for garnishee—Costs and attorney's fee—Attachment dissolved if judgment for defendant.

If said issue is found in favor of the said garnishee, judgment shall be rendered in his favor for his costs and a reasonable counsel fee. If said issue be found against such garnishee, but judgment in the action is rendered in favor of the defendant, the said attachment shall be dissolved, and said garnishee shall recover his costs. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 473.)

NOTES TO DECISIONS

CONSTITUTIONALITY

This provision is constitutional. *Morimura* v. *Samaha* (25 App. D. C. 189).

COUNSEL FEE NOT ALLOWED

Attorney's fee not allowed when issue found against garnishee. *Morimura* v. *Samaha* (25 App. D. C. 189).

"REASONABLE COUNSEL FEE"

What is a reasonable fee in a particular case is within the discretion of the court. *Morimura* v. *Samaha* (25 App. D. C. 189).

§ 16–330 [24: 150]. Judgment of condemnation of property if issues found against defendant and garnishee.

If the said issue is found against said garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, if it shall appear upon the verdict of a jury that the claim of the plaintiff against said defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed in section 16–320. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 474.)

§ 16–331 [24: 151]. Trial of issues.

All issues raised by pleas to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as the convenience of the court may require. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 475.)

CITED

United States ex rel. Robertson v. *Banard* (24 App. D. C. 8).

§ 16–332 [24: 152]. Bill in equity.

Nothing herein contained shall be construed as depriving a judgment creditor of the right to file a bill in equity to enforce his judgment against an equitable interest in real or personal estate of the judgment defendant, or to have a conveyance of the real or personal estate by said defendant, made with intent to hinder, delay, and defraud his creditors, set aside. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 476.)

§ 16–333 [24: 153]. Attachment applies to joint credits, agents, trustees—Judgment protects garnishee—Not applicable to partnerships.

Whenever a writ of attachment shall be served on any bank, trust company, savings bank, or other banking institution, including national banks, or on any other corporation, association, or person as garnishee, and such garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, or holds a credit or property for any person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary, such credit or property shall not be subject to withdrawal by any person, but shall be held by the garnishee until the attachment shall have been

dismissed or otherwise disposed of by the court. If the credit or property is condemned, payment or delivery thereof as ordered by the court shall be a complete discharge of the garnishee from all liability to any person in respect of said credit or property. The provisions of this section shall not be construed to apply to a credit or property of a partnership. (May 15, 1928, 45 Stat. 534, ch. 568, § 3.)

§ 16–334 [24: 154]. Attachment dockets.

The clerk of said court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon; and said attachments shall be indexed in the names of the defendant and of any person in whose possession said property may have been levied upon. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 477.)

§ 16–335 [24: 155]. Attachment provisions of Code apply to municipal court.

The provisions of the Code of Law of the District of Columbia relating to attachments shall apply to attachment proceedings in the municipal court. (Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 9.)

COMPILER'S NOTE

The words "the Code of Law of the District of Columbia" refer to the 1901 code, §§ 445 to 477, which are contained in this code as §§ 16–301 to 16–334.

Chapter 4.—DIVORCE AND SEPARATION

Sec.

16–401. Bona fide residence required—Terms.
16–402. Decree annulling marriage.
16–403. Causes for divorce a vinculo and for divorce a mensa et thoro and for annulling marriages.
16–404. Revocation of divorce a mensa et thoro—Joint application.
16–405. Causes arising after divorce a mensa et thoro.
16–406. Issue of annulled marriage—Legitimacy.
16–407. Issue of a lunatic's marriage—Legitimacy.
16–408. Issue of a marriage dissolved by divorce—Legitimacy.
16–409. Decree of annulment or divorce a vinculo dissolves property rights—Jurisdiction of court to determine property rights.
16–410. Alimony pendente lite—Suit money—Counsel fees—Enforcement—Enjoining disposition and sequestration of property—Custody of children.
16–411. Permanent alimony—Retention of dower.
16–412. Alimony when divorce is in favor of husband.
16–413. Jurisdiction retained as to alimony and custody of children.
16–414. Prior name of wife may be restored.
16–415. Maintenance of wife and minor children—Enforcement.
16–416. Petition for divorce—Proceedings.
16–417. Co-respondents—Made defendants—Service.
16–418. Court to assign attorney in uncontested cases—Compensation.
16–419. Proof required—Decree on default.
16–420. Law not retroactive.
16–421. When decree for annulment or absolute divorce effective.
16–422. Suit to determine validity of marriage.

§ 16–401 [14: 61]. Bona fide residence required—Terms.

No decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of the District of Columbia for at least one year next before the application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of said District for at least two years next before the application therefor for any cause which shall have occurred out of said District and prior to residence therein. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 971; Aug. 7, 1935, 49 Stat. 539, ch. 453, § 2.)

AMENDMENT

The 1935 amendment deleted the words "not a resident of the District of Columbia" and inserted in lieu thereof the words following the word "anyone" and ending "therefore"; and changed the word "three" to "two."

NOTES TO DECISIONS

EVIDENCE

"The statute in no way changes the rules of evidence but is designed primarily to prevent this jurisdiction from becoming a haven for those seeking divorce." *Creel* v. *Creel* (43 App. D. C. 82).

Evidence supported finding that wife, suing for divorce, was a resident of New York and not of the District of Columbia, and justified decree dismissing suit. *Metcalf* v. *Metcalf*, 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

FOREIGN DECREES

A divorce granted in any State according to its laws by a court having jurisdiction of the cause and of both the parties is valid and effectual everywhere. *Sears* v. *Sears* (67 App. D. C. 379, 92 Fed. (2d) 530).

GOOD FAITH

Residence for purpose of divorce must be in good faith. *Downs* v. *Downs* (23 App. D. C. 381).

INSTRUCTIONS

An instruction in a prosecution for perjury committed in a divorce action that "residence required does not necessarily mean the technical, legal domicile, but does mean that locality where the social life of the parties is lived, and that locality where the greatest publicity will be given by litigation concerning his status" was erroneous and standing alone would require reversal. *McFarland* v. *U. S.* (C. A. D. C. 1949, 174 F. 2d 538, 85 U. S. App. D. C. 19).

JURISDICTION

The voluntary appearance of the defendant in such cases does not confer jurisdiction. *Winston* v. *Winston* (50 App. D. C. 321, 271 Fed. 551).

Jurisdiction in divorce suit not shown, by reason of nonresidence. *Rollings* v. *Rollings* (60 App. D. C. 305, 53 Fed. (2d) 917); *Marcum* v. *Marcum* (61 App. D. C. 332, 62 Fed. (2d) 871); *Ridgeway* v. *Ridgeway* (61 App. D. C. 395, 63 Fed. (2d) 458).

Where wife's former marriage to another had been annulled by decree of chancery court of Mississippi wherein the other but not the wife was then domiciled, and wife was not served with process there or anywhere else except by publication and entered no appearance, regardless of whether the annulment was entitled to full faith and credit in District of Columbia, it was within power of district court to recognize it in wife's suit for limited divorce against husband by subsequent marriage. *Shima* v. *Shima*, 1942 (130 F. 2d 809, 75 U. S. App. D. C. 370).

District Court was without jurisdiction of a bill for divorce where plaintiff had not been a bona fide resident of the District of Columbia for at least one year before filing her complaint. *Clark* v. *Clark* (D. C., D. C. 1948, 79 F. Supp. 722).

If court does not have jurisdiction of the original bill for divorce, it is without jurisdiction of the cross-bill and it will be treated as a mere auxiliary suit or as a dependency upon the original bill, and, when the original bill is dismissed for lack of jurisdiction, the cross-bill must also be dismissed. *Clark* v. *Clark* (D. C., D. C. 1948, 79 F. Supp. 722).

LAW APPLICABLE

When Congress has enacted a complete set of divorce and marriage laws for the District of Columbia, it is to these laws, rather than to those preserved out of the past relationship with the State of Maryland, that must be looked to for guidance and control in the determination of a question. *Hoage* v. *Murch Bros. Constr. Co.* (60 App. D. C. 218, 50 Fed. (2d) 983).

LOCUS OF ACTS

Where the parties are residents of the District and sue for a divorce for acts committed therein it is not error to introduce evidence showing acts of cruelty commenced in another jurisdiction and culminating in this District. *Creel* v. *Creel* (43 App. D. C. 82).

Where offense was committed beyond the District of Columbia plaintiff must affirmatively aver in the bill, and prove as a fact at the trial, a bona fide residence here for a period of three years; and such averment and proof is jurisdictional. *Winston* v. *Winston* (50 App. D. C. 321, 271 Fed. 551).

RESIDENCE

One who was married in the District of Columbia and resided there for 14 years does not lose such residence by temporarily residing in another state, without intending to abandon the domicile here. *Stewart* v. *Stewart* (52 App. D. C. 323, 286 Fed. 987).

Naval officer who was born and lived in Washington, D. C., may obtain divorce in that jurisdiction although he was a registered voter in New Jersey. *Dennett* v. *Dennett* (63 App. D. C. 252, 71 Fed. (2d) 975).

In wife's action for divorce where proof showed that parties were married in the District of Columbia in October 1939, and had obtained license upon representation that both resided there, and husband had lived in the District continuously since 1935, and testified that he meant to remain in District so long as he could work and make a living, and there was no evidence that husband had a fixed and definite intent to return to state of his former residence, proof showed that plaintiff was a "bona fide resident" of the District for the year preceding the filing suit for divorce. *Rogers* v. *Rogers,* 1942 (130 F. 2d 905, 76 U. S. App. D. C. 297).

Under this section "residence" means "domicile" *Rogers* v. *Rogers,* 1942 (130 F. 2d 905, 76 U. S. App. D. C. 297).

Persons are "domiciled" in the District of Columbia who live there and have no fixed and definite intent to return and make their homes where they were formerly domiciled. *Rogers* v. *Rogers,* 1942 (130 F. 2d 905, 76 U. S. App. D. C. 297).

Where wife, suing for divorce, had been absent from her former home in District of Columbia since 1923, in meantime she had been in China, Massachusetts, and New York, and had recently voted in New York and had continued to reside in New York City, but she testified that she had never abandoned her domicile in the District of Columbia, in deciding the issue of fact with regard to her intention, the court properly gave substantial weight to all of the facts. *Metcalf* v. *Metcalf,* 1944 (142 F. 2d 102, 79 U. S. App. D. C. 51).

In action by husband for divorce, finding that husband had been for the required period a bona fide resident of the District of Columbia was not clearly erroneous. *Jeffe* v. *Jeffe* (App. D. C. 1945, 152 F. 2d 24).

Plaintiff could not at the same time qualify as a legal voter of New York and sue for divorce in the District of Columbia as a resident of the city of Washington. *Moritz* v. *Moritz* (D. C. Sup. 1948, 80 F. Supp. 267).

§ 16–402 [14: 62]. Decree annulling marriage.

A decree annulling the marriage as illegal and void may be rendered on any of the grounds mentioned in sections 30–101, 30–103 as invalidating a marriage. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 965.)

CROSS REFERENCES

Alimony pendente lite, § 16–410.
Legitimacy of issue, §§ 16–406 to 16–409.
For similar provision see § 30–102.

NOTES TO DECISIONS

FRAUD

Fraud in its procurement will vitiate the contract upon which marriage is based as well as any other contract, and will justify its annulment by the courts. *Lenoir* v. *Lenoir* (24 App. D. C. 160).

JURISDICTION

The court of the domicile of the parties has jurisdiction to annul a marriage contracted elsewhere, but, in determining whether such a decree will be rendered, the court of the forum will be governed by principles of marriage law of state which, under the appropriate conflicts of law rule, determine validity of marriage in question, and marriages in violation of strong "public policy" of the domiciliary state can be declared void in a proceeding there. *Hitchens* v. *Hitchens* (D. C., D. C. 1942, 47 F. Supp. 73).

LEGISLATIVE INTENT

Plain purpose of the law is to prohibit divorce or annulment of marriage upon the mere statement of one of the parties without corroborative evidence. *Lenoir* v. *Lenoir* (24 App. D. C. 160).

LUNATIC

A person who has been allured or entrapped into a marriage with an insane person is not required to procure an adjudication of such insanity in an independent proceeding before he or she could be permitted to institute a suit directly for the annulment of the marriage. *Mackey* v. *Peters* (22 App. D. C. 341).

PARTIES

Proceeding in equity on behalf of a lunatic to annul a marriage contracted during infancy is properly brought by his next friend; however, the committee should be made a party defendant. *Mackey* v. *Peters* (22 App. D. C. 341).

§ 16–403 [14: 63] Causes for divorce a vinculo and for divorce a mensa et thoro and for annulling marriages.

A divorce from the bond of marriage or a legal separation from the bed and board may be granted for adultery, desertion for two years, voluntary separation from bed and board for five consecutive years without cohabitation, final conviction of a felony involving moral turpitude and sentence for not less than two years to a penal institution which is served in whole or in part. A legal separation from bed and board may be granted for cruelty: *Provided,* That where a final decree of divorce from bed and board heretofore has been granted or hereafter may be granted and the separation of the parties has continued for two years since the date of such decree, the same may be enlarged into a decree of absolute divorce from the bond of marriage upon the application of the innocent spouse: *Provided further,* That marriage contracts may be declared void in the following cases:

First. Where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved.

Second. Where such marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the lunacy) or was procured by fraud or coercion.

Third. Where either party was matrimonially incapacitated at the time of marriage and has continued so.

Fourth. Where either of the parties had not arrived at the age of legal consent to the contract of

marriage (unless there has been voluntary cohabitation after coming to legal age), but in such cases only at the suit of the party not capable of consenting. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 966; Aug. 7, 1935, 49 Stat. 539, ch. 453, § 1.)

COMPILER'S NOTE

The act of 1935 repealed D. C. 1929, title 14, § 64, which section provided as follows:

"*64. In suits for divorce a vinculo a divorce a mensa et thoro may be decreed.*—Where a divorce from the bond of marriage is prayed for, the court shall have authority to decree a divorce from bed and board if the causes proved be sufficient to entitle the party to such relief only. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 968.)"

AMENDMENT

The section of the 1901 act was repealed by the 1935 act. The earlier act read as follows:

"A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: *Provided,* That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: *And provided,* That legal separation from bed and board may be granted for drunkenness, cruelty, or desertion: *And provided* * * *", followed by the words of the present section.

CROSS REFERENCE

Co-respondents must be made parties defendant and served with process as other defendants, § 16–417.

NOTES TO DECISIONS

CONSTRUCTION

There is no provision in the statute which permits the application of the doctrine of revival after condonation prior to institution of suit for divorce. *Stea* v. *Stea* (D. C. D. C. 1949, 83 F. Supp. 625).

CRUELTY

Mental cruelty as well as physical cruelty must be such as to endanger and impair the wife's health. *Kimmell* v. *Kimmell* (C. A. D. C. 1948, 171 F. 2d 340, 84 U. S. App. D. C. 177).

DECISIONS UNDER PRIOR LAW

When facts show occasional instances, within the three years, of disgusting and sometimes protracted intoxication, it falls short of establishing the state of habitual drunkenness required by the statute. *Acker* v. *Acker* (22 App. D. C. 353).

Under particular circumstances the trial court should grant a limited divorce although there is no specific prayer for such a decree. *O'Neil* v. *O'Neil* (55 App. D. C. 40, 299 Fed. 914).

If parties to a marriage separated by agreement without cohabitation for more than eight years under the old law and one month under the new law, the actual status of the parties should be recognized and the separation be regarded as a ground for divorce rather than require that the separation should continue for four years and eleven months more before a divorce could be granted. *Tipping* v. *Tipping* (65 App. D. C. 222, 82 Fed. (2d) 828).

Legal separation from bed and board is authorized for various grounds including cruelty. *Pedersen* v. *Pedersen* (71 App. D. C. 26, 107 Fed. (2d) 227).

ADMISSIBILITY OF EVIDENCE

In wife's action for annulment of marriage on ground of husband's matrimonial incapacity, psychiatrist who had examined husband should have been permitted to answer question as to whether husband was matrimonially incapacitated at time of marriage as result of psychogenic causes, notwithstanding that his diagnosis as to husband's impotence would rest largely upon history and symptoms described to him by husband. *Kaufman* v. *Kaufman* (App. D. C. 1948, 164 F. 2d 519).

ADULTERY

Foundation principle underlying connivance, and essential to its establishment, is that plaintiff must have consented, either expressly or impliedly, to the adultery. *Bateman* v. *Bateman* (42 App. D. C. 230).

Husband's suspicions of wife, his failure to put obstacles in her way, and his desire for divorce did not amount to "connivance", so that finding that wife committed adultery without her husband's connivance was based on sufficient evidence. *Shima* v. *Shima,* 1942 (130 F. 2d 809, 75 U. S. App. D. C. 370).

ANNULMENT

In proceedings to annul a void marriage, especially where it is so declared by statute, the rule of pari delicto and the equitable principle of "clean hands" are inapplicable, since in such cases the State becomes a third party. *Simmons* v. *Simmons* (57 App. D. C. 216, 19 Fed. (2d) 690, 54 A. L. R. 75).

BURDEN OF PROOF

In divorce suit based on voluntary separation for five years, party contending that a voluntary separation ceased to be voluntary has burden of proving that contention. *Bowers* v. *Bowers,* 1944 (143 F. 2d 158, 79 U. S. App. D. C. 146).

CAPACITY

Matrimonial incapacity as result of impotence as ground for annulment may be result of psychogenic causes as well as result of physical defects. *Kaufman* v. *Kaufman* (App. D. C. 1948, 164 F. 2d 519).

COMMON LAW MARRIAGE

Where ceremonial marriage of parties was void because it occurred before annulment of husband's former marriage to another had become final, but the parties continued their cohabitation after the annulment became final, there was a valid common law marriage, and wife was not entitled to annulment because of the invalidity of the ceremonial marriage. *Utterback* v. *Utterback* (App. D. C. 1947, 71 F. Supp. 231).

Action to annul ceremonial marriage on ground that at time of marriage, annulment of husband's prior marriage to another had not become absolute, was required to be considered in the light of the fact that the District of Columbia was a common law marriage jurisdiction. *Utterback* v. *Utterback* (App. D. C. 1947, 71 F. Supp. 231).

CRUELTY

"It is difficult to lay down any definite rule as to what constitutes cruelty within the provisions of this statute. It is clear, we think, that it is not necessary that the conduct be limited to such physical treatment as would endanger life or health. * * * The conduct of the offending party, in the absence of assault, may be such as to make life intolerable and thereby amount to such cruel treatment as to justify a decree of separation. * * * It is sufficient if the evidence, in the absence of physical violence, establishes conduct which creates a state of mind which operating upon the physical system produces bodily injury." *Waltenberg* v. *Waltenberg* (54 App. D. C. 383, 298 Fed. 842). On cruelty, see also *Snow* v. *Snow* (48 App. D. C. 448, cert. den. 250 U. S. 641, 63 L. Ed. 1185, 39 Sup. Ct. 492).

Evidence held not to establish cruelty warranting a divorce. *Trice* v. *Trice* (55 App. D. C. 328, 5 Fed. (2d) 543).

"Cruelty" may be shown, without physical violence, but not by mere incompatibility. *Taylor* v. *Taylor* (62 App. D. C. 316, 67 Fed. (2d) 582); *Holt* v. *Holt* (64 App. D. C. 280, 77 Fed. (2d) 538).

A limited divorce may be granted for cruelty. *Helvestine* v. *Helvestine* (67 App. D. C. 121, 89 Fed. (2d) 970).

DEFINITIONS

While statute does not declare length of time drunkenness, cruelty, or desertion must continue, "there is no difficulty in arriving at the legal definition of the terms employed." *Maschaur* v. *Maschaur* (23 App. D. C. 87).

DENIAL OF INTERCOURSE

"The wife's denial to the husband of matrimonial intercourse is not, of itself, ground for divorce." *Underwood* v.

Underwood (50 App. D. C. 323, 271 Fed. 553), citing *Steele* v. *Steele* (1 McArthur (8 D. C.) 505).

DESERTION

One unjustifiably deserted need not seek a reconcilement. *Underwood* v. *Underwood* (50 App. D. C. 323, 271 Fed. 553).

Ill temper and differences over financial matters are not sufficient to justify desertion. "Acts justifying desertion must be such as would support a decree for divorce." *Underwood* v. *Underwood* (50 App. D. C. 323, 271 Fed. 553).

"No definite period of desertion is prescribed. Intent, therefore, plays an important part in determining the question. While actual separation and intention to desert must exist together to constitute desertion, it is apparent that they need not be identical in their commencement. Thus, if the departure antedates the intention to desert, the period of desertion dates from the time such intention was formed (*Hitchcock* v. *Hitchcock* (15 App. D. C. 81)), while if the intention to desert antedates the departure, the period commences to run from the time of the latter." *Moncure* v. *Moncure* (51 App. D. C. 292, 278 Fed. 1005). See also *Blandy* v. *Blandy* (20 App. D. C. 535).

The present law of the District authorizes absolute divorce for desertion. *Atkinson* v. *Atkinson* (65 App. D. C. 241, 82 Fed. (2d) 847).

An unrevoked separation agreement in the absence of other circumstances bars a divorce on the ground of desertion but where other circumstances are present, the agreement becomes merely one of the factors to be considered and the question must be determined upon its merits in each case. The important consideration is whether the separation of the parties was consented to or acquiesced in by the innocent party, who except for such consent or acquiescence would have been privileged to secure a divorce upon the ground of desertion. *Parks* v. *Parks* (68 App. D. C. 363, 98 Fed. (2d) 235).

Desertion for a period before the passage of this act may be added to time subsequent, before institution of absolute divorce proceedings, to make up the two years provided for herein. *Richardson* v. *Richardson* (72 App. D. C. 67, 112 Fed. (2d) 19).

Dismissal of wife's action for divorce on ground of desertion was unauthorized where husband, without wife's consent, left home following a quarrel and wife had done nothing which would justify a divorce by husband and had unsuccessfully urged husband to return. *Miller* v. *Miller,* 1940 (114 F. 2d 596, 72 App. D. C. 348).

Generally, a husband is guilty of "desertion" if he lives apart from wife without her consent, unless wife is guilty of acts which would justify a divorce. *Miller* v. *Miller,* 1940 (114 F. 2d 596, 72 App. D. C. 348).

Where separation of husband and wife occurred in February, 1936, but full and complete marital relations were reestablished in February, 1940, and the reestablished relation was again terminated after February 23, 1940, alleged desertion of wife was not continuous for a period of more than two years next preceding the commencement of action by husband for absolute divorce on September 10, 1940, and therefore complaint was required to be dismissed. *Bledsoe* v. *Bledsoe* (D. C., D. C. 1942, 43 F. Supp. 784).

ENLARGEMENT OF FINAL DECREE

Where separation continued for more than two years since the date of the separation decree, but prior to an application of enlargement for a final decree of divorce, the parties resumed marital relations and thereafter the relationship was again severed and more than two years elapsed before the filing of the application herein, the motion for absolute divorce is not available as a basis because separation had not continued for two years since the date of such decree. *Stea* v. *Stea* (D. C. D. C. 1949, 83 F. Supp. 625).

FOREIGN DECREE

When petitioner presented to the Virginia court the grounds on which he sought release, gave notice to the respondent of the suit, and when she appeared, especially as she maintains and raised the question whether he had standing to sue, it would be unreasonable to hold that his domicile in Virginia was not sufficient to entitle him to obtain a divorce having the same force in the District as in that State. *Davis* v. *Davis* (305 U. S. 32, 83 L. Ed. 26, 59 Sup. Ct. 3).

Virginia decree, lawfully obtained, constitutes a valid divorce a vinculo, entitled to full faith and credit in the Supreme Court of the District when there drawn in question. *Bloedorn* v. *Bloedorn* (64 App. D. C. 199, 76 Fed. (2d) 812).

Divorce obtained in Maryland on grounds not recognized in the District, which was the matrimonial domicile, would be held valid. *Atkinson* v. *Atkinson* (65 App. D. C. 241, 82 Fed. (2d) 847).

A divorce obtained by a person legally domiciled in the District who leaves it and goes into a state solely for the purpose of obtaining a divorce and with no purpose of residing there permanently, is invalid, and the District, being the bona fide residence, may forbid the enforcement within its borders of a decree of divorce so procured. *Sears* v. *Sears* (67 App. D. C. 379, 92 Fed. (2d) 530).

FRAUD

Concealing pregnancy at time of marriage as fraud, see *Lenoir* v. *Lenoir* (24 App. D. C. 160). See also *Alexander* v. *Alexander* (36 App. D. C. 78).

LACHES AND ESTOPPEL

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

LEGISLATIVE INTENT

Congress intended by the enactment of 1935 (§§ 16–401, 16–403, 16–409, 16–421) to liberalize and enlarge the divorce laws of the District of Columbia, both as to existing and prospective conditions. *Tipping* v. *Tipping* (65 App. D. C. 222, 82 Fed. (2d) 828).

In passing the act of August 7, 1935 (§§ 16–401, 16–403, 16–409, 16–421), it was the intention of Congress to liberalize the grounds for divorce. *Helvestine* v. *Helvestine* (67 App. D. C. 121, 89 Fed. (2d) 970).

The purpose of liberalizing amendment to divorce statute was to permit termination in law of certain marriages which have ceased to exist in fact. *Vanderhuff* v. *Vanderhuff,* 1944 (144 F. 2d 509, 79 U. S. App. D. C. 153); *Boyce* v. *Boyce* (App. D. C. 1946, 153 F. 2d 229).

LEGITIMACY

While the courts of the District will refuse a husband or wife relief from a remarriage willfully contracted in violation of the laws of the District, and will not enforce the obligations of the marital status so assumed, if such enforcement will result in benefit or advantage to the wrongdoer only, judicial cognizance may be taken of such status in order to preserve and protect the rights of children and innocent persons. *Olverson* v. *Olverson* (54 App. D. C. 48, 293 Fed. 1015).

The courts do not look with favor on the construction of a law, if not unavoidable, which declares children illegitimate. *Thomas* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

LUNATIC

Suit to annul marriage of lunatic may be filed by next friend, and need not be filed by his committee, although

in such case the committee should be made a defendant. *Mackey* v. *Peters* (22 App. D. C. 341).

MAINTENANCE

To entitle a wife, seeking a limited divorce, to a temporary allowance for maintenance, she must live separate and apart from her husband. *Cooper* v. *Cooper* ((D. C.-D. C.), 30 Fed. Supp. 151).

Where parties enter into a ceremonial marriage and live together for 19 years, the wife, having every right to assume that her former husband from whom she had heard nothing for more than 10 years before her marriage was dead, may sue for separate maintenance upon separation. It could not be presumed that the former husband had remained alive for the 30 years, and the circumstances would establish a common-law marriage upon the death of the former husband in case he was alive at the time of the second ceremonial marriage. *Williams* v. *Williams* ((D. C.-D. C.), 33 Fed. Supp. 612). To same effect, see *Parrella* v. *Parrella,* 33 Fed. Supp. 614).

MEDICAL SERVICES

Municipal court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly judgment obtained by physician for professional services rendered to wife against husband must be dismissed. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

"MORAL TURPITUDE"

Violation of the Harrison Act, although said act was passed as an exercise of the government's taxing power, involved control of narcotics and was a felony involving "moral turpitude" within meaning of act. *Menna* v. *Menna* (70 App. D. C. 13, 102 Fed. (2d) 617).

PLEADING

A suit for a limited divorce and alimony or, in the alternative, for separate maintenance, states two causes of action, distinct not only in the nature of the relief sought but also in the statutory causes for which it may be granted. *Pedersen* v. *Pedersen* (71 App. D. C. 26), 107 Fed. (2d) 227).

PRESUMPTIONS

Where wife voluntarily left husband and there was no evidence or contention that wife afterwards changed her mind and wished to return, law presumes that she did not wish to do so. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

PRIOR DIVORCE INVALID

A divorce to a husband in Virginia being invalid, his subsequent marriage was void, his wife acquired no rights, nor his children, except to have their legitimacy declared. *Frey* v. *Frey* (61 App. D. C. 232, 59 Fed. (2d) 1046).

PRIOR DIVORCE INVALID

In wife's divorce action, husband's motion for new trial on ground that wife's divorce decree from another was invalid because of fraud perpetrated on court in respect of wife's residence presented a "question of fact" and decision granting new trial was not so wanting in evidential support as to be arbitrary. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

PROCEEDINGS

A proceeding for absolute divorce may be either by a new suit or by a petition in an old suit for a limited divorce in which the defendant has been brought in by rule to show cause. *Stern* v. *Stern* (D. C. Sup. 1948, 80 F. Supp. 266).

RECRIMINATION

Recrimination is not an absolute bar to a divorce. *Vanderhuff* v. *Vanderhuff,* 1944 (144 F. 2d 509, 79 U. S. App. D. C. 153).

A husband's invalid marriage to another did not preclude husband and lawful wife from ending their separation and resuming life together, and the remarriage was immaterial to action for divorce by husband under five-year provisions of this section, since recrimination is no longer a defense to a divorce suit. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

REMARRIAGE

District law, forbidding remarriage of guilty party (provision subsequently eliminated from law by amendment) to divorce, does not render invalid subsequent remarriage in Florida. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684, revg. 62 App. D. C. 262, 66 Fed. (2d) 567, reh. den. 292 U. S. 615, 78 L. Ed. 1474, 54 Sup. Ct. 861).

A remarriage elsewhere in disregard of the statute, even when both parties remained domiciled in the District, is not void ab initio, but, at most, voidable, and a voidable marriage cannot be annulled after death of either spouse. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684, revg. 62 App. D. C. 262, 66 Fed. (2d) 567, reh. den. 292 U. S. 615, 78 L. Ed. 1474, 54 Sup. Ct. 861).

Provision that after divorce for adultery the innocent party only may remarry was eliminated by 1935 amendment. *Thomas* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

"SEPARATION FROM BED AND BOARD"

The phrase "legal separation from bed and board" is a synonymous term with divorce a mensa et thoro. *Maschaur* v. *Maschaur* (23 App. D. C. 87).

Divorce a vinculo matrimonii is final, while separation from bed and board is only a partial divorce. *Maschaur* v. *Maschaur* (23 App. D. C. 87).

"SEPARATION FROM BED AND BOARD"

The fact that husband and wife, after separation, continued to live under the same roof and shared in the use of the same dining table did not establish that there was no "separation from bed and board," where they did not occupy the same room and alternated in the use of the table to avoid friction. *Boyce* v. *Boyce* (App. D. C. 1946, 153 F. 2d 229).

Under this section as amended in 1935, a divorce a mensa et thoro establishes a permanent status which can be changed only by revocation of the decree or by absolute divorce for cause arising since the decree or by the enlargement of the decree into a decree of absolute divorce upon the application of the innocent spouse. *Parks* v. *Parks* (D. C., D. C. 1948, 79 F. Supp. 919, reversed on other grounds, 116 F. 2d 556).

SUFFICIENCY OF EVIDENCE

Evidence sustained judgment denying husband a divorce under this section. *Butler* v. *Butler* (App. D. C. 1946, 154 F. 2d 203).

Evidence, consisting of wife's uncontradicted testimony as to husband's impotence at time of marriage, corroborated by record of prior annulment suit against husband in which a former wife obtained an annulment upon ground of fraudulent misrepresentation of his matrimonial capacity, was sufficient to require judgment of annulment on ground of matrimonial incapacity. *Kaufman* v. *Kaufman* (App. D. C. 1948, 164 F. 2d 519).

Evidence justified denial of limited divorce for cruelty to either husband or wife. *O'Neal* v. *O'Neal* (D. C., D. C. 1948, 80 F. Supp. 538).

There was sufficient evidence to find cruelty, taking into consideration that appellant was and is an admittedly nervous woman. *Kimmell* v. *Kimmell* (C. A., D. C. 1948, 171 F. 2d 340).

A wife seeking a divorce under the District Code is not required to live separate and apart from the husband further than to segregate herself from him so as to avoid condoning acts which she charges as the basis for divorce. The essential thing is not separate roofs but separate lives so as to abandon with apparent permanency of intention the relation of husband and wife. *Hurd* v. *Hurd* (C. A., D. C. 1949, 179 F. 2d 68; 86 U. S. App. D. C. 62).

That the parties to a divorce continue their residence in the same dwelling is merely a fact which is evidentiary on the question as to whether they are living together as husband and wife. *Hurd* v. *Hurd* (C. A., D. C. 1949, 179 F. 2d 68; 86 U. S. App. D. C. 62).

Where appellant attacked a limited divorce granted for cruelty upon the ground of insufficient evidence, and testimony showed no physical violence or abuse and no

evidence that the wife's health had suffered by reason of husband's mistreatment and neglect, the charge of cruelty was not proved and the judgment awarding the divorce should be reversed. *Moore* v. *Moore* (C. A., D. C. 1949, 179 F. 2d 38, 86 U. S. App. D. C. 16).

The evidence was sufficient to support the granting of a limited divorce for cruelty in favor of appellee. *Reilly* v. *Reilly* (C. A., D. C. 1950, 182 F. 2d 108, appeal pending).

TERMINATION OF DECREE

Final divorce decree, which changes the fundamental relationship of parties, terminates wife's right to receive alimony under a preceding separation decree predicated on her status as a wife. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

VACATION OF RESIDENCE

Where court denied limited divorce for cruelty to either party, and wife had purchased residential property with her own funds, and continued presence of the husband therein constituted a threat to wife's health, and the parties had already voluntarily separated, court would compel the husband to move from the residence upon the petition of the wife. *O'Neal* v. *O'Neal* (D. C., D. C. 1948, 80 F. Supp. 538).

VOLUNTARY SEPARATION

Provision authorizing divorce on voluntary separation for five years without cohabitation, retroactively applied, held valid. *Tipping* v. *Tipping* (65 App. D. C. 222, 82 Fed. (2d) 828).

To same effect as original annotation, see *Parks* v. *Parks,* 1940 (116 F. 2d 556, 73 App. D. C. 93).

Record justified decree awarding husband absolute divorce on ground of five years' voluntary separation, notwithstanding wife had previously obtained limited divorce or separation, with maintenance, in New York, on ground, among others, of cruelty which made it unsafe and improper for her to cohabit with her husband. *Clemens* v. *Clemens,* 1944 (143 F. 2d 24; 79 U. S. App. D. C. 116, certiorari denied 65 S. Ct. 76, 323 U. S. 736, 89 L. Ed. 590).

The fact that separation resulted from husband's fault was not a defense to husband's suit for absolute divorce under this section. *Parks* v. *Parks,* 1940 (116 F. 2d 556, 73 App. D. C. 93).

Where husband deserted wife, without cause, on April 18, 1932, and parties did not live together thereafter, and husband filed suit on May 6, 1938, for absolute divorce, and wife, although wishing that husband would return, silently acquiesced in separation, husband was entitled to divorce, since wife's acquiescence made separation "voluntary", within less than a year after it began, within contemplation of this section. *Parks* v. *Parks,* 1940 (116 F. 2d 556, 73 App. D. C. 93).

That wife had obtained a limited divorce from husband did not prevent husband from subsequently obtaining an absolute divorce on ground of separation or of voluntary separation. *Parks* v. *Parks,* 1940 (116 F. 2d 556, 73 App. D. C. 93).

A separation agreement signed by husband and wife after husband deserted wife was no defense to husband's suit for absolute divorce where separation had been voluntary for more than five years before commencement of suit. *Parks* v. *Parks,* 1940 (116 F. 2d 556, 73 App. D. C. 93).

A deserted spouse need not make attempts to end the separation in order to obtain a divorce, and even actual unwillingness on her part to take the deserter back does not prevent her from obtaining a divorce. *Parks* v. *Parks,* 1940 (116 F. 2d 556, 73 App. D. C. 93).

A husband was entitled to divorce on ground of voluntary separation for five years, where separation was originally voluntary on both sides and wife failed to establish that her subsequent requests that husband return to her were made in good faith. *Bowers* v. *Bowers,* 1944 (143 F. 2d 158, 79 U. S. App. D. C. 146).

Under this section authorizing divorce for voluntary separation for five consecutive years, divorce is authorized if both parties voluntarily and continuously acquiesce in separation during five years, even though separation was not originally voluntary on both sides. *Bowers* v. *Bowers,* 1944 (143 F. 2d 158, 79 U. S. App. D. C. 146).

Under this section authorizing divorce for voluntary separation for five consecutive years, divorce is unauthorized if either party does not voluntarily and continuously acquiesce in separation during five years, even though separation was originally voluntary on both sides. *Bowers* v. *Bowers,* 1944 (143 F. 2d 158, 79 U. S. App. D. C. 146).

Under this section authorizing absolute divorce on ground of five years' voluntary separation without cohabitation, if wife's leaving of husband was influenced by unkindness or even cruelty that is immaterial under this section, since provocation or justification for an act is not to say that the act is involuntary. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

When separation is continued more than five years and neither party has tried to end it, a divorce should be granted. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

Husband's silent acquiescence in continued separation made the separation "voluntary" in the statutory sense less than six months after it began. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

For plaintiff to be entitled to a divorce under this section, it must be established that the separation was voluntary at the outset, or that the defendant's silent acquiescence made the separation voluntary, in the statutory sense. *Butler* v. *Butler* (App. D. C. 1946, 154 F. 2d 203).

Where husband and wife after separation continued to occupy separate rooms under the same roof, but had no marital relations, and ate at different times, although using the same table, and husband silently acquiesced therein for more than five years, wife was entitled to divorce under this section on ground of voluntary separation from bed and board for five consecutive years without cohabitation. *Boyce* v. *Boyce* (App. D. C. 1946, 153 F. 2d 229).

Under provision of this section authorizing an absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, where the separation was not voluntary on part of wife for the full term of five consecutive years, fact that the court also found that the parties for all practical purposes had been unmarried since 1939 did not entitle the husband to a divorce. *Martin* v. *Martin* (App. D. C. 1947, 160 F. 2d 20).

Under provision of this section authorizing an absolute divorce on the ground of voluntary separation from bed and board for five consecutive years without cohabitation, "voluntary" connotes an agreement and unless the parties agreed to live apart, separation is not voluntary. *Martin* v. *Martin* (App. D. C. 1947, 160 F. 2d 20).

Action for absolute divorce on the ground of voluntary separation for five years, brought approximately three years after defendant was granted a divorce a mensa et thoro, was premature. *Parks* v. *Parks* (D. C., D. C. 1948, 79 F. Supp. 919, reversed on other grounds, 116 F. 2d 556).

A separation for five consecutive years between husband and wife is "voluntary" under the evidence so as to entitle plaintiff to divorce under statutes notwithstanding that separation was originally caused by desertion by plaintiff husband. *Helfgott* v. *Helfgott* (C. A., D. C. 1950, 179 F. 2d 39, 86 U. S. App. D. C. 409)

§ 16–404 [14: 65]. Revocation of divorce a mensa et thoro—Joint application.

In all cases where a divorce from bed and board is decreed it may at any time thereafter be revoked by the court upon the joint application of the parties to be discharged from the operation of the decree. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 969.)

NOTES TO DECISIONS

REPEAL

The 1935 amendment to sections 401, 403, 409, 421 of this title did not effect the repeal of this section providing for a revocation of a decree of divorce a mensa et thoro upon joint application of the parties. *Parks* v. *Parks* (D. C., D. C. 1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556).

§ 16–405 [14: 66]. Causes arising after divorce a mensa et thoro.

Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to such decree. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 970.)

NOTES TO DECISIONS

ENLARGEMENT OF FINAL DECREE

The motion for enlargement of the decree of limited divorce into one of absolute divorce is denied but without prejudice to an independent action by the plaintiff for an absolute divorce if she has grounds therefor in accordance with § 16–405. *Stea* v. *Stea* (D. C. D. C. 1949, 83 F. Supp. 625).

§ 16–406 [14: 67]. Issue of annulled marriage—Legitimacy.

In case any marriage shall be declared by decree to have been void on account of either party having a former wife or husband living, if it shall appear that said marriage was contracted in good faith by the other party and in ignorance of said obstacle to the marriage, that fact shall be found and declared by the decree, and in such case the issue of said marriage shall be deemed to be the legitimate issue of the parent who was capable of contracting. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 972.)

NOTES TO DECISIONS

MARRIAGE—WHEN VOID

When divorce decree was obtained in Virginia through falsehood, any subsequent marriage by either party is void. *Frey* v. *Frey* (61 App. D. C. 232, 59 Fed. (2d) 1046).

§ 16–407 [14: 68]. Issue of a lunatic's marriage—Legitimacy.

Where a marriage is declared null and void on account of the idiocy or lunacy of either party at the time of the marriage the issue of the marriage shall be deemed legitimate. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 973.)

§ 16–408 [14: 69]. Issue of a marriage dissolved by divorce—Legitimacy.

A divorce for any of the causes herein provided for shall not affect the legitimacy of the issue of the marriage dissolved by such divorce, but the legitimacy of such issue, if questioned, shall be tried and determined according to the course of the common law. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 974.)

§ 16–409 [14: 69a]. Decree of annulment or divorce a vinculo dissolves property rights—Jurisdiction of court to determine property rights.

Upon the entry of a final decree of annulment or divorce a vinculo, in the absence of a valid antenuptial or postnuptial agreement in relation thereto, all property rights of the parties in joint tenancy or tenancy by the entirety shall stand dissolved and the court, in the same proceeding in which such decree is entered, shall have power and jurisdiction to award such property to the one lawfully entitled thereto or to apportion the same in such manner as shall seem equitable, just, and reasonable. (Mar. 3, 1901, ch. 854, § 974a, as added Aug. 7, 1935, 49 Stat. 540, ch. 453, § 3.)

CROSS REFERENCE

Joint deposits, accounts, or safety-deposit boxes, § 26–201 et seq.

NOTES TO DECISIONS

DISCRETION OF COURT

Where in annulment proceedings, trial court excluded evidence of wife's contribution toward the purchase of a house and where the record shows that husband's counsel, without having offered evidence, expressly rested except for the identification of the parties, there was no error or abuse of discretion in the court's subsequent ruling that it was too late for counsel of husband to make a proffer of testimony. *Nelson* v. *Nelson* (C. A., D. C. 1948, 171 F. 2d 1021, 84 U. S. App. D. C. 167).

DUTY OF COURT

District court has the right and duty under the statute to exercise a sound judicial discretion in adjusting the property rights of the parties. *Slaughter* v. *Slaughter* (C. A. D. C. 1948, 171 F. 2d 129, 83 U. S. App. D. C. 301).

INAPPLICABILITY OF STATUTE

In a suit for limited divorce for cruelty, section does not apply since its provision for apportionment relates only to property in which a tenancy, joint or by entireties, dissolves by operation of § 16–409 through a decree for absolute divorce or nullity of marriage. *Reilly* v. *Reilly* (C. A., D. C. 1950, 182 F. 2d 108, appeal pending).

JURISDICTION

This section does not deprive district court of jurisdiction to determine ownership of property in District of Columbia formerly held in tenancy by entirety by persons divorced by a foreign decree, there being no agreement or other decree respecting the property. *Scholl* v. *Scholl* (App. D. C. 1945, 152 F. 2d 672, 80 U. S. App. D. C. 292).

Where ownership of house, proceeds from its occupancy under lease executed by defendant, and disposition of furniture were issues presented by complaint for divorce, but defendant pleaded that she had been granted an absolute divorce from plaintiff by a foreign decree, court had jurisdiction to resolve disputed ownership of rents and furniture notwithstanding court dismissed action for divorce because of foreign divorce decree. *Scholl* v. *Scholl* (App. D. C. 1945, 152 F. 2d 672, 80 U. S. App. D. C. 292).

Where decree in proceeding for annulment of marriage incorporated by reference purported property settlement agreement which defendant claimed provided for alimony, error, if any, was in decreeing a sum over and above amount of property settlement itself, and such error, if any, did not oust court of jurisdiction to enter the decree. *Moran* v. *Moran* (App. D. C. 1947, 160 F. 2d 925).

PROPERTY RIGHTS

Under this section, giving the court the right to adjudicate the title to property held in common, the court did not abuse its discretion in awarding to the husband, on his application for divorce, sole ownership of real estate which was purchased from a joint account established by him, the wife having been guilty of breaching the marriage vows. *Richardson* v. *Richardson* (71 App. D. C. 26, 112 Fed. (2d) 19).

While the court has the right and duty to exercise a sound judicial discretion in adjusting the property rights of the parties, it is an abuse of discretion, upon awarding the husband a divorce, to fail to award to the husband ownership of property when the wife furnished no part of the money necessary to acquire the property and has completely forfeited her interest in it by failure to live up to the marriage covenants. *Oxley* v. *Oxley* (App. D. C. 1946, 159 F. 2d 10).

District Court for District of Columbia had power in annulment proceeding to settle property rights of parties even if there had been no agreement between parties. *Moran* v. *Moran* (App. D. C. 1947, 160 F. 2d 925).

It does not necessarily follow that the court would have abused its discretion if it had awarded appellant more than the amount she had contributed to the purchase of the house, and there was certainly no abuse thereof in limiting her to that amount. *Slaughter* v. *Slaughter* (C. A., D. C. 1948, 171 F. 2d 129, 83 U. S. App. D. C. 301).

SUFFICIENCY OF EVIDENCE

An award of real property to plaintiff wife in divorce proceeding on finding that she had purchased the property from proceeds of sale of a lot and premises, title to which was in her name and which she had previously purchased out of her own funds was sustained by the evidence. *Bilsborough* v. *Bilsborough* (App. D. C. 1947, 160 F. 2d 933).

§ 16–410 [14: 70]. Alimony pendente lite—Suit money—Counsel fees—Enforcement—Enjoining disposition and sequestration of property—Custody of children.

During the pendency of a suit for divorce, or a suit by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court shall have power to require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she be plaintiff or defendant, and to enforce obedience to any order in regard thereto by attachment and imprisonment for disobedience. The court may also enjoin any disposition of the husband's property to avoid the collection of said allowances, and may, in case of the husband's failure or refusal to pay such alimony and suit money, sequestrate his property and apply the income thereof to such objects. The court may also determine who shall have the care and custody of infant children pending the proceedings. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 975; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "whether the husband or wife" and inserted in lieu thereof the word "who" in the last sentence.

CROSS REFERENCES

As to use of habeas corpus in connection with custody of children, § 16–808.

Orders for support of feeble-minded person enforceable as decrees for temporary alimony, § 32–616.

NOTES TO DECISIONS

IN GENERAL

Court may award alimony pendente lite without passing on merits of litigation. *Sparks* v. *Sparks* (25 App. D. C. 356). See also *Lesh* v. *Lesh* (21 App. D. C. 475).

Suit to set aside divorce and for maintenance in personam, and wife may not create jurisdiction by seizure of property and notice by publication. *Bliss* v. *Bliss* (60 App. D. C. 237, 50 Fed. (2d) 1002).

This section purports to authorize an award pendente lite only as incident to a suit for divorce or one for annulment. *Pedersen* v. *Pedersen* (71 App. D. C. 26, 107 Fed. (2d) 227).

ABSCONDING HUSBAND

This section authorizes the rendering and enforcement of personal decrees for temporary alimony and it may well be extended to include the case of an absconding husband when the matrimonial domicile of husband and wife is within jurisdiction of the court. *Thompson* v. *Tanner* (53 App. D. C. 3, 287 Fed. 980).

ANNULMENT

When suit was for the annulment of the marriage, and not for a divorce, the court might allow alimony pendente lite, but it had no power to award to the defendant permanent alimony. *Alexander* v. *Alexander* (36 App. D. C. 78); *Payne* v. *Payne* (54 App. D. C. 149, 295 Fed. 970).

COLLECTION AFTER DISMISSAL

Installments of alimony pendente lite previously accruing are collectible after entry of a final judgment dismissing action for divorce. *Cole* v. *Cole* (D. C., D. C. 1946, 67 F. Supp. 134).

COSTS AND COUNSEL FEES

"Without regard to whether or not the wife succeeds in her litigation, we think that under section 975 of the Code (§ 16–410) she is entitled to reasonable attorney's fees for services rendered in prosecuting her case and to costs of the suit." *Towson* v. *Towson* (49 App. D. C. 45, 258 Fed. 517).

Counsel fees of a husband who was plaintiff in divorce proceedings cannot be allowed against the corespondent. *Eichelberger* v. *Symons* (53 App. D. C. 116, 288 Fed. 654).

The wife was entitled to present her case, and the court may compel a husband to pay counsel fee for the wife, while refusing because of her misconduct to compel the payment of alimony. *Myers* v. *Myers* (55 App. D. C. 224, 4 Fed. (2d) 300).

Although there had been no lawful marriage between the parties, either under the statutes or at common law, because plaintiff had a legal husband living, the court was authorized to require defendant to pay a reasonable counsel fee to plaintiff's counsel for their services. *Tendler* v. *Tendler* (56 App. D. C. 296, 12 Fed. (2d) 831); criticized as to existence of marriage in *Williams* v. *Williams* ((D. C.-D. C.), 33 Fed. Supp. 612), and *Parrella* v. *Parrella* ((D. C.-D. C.), 33 Fed. Supp. 614).

The fact that the court found against the wife did not affect the rightfulness of the allowance for counsel fees. *Friedenwald* v. *Friedenwald* (57 App. D. C. 13, 16 Fed. (2d) 509).

Order for "suit money" could not be entered after divorce suit had abated by reason of the plaintiff's death. *Bailey* v. *Scott* (57 App. D. C. 142, 18 Fed. (2d) 184).

The court is not required to hear and pass upon the evidence relating to the final issues involved before granting allowance to wife for suit money and counsel fees. *Martin* v. *Martin* (57 App. D. C. 173, 18 Fed. (2d) 823).

Counsel fees to wife in divorce proceedings; enforced by contempt proceedings. *Boardman* v. *Carey* (62 App. D. C. 152, 65 Fed. (2d) 600).

Upon dismissal of complaint the allowance of costs and counsel fees is within the discretion of the trial court. *Shellman* v. *Shellman* (68 App. D. C. 197, 95 Fed. (2d) 108).

Where husband appealing from judgment in divorce action granting a divorce to husband but giving custody of two children to wife and awarding wife alimony, counsel fees, and suit money, filed notice of appeal on June 27, 1940, and on July 2, 1940, the husband filed a supersedeas bond, the district court had jurisdiction on that date, to enter an order allowing suit money and counsel fees to wife in respect of appeal. *Jaffe* v. *Jaffe,* 1941 (124 F. 2d 233, 74 App. D. C. 394).

If counsel for wife knowingly participates to husband's injury in wife's wrongful or inequitable conduct in connection with a divorce suit, counsel should not be assisted by the court in collecting a fee from the injured husband. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

An attorney who conducts a wife's divorce case properly has a claim of his own against the husband for fees independent of and superior to any claim of the wife. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

Since attorney's liens are of an equitable nature, the court's action in forcing a husband to pay the fees of his wife's attorney in a divorce suit should be limited by equitable considerations. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

Where, on appeal from order denying divorced husband's motion to set aside a previous order of court appointing a sequestrator for pension payments due from District of Columbia to husband who had failed to make payments directed by divorce decree, application was made for allowance of counsel fees to wife's attorney, allowance of $200 would be reasonable. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

Where dismissing on her own motion a wife's complaint for divorce, the District court acted within its discretion in denying fees to her attorney. *Neudecker* v. *Philpot* (C. A. D. C. 1949, 174 F. 2d 668, 85 U. S. App. D. C. 28).

Custody of Children

Welfare of the child is a matter of paramount consideration at all times and under all circumstances. *Slack* v. *Perrine* (9 App. D. C. 128).

Courts, looking principally to the welfare and happiness of the children, will award their care and custody to the one party or the other as will best promote child's interest and general welfare. *Wells* v. *Wells* (11 App. D. C. 392).

When custody of children is involved "the courts do not act to enforce the right of either parent, but to protect the interest and general welfare of the children." *Stickel* v. *Stickel* (18 App. D. C. 149).

Interest of infants is even paramount to the claim of both parents. *Seeley* v. *Seeley* (30 App. D. C. 391, 12 Ann. Cas. 1058, cert. den. 209 U. S. 544, 52 L. Ed. 919, 28 Sup. Ct. 570).

This section authorizes the court to determine who shall have the care and custody of infant children pending proceedings for divorce. Since the court had jurisdiction of the appellant and of the subject-matter, it was his duty to obey the order, irrespective of whether or not it was erroneous. *Early* v. *Early* (49 App. D. C. 123, 261 Fed. 1003).

Equity will interfere to protect children from cruelty or from immoral influences, and may even deprive parents of the care of their own children. *Church* v. *Church* (50 App. D. C. 237, 270 Fed. 359).

Disposition of the custody of the child rests in the sound discretion of the court, subject to the rule that its welfare is the paramount thing to be considered. *Snow* v. *Snow* (52 App. D. C. 39, 280 Fed. 1013).

A father who is a party to divorce proceedings cannot, by contract or otherwise, avoid, or relieve himself from, his primary obligation to maintain a minor child. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

Other things being equal, a child's mother should be preferred to its grandmother in determining the matter of custody, and mother's actual custody should not be disturbed while divorce suit was pending. *Kirk* v. *Kirk* (App. D. C. 1945, 150 F. 2d 589, 80 U. S. App. D. C. 183).

In child custody case, where district court, acting through different judges, had on four or five previous occasions found wife an unsuitable person to have custody, order requiring that custody be delivered to divorced husband was not abuse of discretion. *Steele* v. *Steele* (App. D. C. 1948, 168 F. 2d 562).

In child custody case, either party is entitled to have his evidence presented through mouths of his witnesses rather than by affidavits. *Steele* v. *Steele* (App. D. C. 1948, 168 F. 2d 562).

In child custody case, where plaintiff's counsel, in order to obtain hearing at early date and out of order, agreed to submit case on affidavits, court's refusal of request at trial to hear testimony of child, then nine years of age, was not error, not only because matter was in trial court's sound discretion, but also because to have granted request would have violated conditions on which case was set down for hearing, particularly where stenographic transcript of child's evidence given in police court was before trial court for consideration. *Steele* v. *Steele* (App. D. C. 1948, 168 F. 2d 562).

Discretion of Court

"The granting of alimony pendente lite is a matter within the sound discretion of the trial court." *Dunnington* v. *Dunnington* (45 App. D. C. 277); *Jacobi* v. *Jacobi* (45 App. D. C. 442).

The trial court may in its discretion award counsel fees to wife regardless of the outcome of her divorce suit, and right of wife's attorney to fees is not vitiated by wife's wrongful conduct. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

The entry of final judgment pending special appeal which challenged District Court's right to refuse to consider a motion for alimony pendente lite because movant had declined to appear before Domestic Relations Commissioner did not foreclose matter of allowance of alimony pendente lite, and refusal of motion for the reason stated having been improper, District Court had power, upon return of the case to exercise a sound judicial discretion as to whether a pendente lite allowance should be made and, if so, as to the amount. *Kernan* v. *Kernan* (App. D. C. 1948, 165 F. 2d 232).

Enforcement of Order

An order for alimony and attorney's fees pendente lite in a divorce proceeding is in effect a personal decree, and can only be enforced in a foreign jurisdiction after personal service upon the defendant, regardless of the statutory provisions in the state or jurisdiction where the divorce proceeding is pending. Publication may be substituted for personal service of process upon any defendant in a divorce proceeding in this District. *Johnston* v. *Johnston* (64 App. D. C. 87, 74 Fed. (2d) 774).

Failure to make payments for maintenance of minor children not enforceable by imprisonment for contempt. *Rapeer* v. *Colpoys* (66 App. D. C. 216, 85 Fed. (2d) 715).

Order requiring payments for maintenance of children is enforceable against father, who is not divorced, by imprisonment. *Ebert* v. *Ebert* (App. D. C. 1945, 148 F. 2d 226, 80 U. S. App. D. C. 69).

In divorce action, defendant could be cited for contempt for noncompliance with maintenance order by service of motion on his counsel, since contempt proceedings are incidental to pending cause. *Ebert* v. *Ebert* (App. D. C. 1945, 148 F. 2d 226, 80 U. S. App. D. C. 69).

Husband's obligation to pay installments of alimony as they accrue is enforceable by execution, sequestration, or contempt proceedings. *Cole* v. *Cole* (D. C., D. C. 1946, 67 F. Supp. 134).

Where divorce decree directed husband to make monthly payments to wife for her maintenance and support of minor child but husband moved from District of Columbia and stopped making payments and District did not appeal from order appointing a sequestrator for pension payments due to the husband from District and was making no claim to exemption, the husband should not be permitted to make the claim of exemption. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

After entry of final judgment dismissing wife's action for divorce, husband would be adjudged guilty of contempt of court for failure to pay installments of alimony pendente lite accruing before entry of such judgment. *Cole* v. *Cole* (D. C., D. C. 1946, 67 F. Supp. 134).

This section providing that, in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

Under this section providing that during pendency of suit for divorce court shall have power to require husband to pay alimony to wife and to enforce obedience to order by attachment and imprisonment for disobedience, only so long as divorce suit is pending does court have authority to require husband to pay alimony and to enforce obedience by attachment and imprisonment. *Cole* v. *Cole* (App. D. C. 1947, 161 F. 2d 883).

Failure to pay installments of alimony which had accrued under a pendente lite order could not be punished by contempt proceedings after suit for divorce, in which temporary allowance was made, had been dismissed by order containing no reference to unpaid installments. *Cole* v. *Cole* (App. D. C. 1947, 161 F. 2d 883).

Exemptions

Payments of disability insurance are not exempt under § 35–717 from liability for alimony and support of

divorced wife. *Schlaefer* v. *Schlaefer* (71 App. D. C. 350, 112 Fed. (2d) 177).

JUDGMENT AGAINST PROPERTY

Court may, in case of the husband's failure or refusal to pay such alimony and suit money, sequestrate his property and apply the income to such object but when husband does not default in paying instalment of alimony when due, a writ will not lie. *Stewart* v. *Stewart* (52 App. D. C. 323, 286 Fed. 987).

An order to sequestrate property of the absent defendant, within the immediate jurisdiction of the court, is quasi in rem, issued to satisfy a personal claim on specific property. Thus the court acquires jurisdiction to render a judgment essentially in rem affecting such property, notwithstanding the absence of the owner from the state. *Thompson* v. *Tanner* (53 App. D. C. 3, 287 Fed. 980).

JURISDICTION OF EQUITY

Equity is ancillary and not antagonistic to the law, and where a statute precludes the authority to make an allowance, equity can not be invoked to aid in its circumvention. *Eichelberger* v. *Symons* (53 App. D. C. 116, 288 Fed. 654).

Independent of statute, a court of chancery has jurisdiction over the custody and maintenance of a minor child. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

LIABILITY OF HUSBAND

Decree awarding alimony pendente lite is a final order, and husband is liable therefor although he finally prevail. *Lynham* v. *Hufty* (44 App. D. C. 589).

"In a divorce proceeding the husband is primarily liable for the costs." *Lynham* v. *Hufty* (44 App. D. C. 589).

PROPERTY

In making provision for the wife's sustenance, the term "property" requires a liberal interpretation. *Schlaefer* v. *Schlaefer* (71 App. D. C. 350, 112 Fed. (2d) 177).

PROPERTY SUBJECT TO PAYMENT

A decree for payment of alimony against a non-resident brought before the court by constructive or extra-territorial service is void except as to property which is within the court's jurisdiction, and which has been specifically proceeded against in the divorce action. *Gaines* v. *Gaines* (App. D. C. 1946, 157 F. 2d 521, 81 U. S. App. D. C. 260).

Order of District Court of District of Columbia directing resident of Virginia who was personally served in Virginia, to pay alimony pendente lite, was "in personam" and void for lack of jurisdiction, in absence of any acts by non-resident to subject himself to court's authority, and in absence of a claim of, right to, or lien on any personalty in District of Columbia. *Gaines* v. *Gaines* (App. D. C. 1946, 157 F. 2d 521, 81 U. S. App. D. C. 260).

RECOVERY BACK OF PAYMENTS

An order for payment of alimony pendente lite is in effect a final order enforceable by immediate execution, and though it is revocable and may be rescinded by court and may wholly fall by a final decision on the merits adverse to petitioner, as long as it remains in effect to the extent to which it has been enforced by payment or execution, it is an absolute finality and money so paid cannot be recovered back. *Cole* v. *Cole* (D. C., D. C. 1946, 67 F. Supp. 134).

REPAYMENT OF UNAUTHORIZED FEE

Where order, denying husband's motion pending determination of referred question as to husband's damages from wife's suing out an injunction tying up husband's funds, to stay condemnation of his attached funds, for his wife's counsel fees in dismissed divorce suit, was reversed and the fees had been paid from the attached funds, the District Court would be authorized to require counsel to repay the fees if he were not entitled to retain them, notwithstanding such counsel had not been made a party to husband's appeal from the order. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

SEQUESTRATION OF PENSION PAYMENTS

Where divorced husband was entitled to pension payable out of Policeman's and Fireman's Relief Association of District of Columbia, divorced wife was not entitled to appointment of sequestrator to collect pension from disbursing officer of the District for payment to wife in satisfaction of her alimony claim. *Rone* v. *Rone,* 1944 (141 F. 2d 23, 78 U. S. App. D. C. 369).

SET OFF

Where judgment dismissing wife's suit for divorce and taxing husband with wife's counsel fees determined neither the facts nor the law with regard to husband's right to set off, against claim for counsel fees, damages sustained by wife's suing out of an injunction tying up husband's funds, husband would be allowed to set off such damage against the claimed fees if wife's attorney knowingly participated in wrongful issuance of injunction, notwithstanding allowance of fees had become final. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

Where District Court dismissed wife's suit for divorce and taxed husband with her counsel fees, if court should find that wife's attorney knowingly participated in wrongful suing out of injunction by wife to tie up husband's funds, husband would be allowed to set off his damage from the injunction against the claim for counsel fees. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

§ 16–411 [14: 71]. Permanent alimony—Retention of dower.

When a divorce is granted to the wife, the court shall have authority to decree her permanent alimony sufficient for her support and that of any minor children whom the court may assign to her care, and to secure and enforce the payment of said alimony in the manner before mentioned, and may, if it shall seem fit, retain to the wife her right of dower in the husband's estate. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 976.)

NOTES TO DECISIONS

AMOUNT

Husband who had abandoned his wife and child and who was earning $6,000 a year was directed to pay $200 a month for the maintenance of wife and child and $500 attorney's fees. *Noffsinger* v. *Noffsinger* (D. C., D. C. 1943, 50 F. Supp. 810).

In divorce suit, order requiring husband to pay wife $30 on the 6th and 21st day of each month until court's further order was clear, although court stated that payments would apply on previous New York judgment for maintenance. *Clemens* v. *Clemens,* 1944 (143 F. 2d 24, 79 U. S. App. D. C. 116, certiorari denied 65 S. Ct. 76, 323 U. S. 736, 89 L. Ed. 590).

Where divorced husband's income is large, divorced wife is entitled not merely to subsistence but to maintenance in manner which station of life of parties makes appropriate, but court should not make award so high as to cause financial difficulties and personal embarrassment on part of husband which would impair his earning capacity. *Russell* v. *Russell* (App. D. C. 1944, 142 F. 2d 173).

Amount of alimony award above average level of income should not be set without safeguards against improvident expenditures which impair future security of divorced wife or children. *Russell* v. *Russell,* 1944 (142 F. 2d 753; 79 U. S. App. D. C. 44, 153 A. L. R. 1037).

Alimony, when allotted, measures the husband's duty of support. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

ARREARS

No contempt where arrears are due to personal injuries. *Caffrey* v. *Caffrey* (55 App. D. C. 285, 4 Fed. (2d) 952).

A husband who had income of $160 per month was properly punished for contempt for failure to pay $45

per month alimony awarded to wife, where only excuse offered for alleged inability to pay alimony was that husband voluntarily contributed to support of his mother and his invalid brother and therefore had no funds with which to make the payments. *Kelly* v. *Kelly,* 1943 (137 F. 2d 254, 78 U. S. App. D. C. 97).

One who has no money or tangible property may be punished for contempt for failure to pay alimony award, if he makes no honest effort, considering his physical and mental capabilities, to work and earn money to pay alimony. *Kelly* v. *Kelly,* 1943 (137 F. 2d 254, 78 U. S. App. D. C. 97).

On wife's motion to adjudicate arrears of alimony, trial court acted properly in enforcing full payment of accrued alimony notwithstanding children who were minors when award was made had reached majority at time default in payment commenced. *Lockwood* v. *Lockwood* (App. D. C. 1947, 160 F. 2d 923).

Award Under Prior Law

Provision in 1901 Code, § 978 (§ 16–413) that a case where permanent alimony has been awarded under 1901 Code, § 976 (this section) shall still be considered open for any further orders operates only prospectively, and the court can not set aside or reduce sums determined and past due. *Biscayne Trust Co.* v. *American Security & Trust Co.* (57 App. D. C. 251, 20 Fed. (2d) 267).

Discretion of Court

In awarding alimony, limited discretion of court is based on standards which are necessarily vague, but where income of divorced husband is small the problem only involves giving the wife a decent subsistence if it is possible. *Russell* v. *Russell,* 1944 (142 F. 2d 753, 79 U. S. App. D. C. 44, 153 A. L. R. 1037).

Divorced Father

Act which defines the power of a court to make a support-money order against a husband for the benefit of a wife and minor child, does not embrace the case of an order against a divorced father. See § 980, 1901 Code (§ 16–415). *Rapeer* v. *Colpoys* (66 App. D. C. 216, 85 Fed. (2d) 715).

Effective Date

Any allowance of alimony which is to be effective after suit for divorce has ceased to pend must be made under this section regarding permanent alimony. *Cole* v. *Cole* (App. D. C. 1947, 161 F. 2d 883).

Increase of Alimony

Where, in a petition for an increase in an alimony award, the petitioner alleged that she was without knowledge of the provisions of the decree awarding alimony, and that she had accepted the monthly payments provided therefor under protest, an affidavit asserting that petitioner was present in court when the decree was signed, when undenied, was sufficient to overcome petitioner's allegation that she had no knowledge of the provisions of the decree. *Moran* v. *Moran* ((D. C.-D. C.), 31 Fed. Supp. 227).

A claim for an increase in alimony, based on an allegation that the decree was entered by mistake, will be denied, where the motion was not made until more than six months after the judgment was taken. *Moran* v. *Moran* ((D. C.-D. C.), 31 Fed. Supp. 227).

Where divorce decree required husband to pay wife $900 a month for alimony and $100 for support of one of their two children who required special schooling, award amounted to between 40 and 50 per cent. of husband's entire income, husband had remarried, and his position as an executive required certain standards which, if not maintained, would impair his usefulness to his employer, and pleadings indicated that his living standards were not as high as those of his divorced wife, an increase in award was not justified, even though wife was required to pay income tax on alimony which she received. *Russell* v. *Russell,* 1944 (142 F. 2d 753, 79 U. S. App. D. C. 44, 153 A. L. R. 1037).

Any decrease in divorced wife's net income because of taxes or any other reason which brings it below what is necessary for her station in life may be considered in granting an increase in alimony, but increase must be based on examination of needs of wife in light of present size of divorced husband's income, not on theory of equitable tax adjustment. *Russell* v. *Russell,* 1944 (142 F. 2d 753, 79 U. S. App. D. C. 44, 153 A. L. R. 1037).

Where alimony award to divorced wife is above average level of income, the moral obligations of husband, such as obligation to his mother-in-law, by second marriage, as well as legal obligations of husband, should be considered in determining divorced wife's petition for increase in alimony. *Russell* v. *Russell,* 1944 (142 F. 2d 753, 79 U. S. App. D. C. 44, 153 A. L. R. 1037).

If divorced wife's application for increase in alimony was to be decided against husband without a hearing, all controverted issues and all legitimate inferences raised by the pleadings were required to be resolved in his favor. *Russell* v. *Russell,* 1944 (142 F. 2d 753, 79 U. S. App. D. C. 44, 153 A. L. R. 1037).

Presumptions

Where moving party comes before court asking for enlargement of a limited divorce decree and for final severance of bonds of matrimony, movant must be presumed to be requesting the full relief to which she believes herself entitled. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

Remission of Instalment

Decree as to alimony is final as to instalments of alimony in arrears, and court cannot remit them. *Caffrey* v. *Caffrey* (55 App. D. C. 285, 4 Fed. (2d) 952).

Res Judicata

Order of District Court in divorce action denying motion to modify judgment confirming stipulation of parties whereby husband agreed to pay permanent alimony and determining that the stipulation was a contract but that divorce judgment approving stipulation did not award alimony was res judicata precluding relitigation of the question in the Municipal Court in a suit to enforce the stipulation. *Woodruff* v. *Woodruff* (D. C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72, 85 U. S. App. D. C. 424).

Sequestration of Pension Payments

Section 16–410 providing that, in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

Where divorce decree directed husband to make monthly payments to wife for her maintenance and support of minor child but husband moved from District of Columbia and stopped making payments and District did not appeal from order appointing a sequestrator for pension payments due to the husband from District and was making no claim to exemption, the husband should not be permitted to make the claim of exemption. *Montgomery* v. *Montgomery* (App. D. C. 1946, 153 F. 2d 634).

Termination of Prior Alimony Decree

Final divorce decree, which changes the fundamental relationship of parties, terminates wife's right to receive alimony under a preceding separation decree predicated on her status as a wife. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

§ 16–412 [14: 72]. Alimony when divorce is in favor of husband.

If the divorce is granted on the application of the husband, the court may, nevertheless, require him to pay alimony to the wife, if it shall seem just and proper. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 977; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the words "but in such cases the husband may appeal" at the end of this section.

CROSS REFERENCE

See notes to § 16–411.

NOTES TO DECISIONS

ALIMONY AWARD

Under our Code, alimony may be awarded to a wife even though the divorce was granted on the application of the husband, if it would seem just and proper to the court. *Quarles* v. *Quarles* (C. A., D. C. 1949, 179 F. 2d 57; 86 U. S. App. D. C. 41).

AMOUNT OF AWARD

Where husband, who was awarded a divorce on ground of wife's adultery, had a substantial business and an income of about $12,000 a year, wife, who had not been repaid $2,000 which she had advanced to husband for purchase of family home, was without means, and trial lasted five days and required considerable preparation, sums of $2,000 in cash, $50 a week alimony for support of wife and two minor children, or $75 if wife ceased to occupy husband's house free of rent, $825, in addition to $175 previously paid, as wife's counsel fees in district court, and $150 suit money and $300 counsel fees in respect of husband's appeal directed to be paid to wife by husband were reasonable. *Jaffe* v. *Jaffe,* 1941 (124 F. 2d 233, 74 App. D. C. 394).

That wife's counsel represented co-respondent as well as wife in trial of husband's divorce action based on ground of adultery did not show that award to wife of $825, in addition to $175 previously paid, as counsel fees in the district court and $300 counsel fees in respect of husband's appeal were excessive. *Jaffe* v. *Jaffe,* 1941 (124 F. 2d 233, 74 App. D. C. 394).

The record does not support the award of alimony to wife when there is no evidence that she contributed either her funds or her industry in the accumulation of the property by her husband, and no loss, either financial or by way of security, or status, was suffered by reason of her marriage, and upon consideration of other compelling factors of an equitable nature. *Quarles* v. *Quarles* (C. A. D. C. 1949, 179 F. 2d 57; 86 U. S. App. D. C. 41).

Judgment of the trial court in determining whether an award of alimony to a guilty defendant is just and proper will not be disturbed unless an abuse of discretion is made, manifested by the record. Evidence here was sufficient to sustain monthly payment of $65.00 for alimony. *Schulz* v. *Schulz* (C. A., D. C. 1949, 179 F. 2d 59; 86 U. S. App. D. C. 43).

CUSTODY OF CHILDREN

A court may in its discretion award custody of children to the unsuccessful defendant in a divorce action. *Jaffe* v. *Jaffe,* 1941 (124 F. 2d 233, 74 App. D. C. 394).

EFFECT OF AGREEMENT

Where the court did not require husband to pay alimony, but only approved an agreement by which the parties adjusted their respective property rights and all claims for alimony, the decree cannot be considered open for a future order in that respect, at least in the absence of fraud or mistake. *Heckman* v. *Heckman* (D. C., D. C. 1949, 83 F. Supp. 687).

RETENTION OF JURISDICTION

Jurisdiction may be retained to enter further orders respecting alimony and care and custody of child. *Davis* v. *Davis* (61 App. D. C. 48, 57 Fed. (2d) 414).

SCOPE OF REVIEW

Ordinarily, the trial court's determination of the propriety of the award under all the circumstances will not be disturbed unless an abuse of discretion is shown. *Quarles* v. *Quarles* (C. A., D. C. 1949, 179 F. 2d 57; 86 U. S. App. D. C. 41).

WAIVER OF APPEAL

Right to appeal is lost by acceptance of alimony. *Harris* v. *Harris* (67 App. D. C. 85, 89 Fed. (2d) 829).

Where judgment granted plaintiff husband an absolute divorce but also awarded alimony and counsel fees to wife, and after entry of judgment husband paid monthly to wife the alimony as well as the counsel fees, appeal by wife was subject to dismissal upon ground that, having accepted benefits of judgment, she was precluded from appealing therefrom. *Stein* v. *Stein* (C. A., D. C. 1948, 170 F. 2d 162).

§ 16–413 [14: 73]. Jurisdiction retained as to alimony and custody of children.

After a decree of divorce in any case granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders in those respects. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 978.)

CROSS REFERENCE

Setting aside or reducing sums determined and past due, see note to § 16–411. *Biscayne Trust Co.* v. *American Security & Trust Co.* (57 App. D. C. 251, 20 Fed. (2d) 267).

NOTES TO DECISIONS

ARREARS

Decree as to alimony is final as to installments of alimony in arrears. *Caffrey* v. *Caffrey* (55 App. D. C. 285, 4 Fed. (2d) 952).

Provision in § 978 (§ 16–413) that a case where permanent alimony has been awarded under § 976 (§ 16–411) shall still be considered open for any further orders operates only prospectively, and the court can not set aside or reduce sums determined and past due. *Biscayne Trust Co.* v. *American Security & Trust Co.* (57 App. D. C. 251, 20 Fed. (2d) 267).

"CARE AND CUSTODY OF CHILDREN"

Phrase "care and custody of children," includes maintenance, since plainly a child cannot be cared for without being fed, clothed, and otherwise maintained. *Elkins* v. *Elkins* (55 App. D. C. 9, 299 Fed. 690).

Marriage of a daughter may constitute a good and sufficient reason for modification of a previous order for support and maintenance. *Davis* v. *Davis* (68 App. D. C. 240, 96 Fed. (2d) 512).

To same effect as first paragraph of original annotation, see *Evans* v. *Evans* (D. C., D. C. 1941, 36 F. Supp. 12).

The District Court of the United States for the District of Columbia may, independently of statute, provide for care and custody of children in divorce cases. *Evans* v. *Evans* (D. C., D. C. 1941, 36 F. Supp. 12).

Where the District Court of the United States for the District of Columbia acquired jurisdiction over custody and maintenance of child of parties to divorce suit, the court's jurisdiction continued for all proper purposes concerning the custody and maintenance of the child. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

After submitting themselves to jurisdiction of court in divorce proceedings, parents cannot by their agreement deprive court of power to control custody and maintenance of child. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

In divorce proceeding the court must retain a continuing jurisdiction with respect to custody and maintenance of minor child. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

A child's claim against his father for maintenance is not subsidiary to that of the mother. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

Where District Court of United States for District of Columbia granting divorce failed to make provision regarding custody or maintenance of minor child, but parties filed stipulation for maintenance and support giving mother custody but requiring father to make payments for support, fact that mother had supported the child and the child had had support did not affect the duty of the father to render it, relieve him of the burden, or

deprive the court of power to compel him to discharge it or to force him to reimburse the mother for what she had expended on that account. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307).

Where stipulation for support of infant child was made part of record in divorce proceeding in District Court of United States for District of Columbia, the district court had continuing and exclusive jurisdiction over custody and maintenance of child and the municipal court did not have jurisdiction of action to recover amount alleged to be due under the stipulation. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307).

Court's jurisdiction, having attached to child custody case, continued undisturbed to final conclusion of case. *Steele* v. *Steele* (App. D. C. 1948, 168 F. 2d 562).

COUNSEL FEES

An order for payment of counsel fees in connection with the collection of alimony and support, is an order "in those respects" within the meaning of this section, and the case was "open" for the purposes of this order. *Junghans* v. *Junghans* (72 App. D. C. 129, 112 Fed. (2d) 212).

DISCRETION OF COURT

Trial court has large discretion in awarding custody of minor child and cause will remain open for any further orders found to be proper. *Warner* v. *Warner* (58 App. D. C. 34, 24 Fed. (2d) 609).

Alimony within trial court's discretion. Dependent on circumstances. *Garrett* v. *Garrett* (61 App. D. C. 309, 62 Fed. (2d) 471).

JURISDICTION OF COURT

Where the court did not require the husband to pay alimony, but only approved an agreement by which the parties adjusted their respective property rights and all claims for alimony, the decree cannot be considered open for a future order in that respect, at least in the absence of fraud or mistake. *Heckman* v. *Heckman* (D. C. D. C. 1949, 83 F. Supp. 687).

PROCEEDING IN PERSONAM

Claim for maintenance is essentially a proceeding in personam and there can be no attachment, seizure, or taking of the property until after the decree has passed. *Bliss* v. *Bliss* (60 App. D. C. 237, 50 Fed. (2d) 1002).

STIPULATIONS

In divorce suit, it was duty of court to act for the protection of minor child and where parties filed stipulation, for maintenance and support of the child, it was proper to assume that the official duty of the court was performed. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307).

Even though stipulation for maintenance and support of child was not incorporated in divorce decree, it would be granted equal effectiveness as if it had been incorporated in decree to extent that it received the tacit approval of the court and was carried out by the parties. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307).

In a divorce suit where court approves stipulation for maintenance and support of child, it is better practice to incorporate stipulation into the decree. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307).

Court ratification and confirmation of a stipulation for permanent alimony as a contract for support and maintenance does not convert the stipulation into a decree for alimony. *Woodruff* v. *Woodruff* (D. C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72, 85 U. S. App. D. C. 424).

Where stipulation for permanent alimony was ratified and confirmed by the court as a contract for support and maintenance, husband could not after stipulation was filed and submitted on behalf of both parties resist enforcement on the ground that he did not intend to be bound by the agreement. *Woodruff* v. *Woodruff* (D. C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72, 85 U. S. App. D. C. 424).

Stipulation for alimony whereby husband, who had deserted his wife and was under legal and moral obligation to provide for her support, agreed to pay permanent alimony in consideration of which wife refrained from seeking court award of alimony and counsel fees was amply supported by consideration. *Woodruff* v. *Woodruff* (D. C. Mun. App 1948, 60 A 2d 538, affirmed 176 F 2d 72, 85 U. S. App. D. C. 424).

TERMINATION OF SEPARATION DECREE

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

The power under this section which district court has to award permanent alimony in case of a proceeding for final divorce, whether it is on original complaint or on petition for enlargement of limited decree, is discretionary with trial court. *Holmes* v. *Holmes* (App. D. C. 1946, 155 F. 2d 737).

§ 16–414 [14: 74]. Prior name of wife may be restored.

In granting a divorce from the bond of marriage the court may restore to the wife her maiden or other previous name. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 979.)

§ 16–415 [14: 75]. Maintenance of wife and minor children—Enforcement.

Whenever any husband shall fail or refuse to maintain his wife and minor children, if any, although able so to do, the court, on application of the wife, pendente lite and permanently, may decree that he shall pay her, periodically, such sums as would be allowed to her as pendente lite or permanent alimony in case of divorce for the maintenance of herself and the minor children, if any, committed to her care by the court, and the payment thereof may be enforced in the same manner as directed in regard to the payment of permanent alimony. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 980; June 20, 1949, 63 Stat. 213, ch. 228.)

AMENDMENTS

The act of June 20, 1949, cited to text, amended the section by inserting the words "pendente lite and permanently" preceding "may decree", "pendente lite or" preceding "permanent alimony" the first time it appears, "if any" preceding "committed" and "the payment of" preceding "permanent alimony" the second time it appears.

NOTES TO DECISIONS

IN GENERAL

Under the statute "the power of the court to grant separate maintenance can be exercised only where the 'husband shall fail or refuse to maintain his wife and minor children,' if any, although able so to do." *Towson* v. *Towson* (49 App. D. C. 45, 258 Fed. 517), citing *Tolman* v. *Tolman* (1 App. D. C. 299).

Statute does not require that husband and wife live "separate and apart." *Pedersen* v. *Pedersen* (71 App. D. C. 26, 107 Fed. (2d) 227).

ADMISSIBILITY OF EVIDENCE

Proof regarding motivation of husband's conduct, justification for wife's departure from family home, and the necessity, if any, for her maintenance apart from her husband, is admissible in action of wife for separate maintenance. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

AMOUNT OF AWARD

Evidence was sufficient to sustain an order of $150 per month for the support and maintenance of wife and three children. *Wedderburn* v. *Wedderburn* (54 App. D. C. 193, 295 Fed. 1014).

Lower court, having first obtained jurisdiction of the parties under the bill for maintenance, had the power and the right to enter a decree for maintenance and as shown in the circumstances the allowance of the amount of alimony should be sustained as a proper allowance. *Marcum* v. *Marcum* (61 App. D. C. 332, 62 Fed. (2d) 871).

Award Pendente Lite

This section makes no provision for an award pendente lite as an incident to a suit for separate maintenance. *Pedersen* v. *Pedersen* (71 App. D. C. 26, 107 Fed. (2d) 227).

Counsel Fees

The District Court has authority to award counsel fees in a wife's action for separate maintenance. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

In action by wife for separate maintenance, evidence of cruelty of husband is relevant on question of how much maintenance the husband should be required to pay. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

Wife's attorney's fee of $125 was ordered paid by husband in wife's maintenance action, where husband's income was not ample to justify more, notwithstanding services of wife's counsel warranted a higher amount. *Hodge* v. *Hodge* (D. C., D. C. 1948, 80 F. Supp. 379).

Discharge of Order

"The amount and the continuation of the allowance will remain subject to the control of the equity court," and should the parties be reconciled or should the husband provide a suitable home and invite the wife to occupy it, the order for maintenance will be discharged. *Bernsdorff* v. *Bernsdorff* (26 App. D. C. 520). Distinguished *Marschalk* v. *Marschalk* (45 App. D. C. 455).

Discretion of Court

Where a bill for maintenance makes out a prima facie case, the complainant is entitled to an allowance pendente lite for support, the amount of which is within the sound discretion of the trial court. *Tolman* v. *Tolman* (1 App. D. C. 299).

Matter of granting or refusing temporary alimony is committed to sound discretion of trial court, and will not be disturbed by reviewing court, unless discretion has been abused. *Reed* v. *Reed* (52 App. D. C. 35, 280 Fed. 1009); *Howard* v. *Howard* (72 App. D. C. 145, 112 Fed. (2d) 44).

In wife's suit for maintenance, awards of maintenance pendente lite and suit money were within District Court's discretion under its general equity powers. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

Dismissal

A motion to dismiss a complaint for maintenance was required to be denied notwithstanding defendant introduced affidavit and a supplemental answer disclosing that defendant had obtained an absolute divorce from plaintiff in Arkansas wherein he claimed to have obtained a legal residence, since court could consider only facts set forth in complaint which disclosed an existing marriage of parties who were residents of Maryland and that defendant was temporarily within the District. *Brandenburg* v. *Brandenburg* (D. C., D. C. 1948, 80 F. Supp. 562).

Divorced Father

This section defines the power of a court to make a support-money order against a husband for the benefit of a wife and minor children, but does not embrace the case of an order against a divorced father. *Rapeer* v. *Colpoys* (66 App. D. C. 216, 85 Fed. (2d) 715).

Equity Jurisdiction

Equity has jurisdiction to grant maintenance as an independent relief. *Rhodes* v. *Rhodes* (36 App. D. C. 261), following *Tolman* v. *Tolman* (1 App. D. C. 299). See also *Lesh* v. *Lesh* (21 App. D. C. 475), holding such jurisdiction not superseded by this section.

Where father was worth over a million dollars, $50 a month was not adequate for care and education of son of 18, custody of whom had been awarded to mother by Nevada divorce decree, and it was duty of court to compel father to provide adequate support under its general equity powers. *Schneider* v. *Schneider,* 1944 (141 F. 2d 542, 78 U. S. App. D. C. 383).

Suits for maintenance have been regarded in the District as equitable rather than legal. *Franklin* v. *Franklin* (C. A. D. C. 1948, 171 F. 2d, 12, 83 U. S. App. D. C. 385).

The power of the court of equity to adopt its remedial relief to existing conditions and circumstances should not be curtailed. *Franklin* v. *Franklin* (C. A. D. C. 1948, 171 F. 2d 12, 83 U. S. App. D. C. 385).

Foreign Decree

Decree of divorce obtained by husband in Virginia barred wife's action for maintenance in the courts of the District of Columbia. *Thompson* v. *Thompson* (266 U. S. 551, 57 L. Ed. 347, 33 Sup. Ct. 129).

A Florida divorce decree obtained by husband who went to Florida solely for purpose of obtaining the divorce, and with no bona fide intention of remaining therein permanently or indefinitely, was not entitled to full faith and credit in the District of Columbia, so as to bar wife's action for maintenance. *White* v. *White* (App. D. C. 1945, 150 F. 2d 157, 80 U. S. App. D. C. 156).

In absence of any showing of invalidity, Florida judgment granting absolute divorce to husband barred right of wife to maintenance, notwithstanding wife had instituted suit for maintenance in District Court for District of Columbia and had obtained an order granting temporary maintenance prior to time husband instituted Florida divorce suit. *Gullet* v. *Gullet* (App. D. C. 1945, 149 F. 2d 17, 80 U. S. App. D. C. 73, see also 174 F. 2d 531, 85 U. S. App. D. C. 12).

Where husband took 40 hour annual leave from Washington job and went to Mexico for divorce, remaining there for not more than eight days, returning to Washington before decree was signed, husband was not a bona fide resident of Mexico, and decree obtained by him was not binding on District Court for District of Columbia in wife's subsequent action for support and maintenance. *Hodge* v. *Hodge* (D. C., D. C. 1948, 80 F. Supp. 379).

Maryland court's judgment of acquittal in bigamy prosecution following husband's remarriage after Mexican divorce did not settle question of validity of divorce in wife's action for maintenance brought subsequent to both Maryland judgment and Mexican divorce. *Hodge* v. *Hodge* (D. C., D. C. 1948, 80 F. Supp. 379).

Imprisonment for Nonpayment

Under this section, authorizing imprisonment for enforcement of permanent maintenance and §§ 16–410, 16–411, for enforcement of alimony during pendency of divorce suit and § 11–327, permitting enforcement of interlocutory orders by same process as final decrees, court had no power to imprison husband for failure to pay awards of maintenance pendente lite and suit money, in wife's suit for maintenance. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

Judgment

Where wife brought action for divorce from bed and board, or, in alternative, for separate maintenance, judgment for separate maintenance was a finality as to every matter which was offered and received to sustain or defeat the case. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

A judgment for separate maintenance requires some basis for its support. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

Legitimacy of Child

The presumption of legitimacy of a child, corroborated by the mother's sworn statement that her husband, defendant in suit for maintenance, was the father of the child, and affidavits of third parties detailing circumstances strongly corroborative of the claim, is not overcome by the husband's denial of paternity, supported by the professional opinion of a physician, based on an examination of defendant more than a year later, that he was sterile at the time conception occurred. *Howard* v. *Howard* (72 App. D. C. 145, 112 Fed. (2d) 44).

MAINTENANCE ARREARS

An unfair burden would be imposed upon appellee if, after he had contributed directly to the support of his children and had otherwise acted in accordance with assurance that appellant wanted no money from him, he were now to be required to pay her large accumulations of arrears for maintenance. *Franklin* v. *Franklin* (C. A. D. C. 1948, 171 F. 2d 12, 83 U. S. App. D. C. 385).

MAINTENANCE AS ALIMONY

This section authorizing award of maintenance to a wife in such sums as would be allowed as permanent alimony in case of divorce assimilates maintenance, at least as regards amount, to alimony within rule that alimony is largely discretionary and may be granted to a wife who is at fault or denied against a husband who is at fault and that its amount is elastic. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

MEASURE OF SUPPORT

Alimony, when allotted, measures the husband's duty of support. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

NONRESIDENT PARTIES

Where complaint for maintenance states an existing marriage and that plaintiff and defendant are residents of Maryland and that defendant husband is temporarily within the District, practice is for the District Court for the District of Columbia, to take jurisdiction. *Brandenburg* v. *Brandenburg* (D .C., D. C. 1948, 80 F. Supp. 562).

PERMANENT ALIMONY

Question of permanent alimony could be judicially considered only on the granting of a divorce or on application of the wife for maintenance. *Payne* v. *Payne* (54 App. D. C. 149, 295 Fed. 970).

In view of this section providing for the allowance of money for the maintenance of a wife upon her application therefor whenever the husband fails or refuses to maintain her, permanent alimony may be granted in an annulment action. *Parrella* v. *Parrella,* 1941 (120 F. 2d 728, 74 App. D. C. 161).

PROCEEDING IN PERSONAM

When suit is for maintenance it is a proceeding in personam, and wife could not by attachment or seizure take the property until after the decree has passed. *Bliss* v. *Bliss* (60 App. D. C. 237, 50 Fed. (2d) 1002).

RES JUDICATA

A judgment in prior action between same parties is res judicata on the points and matters in issue and adjudicated in such action. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

Even if subsequent action is for different cause of action, a right, question, or fact determined in prior action must, as between same parties, be taken as conclusively established, so long as judgment in prior action remains unmodified. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

Decree on wife's cross-complaint denying divorce, but allowing temporary and permanent alimony and dismissing both husband's divorce complaint and wife's cross-complaint, was not res judicata precluding subsequent action by wife for support and maintenance. *Hodge* v. *Hodge* (D. C., D. C. 1948, 80 F. Supp. 379).

An issue of how much defendant should pay his wife for necessaries litigated in District Court was res judicata between husband and wife and District Court alone had the power to reopen and modify decree. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

SEPARATE MAINTENANCE

Municipal Court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly, judgment obtained by physician against husband for professional services rendered to wife must be reversed. *Irwin* v. *Hawfield* (D. C. Mun. App. 1948, 62 A. 2d 926).

SUFFICIENCY OF ALLEGATIONS

Wife suing for limited divorce and failing to establish any dereliction on the part of the husband is not entitled to maintenance under section 980, D. C. 1901 (§ 16–415). *Towson* v. *Towson* (49 App. D. C. 45, 258 Fed. 517).

Although cruelty was alleged in bill for maintenance on ground of failure to support, it was sufficient. *Cissell* v. *Cissell* (61 App. D. C. 271, 61 Fed. (2d) 679).

A wife may state a cause of action for maintenance when she alleges that her husband has failed or refused to maintain her, although able to do so, and an allegation of cruelty is not necessary. *Gill* v. *Gill,* 1945 (147 F. 2d 154, 79 U. S. App. D. C. 357).

SUIT BY NONRESIDENT WIFE

A suit for maintenance may be maintained by a nonresident wife against a resident husband. *Tolman* v. *Tolman* (1 App. D. C. 299).

The District Court for the District of Columbia properly accepted jurisdiction of wife's action for maintenance where the parties had lived together in the District for ten years, then moved to Maryland, just over the District line, where they lived until separation, and husband then moved back to the District, where he had since lived and worked, except for period of temporary residence in Florida, where he attempted to obtain divorce. *White* v. *White* (App. D. C. 1945, 150 F. 2d 157, 80 U. S. App. D. C. 156).

SUPPORT OF CHILD

A child's claim to paternal support, unlike a claim by a wife in separate maintenance and support proceedings, is not affected by the merits of the controversy between the spouses. A father's obligation to contribute to the support of a child born of marriage is unqualified, and maintenance pendente lite for the child must be provided. *Howard* v. *Howard* (72 App. D. C. 145, 112 Fed. (2d) 44).

A child's claim for maintenance is not subsidiary to that of the mother. *Howard* v. *Howard* (72 App. D. C. 145, 112 Fed. (2d) 44).

Where domicile of father and minor son was in District of Columbia, duty imposed by this section on father to provide adequate support for his son existed in spite of Nevada divorce decree containing inadequate support provisions. *Schneider* v. *Schneider,* 1944 (141 F. 2d 542, 78 U. S. App. D. C. 383).

A suit by mother as next friend of minor son is proper proceeding to enforce duty of father to provide adequate support for his minor son. *Schneider* v. *Schneider,* 1944 (141 F. 2d 542, 78 U. S. App. D. C. 383).

The measure of father's duty to provide adequate support for minor son was present needs of son and ability of father to provide for him. *Schneider* v. *Schneider,* 1944 (141 F. 2d 542, 78 U. S. App. D. C. 383).

§ 16–416 [14: 76]. Petition for divorce—Proceedings.

All applications for divorce or for a decree annulling a marriage shall be made by complaint to the United States District Court for the District of Columbia, and the proceedings thereupon shall be the same as in equity causes, except so far as otherwise herein provided. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 963; June 30, 1902, 32 Stat. 537, ch. 1329; June 21, 1949, 63 Stat. 215, ch. 233.)

COMPILER'S NOTE

The 1902 amendment added a paragraph which provided for disposal of divorce actions pending December 31, 1901. This paragraph has been omitted herefrom.

AMENDMENTS

The act of June 21, 1949, cited to text, substituted the word "complaint" in lieu of "petition" and the words "United States District Court" in lieu of "District Court of the United States".

NOTES TO DECISIONS

ACTION EQUITABLE

A divorce proceeding in this jurisdiction is equitable in character. *Moncure* v. *Moncure* (51 App. D. C. 292, 278 Fed. 1005).

JURISDICTION OF DISTRICT COURT

The "public policy" of the District of Columbia does not require its courts to take jurisdiction of a matrimonial dispute between two persons who are neither domiciled in the District nor even residents thereof, especially where there is no showing that the welfare of children, rights of property, or other public interests in the District are affected. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

Under the doctrine "forum non conveniens" the District Court's jurisdiction of actions for separate maintenance between nonresidents domiciled elsewhere should not be exercised unless unusual circumstances justify trial in the District of Columbia. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

The District Court properly accepted jurisdiction of a wife's action for separate maintenance, even though husband and wife were nonresidents domiciled outside the District of Columbia, where husband's work when not traveling was in the District and husband's domicile was uncertain, both parties lived a few miles away, and husband at one time lived in the District. *Melvin* v. *Melvin,* 1942 (129 F. 2d 39, 76 U. S. App. D. C. 56).

Where District Court was without jurisdiction of original complaint for divorce because of lack of plaintiff's required residence, it could not entertain the cross-bill, and bill would be dismissed, with the dismissal of the original bill. *Clark* v. *Clark* (D. C., D. C. 1948, 79 F. Supp. 722).

QUESTIONS OF FACT

In wife's divorce action, husband's motion for new trial on ground that wife's divorce decree from another was invalid because of fraud perpetrated on court in respect of wife's residence presented a "question of fact" and decision granting new trial was not so wanting in evidential support as to be arbitrary. *Ruppert* v. *Ruppert,* 1942 (134 F. 2d 497, 77 U. S. App. D. C. 65).

SUMMONS

Where wife obtained a limited divorce from husband, and thereafter she filed a petition for enlargement of the decree into a decree for absolute divorce, and rule to show cause was issued, but husband refused to appear, rule to show cause would be discharged, and wife was required to proceed by summons. *Stern* v. *Stern* (D. C. Sup. 1948, 80 F. Supp. 266).

§ 16–417 [14: 77]. Co-respondents—Made defendants—Service.

In all divorce cases where adultery is charged the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases. (Mar. 3, 1901, 31 Stat. 1347, ch. 854, § 983.)

NOTES TO DECISIONS

IN GENERAL

Bill alleging adultery with two persons without making them party to suit, was not maintainable. *Nelson* v. *Nelson* (60 App. D. C. 156, 49 Fed. (2d) 680).

COUNSEL FEES

Counsel fees of husband plaintiff cannot be assessed against the co-respondent as costs. *Eichelberger* v. *Symons* (53 App. D. C. 116, 288 Fed. 654).

DEFENSE BY CO-RESPONDENT

Quaere: Whether co-respondent can plead condonation by plaintiff. *Holden* v. *Matteson* (38 App. D. C. 128).

IDENTITY UNKNOWN

It is not necessary to make co-respondent a party if his identity cannot be determined or he is known only by a fictitious name. *McLarren* v. *McLarren* (45 App. D. C. 237).

§ 16–418 [14: 78]. Court to assign attorney in uncontested cases—Compensation.

In all uncontested divorce cases, and in any other divorce or annulment case where the court may deem it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause, and such attorney shall receive such compensation for his services as the court may determine to be proper, such compensation to be paid by the parties as the court may direct. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 982; June 20, 1949, 63 Stat. 213, ch. 229.)

AMENDMENTS

The act of June 20, 1949, cited to text, inserted the words "or annulment" preceding "case".

NOTES TO DECISIONS

CITED

Referred to but not construed in *Lenoir* v. *Lenoir* (24 App. D. C. 160).

CONTEMPT

In divorce action, where an attorney was appointed for defaulting defendant and final decree granting divorce ordered defendent to pay a fee to attorney but this section providing compensation for attorney so appointed, made no provision for enforcement of payment of compensation, attorney could not enforce payment of his fee by way of contempt proceeding. *Robinson* v. *Robinson* (D. C., D. C. 1948, 80 F. Supp. 397).

§ 16–419 [14: 79]. Proof required—Decree on default.

No decree for a divorce, or decree annulling a marriage, shall be rendered on default, without proof; nor shall any admission contained in the answer of the defendant be taken as proof of the facts charged as the ground of the application, but the same shall in all cases, be proved by other evidence. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 964.)

CROSS REFERENCE

See note to § 16–403.

NOTES TO DECISIONS

ADMISSIONS

Admissions of adultery by wife, having been freely made, were rightly received in evidence against her. *Holden* v. *Matteson* (38 App. D. C. 128).

The testimony of a party to a divorce suit need not be corroborated when it is undisputed, the suit is contested and no collusion appears, though testimony is necessary and admissions in pleadings are not enough. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

CONFESSIONS

"In *Michalowicz* v. *Michalowicz* (25 App. D. C. 484) it was ruled that this provision of the code is declarative of the general rule of practice in such cases and was not intended to prohibit all evidence of confessions that may have been made by a party. 'But,' said the court, 'to warrant a decree of divorce the confessions must be well established, direct, and certain, free from suspicion of collusion, and corroborated by independent facts and circumstances.'" *Cogswell* v. *Cogswell* (49 App. D. C. 31, 258 Fed. 287).

NATURE OF PROOF REQUIRED

In divorce proceedings, evidence of wife's adultery must be clear and convincing. Mere circumstances of suspicion are not sufficient. *Krous* v. *Krous* (41 App. D. C. 200); *Symons* v. *Symons* (51 App. D. C. 69, 275 Fed. 1015); *Stewart* v. *Stewart* (52 App. D. C. 323, 286 Fed. 987), citing *Glennan* v. *Glennan* (3 App. D. C. 333); *McKitrick* v. *McKitrick* (49 App. D. C. 109, 261 Fed. 451); *Topham* v. *Topham* (50 App. D. C. 229, 269 Fed. 1013).

Proof of an adulterous disposition and opportunity to commit offense warrant a finding of adultery. *Allen* v. *Allen* (52 App. D. C. 228, 285 Fed. 962).

Where testimony is in conflict, "the finding of the lower court will not be disturbed, unless it is palpably wrong."

Cole v. *Cole* (52 App. D. C. 302, 286 Fed. 764). See also *Church* v. *Church* (50 App. D. C. 237, 270 Fed. 359).

"But that rule does not require proof beyond the possibility of doubt, nor does it necessarily require proof by eye witnesses of the actual offense. Nor do we overlook the rule that the testimony of hired detectives in such cases should be scrutinized with great caution." *Stewart* v. *Stewart* (52 App. D. C. 323, 286 Fed. 987). See also *Allen* v. *Allen* (52 App. D. C. 228, 285 Fed. 962) (testimony of detectives).

PURPOSE

It is the purpose of law of District of Columbia to require caution in granting of uncontested divorces and to prevent the granting of default decrees, without proof. *Stone* v. *Stone,* 1943 (136 F. 2d 761, 78 U. S. App. D. C. 5).

WITNESS

"In the case of *Bergheimer* v. *Bergheimer* (17 App. D. C. 381), we held that in divorce cases the parties to a suit are not competent to testify as witnesses in their own behalf. Therein we followed the ruling of the general term of the Supreme Court of the District in the case of *Burdette* v. *Burdette* (2 Mackey (13 D. C.) 469) and the uniform rule of practice in this District. And this rule, we think, is not affected by section 1068 of the Code (§ 14–306). * * * This section must be taken as qualified by section 964 of the Code (this section), which provides a special rule of evidence for divorce cases." *Lenoir* v. *Lenoir* (24 App. D. C. 160).

This section has no relation to the competency of the witnesses of the parties to the suit. *Early* v. *Early* (49 App. D. C. 123, 261 Fed. 1003).

The parties to a divorce suit are competent witnesses. *Buford* v. *Buford* (App. D. C. 1946, 156 F. 2d 567).

§ 16–420 [14: 80]. Law not retroactive.

The provisions of this chapter shall not invalidate any marriage solemnized according to law before January 1, 1902, or affect validity of any decree or judgment of divorce pronounced before January 1, 1902. (Mar. 3. 1901, 31 Stat. 1345, ch. 854, § 967.)

§ 16–421 [14: 81]. When decree for annulment or absolute divorce effective.

No final decree annulling or dissolving a marriage shall be effective to annul or dissolve the marriage until the expiration of the time allowed for taking an appeal, nor until the final disposition of any appeal taken, and every final decree shall expressly so recite. Every decree for absolute divorce shall contain the date thereof and no such final decree shall be absolute and take effect until the expiration of six months after its date. (Apr. 19, 1920, 41 Stat. 567, ch. 153, § 983a; Aug. 7, 1935, 49 Stat. 540, ch. 453, § 4.)

AMENDMENT

The 1920 act provided for an interlocutory decree and a waiting period of 90 days before final decree was entered, but did not postpone effectiveness for 6 months.

NOTES TO DECISIONS

IN GENERAL

Meaning and purpose of this provision is to prevent the remarriage of and preserve the status quo of the parties until the losing party may have his or her full legal rights and the law should be satisfied when that result is accomplished. *Tillinghast* v. *Tillinghast* (58 App. D. C. 107, 25 Fed. (2d) 531).

ASSAULT DURING COVERTURE

Action against former husband for assault committed after decree of absolute divorce had been entered, but before expiration of six months period when decree would become effective, could be maintained as against contention that a married woman may not sue for assault committed on her by her husband during coverture. *Steele* v. *Steele* (D. C., D. C. 1946, 65 F. Supp. 329).

DEFENSE TO POLYGAMY

Since plaintiff had been legally divorced in the District while the parties were domiciled there, and the decree became effective unconditionally and irrevocably, she was thereafter an unmarried woman and could not be guilty of polygamy. *Loughran* v. *Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

§ 16–422 [14: 82]. Suit to determine validity of marriage.

When the validity of any alleged marriage shall be denied by either of the parties thereto the other party may institute a suit for affirming the marriage, and upon due proof of the validity thereof it shall be decreed to be valid, and such decree shall be conclusive upon all parties concerned. (Mar. 3, 1901, 31 Stat. 1346, ch. 854, § 981.)

NOTES TO DECISIONS

ADMINISTRATIVE DETERMINATION

An adjudication that a marriage is invalid may ordinarily be made only by a court of competent jurisdiction after trial at which all interested parties have an opportunity to be heard, and it is questionable whether an administrative agency, such as the Veterans' Administration, the Navy Department, or the War Department, has any authority to hold a marriage invalid in an ex parte manner on basis of its own investigation. *Snyder* v. *Buck* (D. C., D. C. 1948, 75 Supp. 902, reversed 179 F. 2d 466, 85 U. S. App. D. C. 428, certiorari granted 70 S. Ct. 837, 339 U. S. 951, 94 L. Ed. 723).

REMARRIAGE BEFORE APPEAL DATE

A wife's remarriage before time had expired for taking appeal from husband's annulment decree, was valid. *Tillinghast* v. *Tillinghast* (58 App. D. C. 107, 25 Fed. (2d) 531).

Chapter 5.—EJECTMENT

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§ 16–501 [24: 161]. Parties.

Every action of ejectment shall be brought in the name of the real claimant and may be brought against the person actually occupying the premises claimed, either in person or by tenant, or against both the claimant and his tenant, or other occupant claiming under him, or, if they be not actually occupied, against some person exercising acts of ownership thereon adversely to the plaintiff. If a lessee be made a defendant at the suit of a party claiming against the title of his landlord such landlord may appear and be made a party defendant in the place of his lessee. And any person claiming to be in possession may, on motion, be admitted to defend the action. (Mar. 3, 1901, 31 Stat. 1347, ch. 854, § 984; June 30, 1902, 32 Stat. 537, ch. 1329.)

Amendment

The 1902 amendment inserted after the word "tenant" in the first sentence, the words "or against both the claimant and his tenant, or occupant claiming under him."

Cross Reference

Parties to actions, § 13–401 and notes.

NOTES TO DECISIONS

Equity—Jurisdiction to Enjoin

When equity has jurisdiction to enjoin prosecution of an action of ejectment involving three tracts of land, so far as two tracts are concerned, on ground that defendants have no adequate remedy at law, it will assume jurisdiction as to the third tract to terminate the litigation even though the defendants would have a remedy as to said third tract. *Camp* v. *Boyd* (35 App. D. C. 159, affd. 229 U. S. 530, 57 L. Ed. 1317, 33 Sup. Ct. 785).

Estoppel

Strict rules of estoppel are present when the parties in both actions are the same, when they are parties in interest, not only asserting in both instances the right of possession, but the title to the property. *Lyon* v. *Bursey* (36 App. D. C. 235).

Historical

The abolition of fictions in pleading in the District of Columbia by act June 1, 1870 (16 Stat. 146, ch. 115) and providing that all actions for the recovery of real estate in the District should be commenced in the name of the real party in interest, did not abolish the action of ejectment or make any other alteration in the form of the action, or extend limitations. *Hogan* v. *Kurtz* (94 U. S. 773, 24 L. Ed. 317).

British statutes prohibiting conveyance of lands held adversely are obsolete in this District. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D. C. 587, affd. 199 U. S. 247, 50 L. Ed. 175, 26 Sup. Ct. 25).

Pleading

It seems to be unnecessary to plead the statute of limitations where the general issue has been pleaded in actions of ejectment. *McMillan* v. *Fuller* (41 App. D. C. 384).

Where defendant pleads the general issue, and was found in possession of the land demanded, his plea must be construed as making defense for the whole. *Marine R. & Coal Co.* v. *United States* (49 App. D. C. 285, 265 Fed. 437).

Possession—Judgment Reversed on Appeal

"Where in ejectment a party in possession has been ejected from the premises under a judgment found upon appeal or writ of error to be erroneous, the party so dispossessed is entitled to restitution of the premises." *Wilson* v. *Newburgh* (42 App. D. C. 407).

The court is without jurisdiction to permit the plaintiff to retain possession under such reversed judgment, conditioned upon paying the original occupant a monthly rental pending further litigation. *Wilson* v. *Newburgh* (42 App. D. C. 407).

Presumption as to Judgment

The doctrine as to the inconclusiveness of judgments of ejectment has been abrogated by section 1002 of the Code (§ 16–518). *Lyon* v. *Bursey* (36 App. D. C. 235).

Proof of Title

For exceptions to the rule that plaintiff in ejectment must recover on strength of his own title, see *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D. C. 587, affd. 199 U. S. 247, 50 L. Ed. 175, 26 Sup. Ct. 25).

Marshal's deed of land which shows levy upon and sale of property under judgment is not sufficient to show title to the land in the grantee, but the grantee must prove the judgment and the execution. *Rowlett* v. *Nash* (38 App. D. C. 598).

One in peaceable possession of property, either in person or by tenant, is presumed to be in lawful possession, and "he was entitled to recover possession from a mere trespasser without further proof of title." *Nash* v. *Rawlett* (41 App. D. C. 456). See also *Bradshaw* v. *Ashley* (180 U. S. 59, 45 L. Ed. 423, 21 Sup. Ct. 297, affg. 14 App. D. C. 485); *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D. C. 587, affg. 199 U. S. 247, 50 L. Ed. 175, 26 Sup. Ct. 25); *Robinson* v. *Hillman* (36 App. D. C. 576).

Right of Action

Action of ejectment may be commenced by an claimant to property against anyone occupying the premises, either in person or by tenants, or against any person exercising acts of ownership adversely to the plaintiff *Spruill* v. *Brooks* (D. C. Mun. App. 1949, 68 A. 2d 204).

§ 16–502 [24: 162]. Tenant served in ejectment must give notice to landlord.

Every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt. (11 Geo. 2, ch. 19, § 12, 1738; Kilty Rep., p. 251; Alex. Br. Stat., p. 737; Comp. Stat., D. C., p. 332, § 61).

Cross Reference

See note to §13–201.

§ 16–503 [24: 163]. Declaration—Form—Adverse possession.

The plaintiff in his declaration must describe the premises claimed with reasonable certainty, and set forth distinctly the nature and quantity of the estate claimed by him in the same, and it shall be sufficient for him to state in addition thereto that the plaintiff was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession of the same and withholds the possession thereof from the plaintiff, or wrongfully detains such possession, or that the defendant is wrongfully exercising acts of ownership thereon. Such acts of ownership, however, unaccompanied with possession shall not, except as hereinafter provided, be held to amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations. (Mar. 3, 1901, 31 Stat. 1347, ch. 854, § 985.)

CROSS REFERENCE

Pleading generally, § 13–201 and notes.

§ 16–504 [24: 164]. Counts.

The declaration may contain several counts and several parties may be named as plaintiffs, jointly in one count and separately in others. (Mar. 3, 1901, 31 Stat. 1347, ch. 854, § 986.)

RULES OF CIVIL PROCEDURE

See Rules 2, 7–25, 54 (b), 55 (a), (d), 56, 67.

§ 16–505 [24: 165]. Proof necessary.

It shall be sufficient to entitle the plaintiff to a verdict to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed and that the defendant is in possession thereof, holding adversely to the plaintiff, or is exercising acts of ownership over the same adversely to the plaintiff; except that in an action by one or more joint tenants or tenants in common against their cotenants, the plaintiffs shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property. (Mar. 3, 1901, 31 Stat. 1347, ch. 854, § 988.)

CROSS REFERENCE

See notes to § 16–501.

NOTES TO DECISIONS

DEFENSE—ADVERSE POSSESSION

Defense of adverse possession held established. *Holtzman* v. *Douglas* (168 U. S. 278, 42 L. Ed. 466, 18 Sup. Ct. 65, affg. 5 App. D. C. 397).

OUSTER NOT PRESUMED

"Ouster will not be presumed, but there must be a showing of positive acts of hostility." *Lyon* v. *Bursey* (42 App. D. C. 519).

PROOF OF TITLE

Where plaintiff and defendant do not claim through common source of title, plaintiff must "show a complete chain of title from the sovereign, either the English crown, the State of Maryland, or the United States," particularly when neither plaintiff nor those under whom he claims was ever in possession of the property. *Bursey* v. *Lyon* (30 App. D. C. 597). See also *Anderson* v. *Reid* (10 App. D. C. 426); *Scott* v. *Herrell* (27 App. D. C. 395); *Robinson* v. *Hillman* (36 App. D. C. 576).

TENANTS IN COMMON

"One tenant in common is not liable to his cotenant for use and occupation, unless there has been an actual ouster of the cotenant, or acts amounting to that." *Lyon* v. *Bursey* (42 App. D. C. 519).

§ 16–506 [24: 166]. Legal title in mortgagee or trustee—Possession.

It shall be no bar to the plaintiff's recovery that the legal title to the property claimed is outstanding in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt unless such mortgagee or trustee, or those claiming under him, has taken possession of the premises; or unless the defendant claims under such mortgagor or grantor in the deed of trust. (Mar. 3, 1901, 31 Stat. 1347, ch. 854, § 989; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the words following the word "trustee" where it first appears, which read, "if the mortgage or deed of trust has been satisfied and the plaintiff would be entitled to an unconditional decree for the release or reconveyance of the property to him, nor shall the mortgagee or trustee in such case be entitled to maintain an action of ejectment against the party so entitled," and inserted in lieu thereof the words that follow the word "trustee."

§ 16–507 [24: 167]. Vendor in valid contract, entitling vendee to decree of specific performance may not recover in ejectment.

Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree in equity for a conveyance of the legal title, without condition, such vendor shall not be entitled at law, any more than in equity, to recover said property from the vendee. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 990.)

§ 16–508 [24: 168]. Several judgments against defendants occupying distinct parcels in severalty.

If it appears on the trial that some of the defendants occupy distinct parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may in the discretion of the court, have several judgments against the respective parties, according to the proof of occupancy. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 992; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "may" the words "in the discretion of the court."

§ 16–509 [24: 169]. Recovery of less than is claimed.

The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 993.)

NOTES TO DECISIONS

DISCLAIMER OF OTHER PART

Where plaintiff claims only a portion of the land sued for, he may, under this section, disclaim as to the other part. *Robinson* v. *Hillman* (36 App. D. C. 576).

§ 16–510 [24: 170]. Joint tenants and tenants in common.

Joint tenants must sue jointly in ejectment, but tenants in common may sue either jointly or sep-

arately, and any numbers of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 994.)

CROSS REFERENCE

Parties generally, § 13–401 and notes.

§ 16–511 [24: 171]. Recovery of mesne profits and damages—Separate count.

The plaintiff may embody in his declaration, in a separate count, a claim for the mesne profits received by the defendant from the property sued for or for the clear value of the use and occupation thereof extending to the time of the verdict, and also damages for waste or injury to the premises during said period; and if the jury find for the plaintiff they may, at the same time, find and assess the said mesne profits, or the value of said use and occupation and the amount of said damages; and, besides a judgment for the recovery of the property, there shall be rendered a judgment against the defendant for the amount so found by the jury, except in the case provided for in section 16–519. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 995; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "to the defendant during his occupation thereof, and during the plaintiff's ownership thereof, within a period commencing three years before the commencement of the suit and" following the word "thereof."

§ 16–512 [24: 172]. Landlord and tenant—Recovery of furniture, arrears in rent, damages—Separate counts.

If the action be by a landlord against his tenant, the plaintiff may embody in his declaration, in separate counts, a claim for furniture if leased with the realty, for arrears of rent due at the termination of the tenancy, a claim for double rent in cases authorized by this code from the termination of the tenancy to the verdict for possession, and a claim for damages for waste or injury to the premises or furniture during the defendant's occupancy of the same and before the commencement of the suit; and if the jury find for the plaintiff, they may at the same time find the amounts due for arrears of rent and for double rent and for damages as aforesaid, and judgment shall be rendered accordingly. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 996.)

CROSS REFERENCE

General provisions concerning suits by landlord against tenant, § 45–901 et seq.

NOTES TO DECISIONS

AMOUNT OF VERDICT

In action for rent, where defendant admitted liability for a fixed amount and claimed a credit for repairs made, and the evidence was conflicting, some items of defense were hard to prove, and jury had no purely mathematical basis upon which to rest its verdict, a verdict for less than amount demanded, but for more than amount admitted by defendant, would not be disturbed. *Shlopak* v. *Davison* (D. C. Mun. App. 1943, 34 A. 2d 126).

In action for rent where defendant admitted liability for a limited amount, and jury returned a verdict for less than amount demanded, but more than amount admitted to be due by defendant, and verdict was accepted by plaintiff, defendant was in no position to complain that verdict should have been a verdict for all or nothing. *Shlopak* v. *Davison* (D. C. Mun. App. 1943, 34 A. 2d 126).

§ 16–513 [24: 173]. Plaintiff may sue separately for rent or damages.

The plaintiff in ejectment shall not be bound to join his claim for rent or damages with his claim for the recovery of the land and his omission to do so shall not prevent him from suing for the same separately. (Mar. 3, 1901, 31 Stat. 1348, ch. 854, § 997.)

NOTES TO DECISIONS

CONCURRENT ACTIONS

A landlord could maintain action against tenant in District of Columbia District Court for arrears of rent and an action against tenant in the municipal court for possession of leased premises. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D. C. Mun. App. 1946, 47 A. 2d 400, modified, 1947, 54 A. 2d 144).

NATURE OF POSSESSORY ACTION

A landlord's action for possession of leased premises for nonpayment of rent is statutory substitute for the ancient remedy of ejectment. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D. C. Mun. App. 1946, 47 A. 2d 400, modified, 1947, 54 A. 2d 144).

§ 16–514 [24: 174]. Expiration of title pending suit—Damages.

If the title of the plaintiff in ejectment shall expire after the commencement of the suit but before the trial, and but for said expiration he would have been entitled to recover, the verdict shall find such facts, and the plaintiff shall be entitled to recover his damages sustained by the wrongful withholding of the possession. (Mar. 3, 1901, 31 Stat. 1349, ch. 854, § 998.)

§ 16–515 [24: 175]. Defense of adverse possession—Inclosure.

In an action to recover vacant and unimproved lots of ground it shall not be necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been inclosed; but if it appear that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the same and were the only persons who had exercised control over the same for a period of fifteen years before the bringing of the action, such facts shall be the equivalent of possession by actual inclosure. (Mar. 3, 1901, 31 Stat. 1349, ch. 854, § 999.)

COMPILER'S NOTE

This section was duplicated in D. C. Code, 1929 Edit., and appeared therein as title 24, § 175 and title 25, § 2 (Quiet Title Proceedings).

CROSS REFERENCE

Quieting title, § 16–1501 et seq.

NOTES TO DECISIONS

IN GENERAL

Defense of adverse possession held established by payment of taxes on lot and collection of rent from one who used it as stoneyard. *Holtzman* v. *Douglas* (168 U. S. 278, 42 L. Ed. 466, 18 Sup. Ct. 65, affg. 5 App. D. C. 397).

"The evidence on behalf of the defendant made out a clear case of actual, exclusive, continuous, open, and adverse possession of the premises for more than 20 years by her and those under whom she claimed, and had the effect to create in her a good and sufficient title." *Briel* v. *Jordan* (27 App. D. C. 202).

ADVERSE POSSESSION

Proof that plaintiff and his predecessors held vacant and unimproved land openly, notoriously, exclusively, and adversely for statutory period, and during that period paid taxes on the land established title in plaintiff by "adverse possession" under District of Columbia law without proof that acts of ownership other than assessment to and payment of taxes by the plaintiff and his predecessors were exercised by them continuously during the period prescribed by this section. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

Under District of Columbia law, title to vacant and unimproved land is established by "adverse possession" where claimant shows that for 15 years the land was assessed to him or his predecessors in claim, and that he or they regularly paid the taxes, and exercised other acts of dominion over the property, though not necessarily continuously during the entire period, and that no one else including the legal title holder had done so. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

Congress, in enacting this section which provided that proof of facts specified should be the equivalent of "possession by actual inclosure", intended to make proof of such facts sufficient for creation of title by adverse possession. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

The purpose of this section was to make proof of facts specified therein, not only the equivalent of possession by actual inclosure, but also of intent to claim adversely. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

EFFECTIVENESS OF TITLE SO SECURED

When title is secured by adverse possession an attempted dedication by the record owner is ineffectual to vest title in the District of Columbia. *Rudolph* v. *Peters* (35 App. D. C. 438, Ann. Cas. 1912A, 446).

LIMITATIONS

This section referred to section 201 of Title 12, and plaintiff could establish title to such lands by adverse possession upon proof of payment of taxes regularly for 15-year period, even though the period did not immediately precede the bringing of the action. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

OCCUPATION BY MISTAKE

Where one entitled to eight acres of land by mistake takes eleven acres, and occupies the entire tract adversely, such error can not be held to operate against his acquisition by such adverse possession of the three wrongfully occupied acres. *Johnson* v. *Thomas* (23 App. D. C. 141).

Occupation by grantee, although by mistake, of land beyond boundaries as specified in deed vests in him an indefeasible title if his possession has been actual, open, notorious, exclusive, and adverse for the statutory period. *Rudolph* v. *Peters* (35 App. D. C. 438, Ann. Cas. 1912A, 446).

PERSONS WITHIN SECTION

Congress, in enacting this section, did not intend to limit the substantive effects of the section to specific procedural situation described, and the section was applicable to plaintiff who claimed land by adverse possession and brought action to obtain payment of a condemnation award which had been made in favor of plaintiff and was deposited in registry of court when defendants asserted title to the condemned land. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

POSSESSION BY INCLOSURE

Under Maryland law, the phrase "possession by inclosure" embraced all possessory elements necessary for adverse possession, and the court would assume that such meaning was carried over to this section, which provided that proof of certain facts should be the equivalent of "possession by inclosure", in view of fact that the provision was drawn with a view to Maryland law. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

PRESUMPTION THAT POSSESSION FOLLOWED TITLE

Where railroad tracks were on the land, and when plaintiff exhibits a series of deeds purporting to convey the property, the last one to itself, it is to be presumed that possession followed the title until dispossession by the defendant took place. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (23 App. D. C. 587, affd. 199 U. S. 247, 50 L. Ed. 175, 26 Sup. Ct. 25).

PUBLIC HIGHWAY

Quaere: Whether one may acquire title by adverse possession of a portion of a public highway outside of the boundary of the city of Washington. *Rudolph* v. *Peters* (35 App. D. C. 438, Ann. Cas. 1912A, 446).

PURPOSE

This section was not intended as revenue-enforcing measure nor as measure which would make acquisition of title by adverse possession more difficult than it had been previously, and the obvious purpose of the provision was to dispense with necessity for showing that acts of dominion other than assessment and payment of taxes had been continuous throughout the limitation period when no other person had exercised control within it. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

This section was intended to modify and not merely to codify the previously existing common law. *Faulks* v. *Schrider,* 1940 (114 F. 2d 587, 72 App. D. C. 308).

RECOVERY AGAINST TRESPASSER

One in adverse possession for less than statutory period, and who has never voluntarily relinquished possession, may recover as against a subsequent trespasser. *Bradshaw* v. *Ashley,* (14 App. D. C. 485, affd. 180 U. S. 59, 45 L. Ed. 423, 21 Sup. Ct. 297). See also *Staffan* v. *Zeust* (10 App. D. C. 260).

§ 16–516 [24: 176]. Verdict.

If the plaintiff's title be established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property or interest claimed in the declaration, as the case may be; if, on the contrary, the plaintiff fail to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be, and it may be for the plaintiff as to part and for the defendant as to other part thereof, and judgment shall be rendered according to the verdict, except as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1349, ch. 854, § 1000; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "property" the words "or interest."

NOTES TO DECISIONS

JUDGMENT FOR PART OF PROPERTY

Under this section, plaintiff may recover a less portion than the whole sued for. *Robinson* v. *Hillman* (36 App. D. C. 576).

§ 16–517 [24: 177]. Verdict of not guilty—Judgment for defendant—Costs—Future actions.

If it appear on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, as aforesaid, the verdict of the jury shall be that the defendant is not guilty, and thereupon judgment shall be rendered in favor of the defendant against the plaintiff for the costs of the action, but such judgment shall not be a bar to a future action by the plaintiff against the defendant for the recovery of the property. (Mar. 3, 1901, 31 Stat. 1349, ch. 854, § 1001.)

§ 16–518 [24: 178]. Judgment conclusive as to title.

Any final judgment rendered in an action of ejectment shall be conclusive as to the title thereby estab-

lished as between the parties to the action and all persons claiming under them since the commencement of the action. (Mar. 3, 1901, 31 Stat. 1349, ch. 854, § 1002.)

NOTES TO DECISIONS

COMMON LAW ABROGATED

"The doctrine of the common law as to the inconclusiveness of judgments of ejectment has been abrogated in this District" by code section 984 (§ 16–501) and this section. *Lyon* v. *Bursey* (36 App. D. C. 235).

JUDGMENT IS "FINAL"

A judgment in ejectment, appealed from, is a final judgment. *Reed* v. *Allen* (286 U. S. 191, 76 L. Ed. 1054, 52 Sup. Ct. 532, revg. 60 App. D. C. 346, 54 Fed. (2d) 713).

§ 16–519 [24: 179]. Recovery for improvements—Notice—Good faith—Directions to jury—Measure of damages.

If at any time before the trial the defendant shall give notice that if the verdict of the jury shall be in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and shall offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on said property, which were begun in good faith before the commencement of the suit, the jury shall be directed, in case they find in favor of the plaintiff's title and also find that such permanent improvements were made by the defendant, or those under whom he claims, under the circumstances aforesaid, to assess—

First. The damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of said improvements, during the whole period of the occupation of the same to the date of the verdict, and also any damage done to the property, by waste or otherwise, by said parties during said occupation.

Second. The present value of any permanent improvements which may have been placed on the premises by the defendant or those under whom he claims.

Third. The present value of the property of the plaintiff without and exclusive of said improvements. (Mar. 3, 1901, 31 Stat. 1349, ch. 854, § 1003; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the following: from the second paragraph following the word "improvements," the words "to the defendant and those under whom he claims": from the third paragraph following the word "value," the words "to the plaintiffs"; and, from the fourth paragraph following the word "value," the words "to the defendant."

NOTES TO DECISIONS

OCCUPANT IN GOOD FAITH

This section "is limited to those who enter into possession of the premises under a title which they had reason to believe, and did believe, to be good, and erect valuable and permanent improvements in good faith." *Robinson* v. *Hillman* (36 App. D. C. 576). See also *Armstrong* v. *Ashley* (22 App. D. C. 368), holding that grantee of an occupant in good faith can have no better right than his grantor had to an equitable lien for improvements, citing *Anderson* v. *Reid* (14 App. D. C. 54) and stating that the rule therein announced "has now, at least to some extent, been modified by the code in section 1003 (this section)."

§ 16–520 [24: 180]. New trial as to assessment.

If either party shall feel aggrieved by said assessment he may, within four days after the verdict, move to set the assessment aside, and the court may, for good cause shown, set the same aside and order another jury to be empaneled in the cause to make a new assessment. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1004; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the first sentence which read as follows: "In addition to the evidence offered at the trial as to said values, the jury may be directed to view the premises, and their said assessments shall be returned with their verdict and recorded with the same"; and changed the word "three" to "four."

§ 16–521 [24: 181]. Judgment for damages in excess of improvements.

If the damages of the plaintiff, assessed as aforesaid, shall exceed the value of said permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed in section 16–511. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1005.)

§ 16–522 [24: 182]. Improvements and damages offset.

If the value of said improvements, so ascertained, shall equal but not exceed the plaintiff's damages, as found by the jury, the plaintiff shall only be entitled to judgment for the recovery of the property sued for and costs. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1006.)

§ 16–523 [24: 183]. Election of plaintiff to pay excess or tender deed.

If the value of said improvements shall be found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of said excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for said property, with all the plaintiff's right, title, and interest in the same. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1007.)

§ 16–524 [24: 184]. Judgment and writ of possession after payment for improvements.

If the said plaintiff shall pay to the defendant, within the time fixed therefor by the court, or, in case of his refusal to accept the same, shall pay into court for his use the amount of such excess of the value of said improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1008.)

§ 16–525 [24: 185]. Judgment and writ of possession after refusal of tender of deed by plaintiff.

If the plaintiff shall tender a deed as aforesaid to the defendant and demand the value of his property without the said improvements, as found by the jury, and the defendant shall fail or refuse to pay the same within the time fixed therefor by the court, the

plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and in case the plaintiff shall be a minor, the court may authorize said deed to be executed by his guardian. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1009.)

§ 16–526 [24: 186]. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.

If the plaintiff shall fail or refuse either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or to tender a deed to the defendant, as aforesaid, and accept from him the value of the plaintiff's property, exclusive of the improvements, as aforesaid, the defendant may pay said value into court for the use of the plaintiff, and thereupon the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover said property for cause theretofore existing. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1010.)

§ 16–527 [24: 187]. Remedy of remainderman to gain possession of estate—Affidavit of concealed death of life tenant—Order to produce—Commissioners—Presumption of death upon failure to produce.

Any person or persons who hath or shall have any claim or demand in or to any remainder, reversion or expectancy in or to any estate, after the death of any person within age, married woman, or any other person whatsoever, upon affidavit made in the court of chancery, by the person so claiming such estate, of his or her title, and that he or she hath cause to believe that such minor, married woman, or other person is dead, and that his or her death is concealed by such guardian, trustee, husband, or any other person, shall and may once a year, if the person aggrieved shall think fit, move the chancellor to order, and they are hereby authorized and required to order such guardian, trustee, husband, or other person, concealing or suspected to conceal such person, at such time and place as the said court shall direct, on personal or other due service of such order, to produce and shew to such person and persons (not exceeding two) as shall in such order be named by the party or parties prosecuting such order, such minor, married woman, or other persons aforesaid; and if such guardian, trustee, husband, or such other person, as aforesaid, shall refuse or neglect to produce or shew such infant, married woman, or such other person, on whose life any such estate doth depend, according to the directions of the said order, that then the court of chancery is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the said court of chancery, or otherwise, before commissioners to be appointed by the said court, at such time and place as the court shall direct, two of which commissioners shall be nominated by the party or parties prosecuting such order, at his, her or their costs and charges; and in case such guardian, trustee, husband, or other person, shall refuse or neglect to produce such infant, married woman, or other person so concealed, in the court of chancery, or before such commissioners, whereof return shall be made by such commissioners, and that return filed, in either or any of the said cases, the said minor, married woman, or such other person so concealed, shall be taken to be dead, and it shall be lawful for any person claiming any right, title or interest in remainder or reversion, or otherwise. after the death of such infant, married woman, or such other person so concealed, as aforesaid, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, so concealed were actually dead. (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D. C., p. 356, § 6.)

Cross Reference

See note to § 13–201.

§ 16–528 [24: 188]. Remedy of remainderman to gain possession of estate—Life tenant beyond the seas—Commissioner may be ordered to make view of life tenant and report to court—Presumption of death—Right to enter.

If it shall appear to the said court by affidavit, that such minor, married woman, or other persons, mentioned in section 16–527, for whose life such estate is holden, is, or lately was at some certain place beyond the seas in the said affidavit to be mentioned, it shall and may be lawful for the party or parties prosecuting such order, as aforesaid, at his, her, or their costs and charges, to send over one or both the said persons appointed by the said order, to view such minor, married woman, or other person, for whose life any such estate is holden; and in case such guardian, trustee, husband or other person concealing or suspected to conceal such persons, as aforesaid, shall refuse or neglect to produce or procure to be produced to such person or persons, a personal view of such infant, married woman, or other person, for whose life any such estate is holden, that then and in such case such person or persons are hereby required to make a true return of such refusal or neglect to the court of chancery, which return shall be filed, and thereupon such minor, married woman, or other person, for whose life any such estate is holden, shall be taken to be dead; and it shall be lawful for any person claiming any right, title or interest, in remainder, reversion or otherwise, after the death of such infant, married woman, or other person, for whose life any such estate is holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, for whose life any such estate is holden, were actually dead. (6 Ann, ch. 18, § 2, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D. C., p. 356, § 7.)

§ 16–529 [24: 189]. Rights of life tenant protected—Reentry—Damages.

If it shall afterwards appear upon proof, in any action to be brought pursuant to sections 16–527, 16–528, that such infant, married woman, or other person, for whose life any such estate is holden, were alive at the time of such order made, then it shall be lawful for such infant, married woman, guardian or trustee, or other person having any estate or interest, determinable upon such life, to

reenter upon the said lands, tenements or hereditaments, and for such infant, married woman, or other person, having any estate or interest determinable upon such life, their executors, administrators or assigns, to maintain an action against those who, since the said order, received the profits of such lands, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same received, from the time that such infant, married woman, or other person, having any estate or interest determinable upon such life, were ousted of the possession of such lands, tenements or hereditaments. (6 Ann, ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D. C., p. 357, § 8.)

§ 16–530 [24: 190]. Rights of life tenant not disturbed if found to be living.

If any such guardian, trustee, husband or other person or persons, holding or having any estate or interest, determinable upon the life or lives of any other person or persons, shall by affidavit or otherwise, to the satisfaction of the said court of chancery, make appear, that he, she or they have used his, her, or their utmost endeavours to procure such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, to appear in the said court of chancery, or elsewhere, according to the order of the said court in that behalf made; and that he, she or they can not procure or compel such infant, married woman, or other person or persons so to appear, and that such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, is, are or were living at the time of such return made and filed, as aforesaid, then it shall be lawful for such person or persons to continue in the possession of such estate, and receive the rents and profits thereof for and during the infancy of such infant, and the life or lives of such married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend. (6 Ann, ch. 18, § 4, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D. C., p. 357, § 9.)

§ 16–531 [24: 191]. Persons holding over after life estate—Liable as trespassers—Measure of damages.

Every person who, as guardian or trustee for any infant, and every husband seized in right of his wife only, and every other person having any estate determinable upon any life or lives, who after the determination of such particular estates or interests, without the express consent of him, her or them, who are or shall be next, and immediately entitled, upon and after the determination of such particular estates or interests, shall hold over and continue in possession of any manors, messuages, lands, tenements or hereditaments, shall be and are hereby adjudged to be trespassers; and every person and persons, his, her and their executors and administrators, who are or shall be entitled to any such manors, messuages, lands, tenements and hereditaments, upon or after the determination of such particular estates or interests, shall and may recover in damages against every such person or persons so holding over, as aforesaid, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession, as aforesaid. (6 Ann, ch. 18, § 5, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D. C., p. 357, § 10.)

§ 16–532 [24: 192]. Lessee barred of relief if rent and costs not paid and bill for relief filed within six months after execution in ejectment executed—Mortgagee of lease in same position.

In case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed; then, and in such case, the said lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premisses discharged from such lease; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, then in every such case such defendant or defendants shall have and recover his, her, and their full costs: provided always, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons intitled to the remainder or reversion, as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed. (4 Geo. 2, ch. 28, § 2, 1731; Kilty's Rept., p. 249; Alex. Br. Stat., p. 705; Comp. Stat. D. C., p. 326, § 46.)

§ 16–533 [24: 193]. Injunction against ejectment dissolved unless rent and costs lodged with court within 40 days after answer—Possession not to be restored to lessee unless all rent and costs paid.

In case the said lessee or lessees, his, her, or their assignee or assignees, or other person or persons, claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of equity, such person or persons shall not have or continue any injunction, against the proceedings at law on such ejectment, unless he, she, or they do or shall within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money, as the lessor or lessors of the plaintiff in the said ejectment shall, in his, her, or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing

of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her, or their entring into the actual possession thereof, and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved in the said lease, then the said lessee, or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands. (4 Geo. 2, ch. 28, § 3, 1731; Kilty's Rept., p. 249; Alex. Br. Stat., p. 707; Comp. Stat. D. C., p. 327, § 47.)

§ 16–534 [24: 194]. Payment or tender of all rent and costs before trial of ejectment, proceedings cease—If tenant restored by equity no new lease necessary.

If the tenant or tenants, his, her, or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then, and in such case, all further proceedings on the said ejectment shall cease, and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they, shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them. (4 Geo. 2, ch. 28, § 4, 1731; Kilty's Rept., p. 249; Alex. Br. Stat., p. 707; Comp. Stat. D. C., p. 328, § 48.)

Chapter 6.—EMINENT DOMAIN

LAND FOR DISTRICT OF COLUMBIA

Sec.

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LAND FOR DISTRICT OF COLUMBIA

§ 16–601 [25: 41]. Condemnation authorized — Petition—Commissioners.

Whenever land in the District is needed by the commissioners of the District for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and the same can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of said District authorized to negotiate for the same, application may be made to the District Court of the United States for the District of Columbia by petition in the name of said commissioners for the condemnation of said land or said right of way and the ascertainment of its value. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 483; Mar. 1, 1929, 45 Stat. 1437, ch. 439.)

AMENDMENT

The 1929 amendment deleted the words "for the use of the United States or" after the word "needed," and the words "of the United States or" after the word "name."

CROSS REFERENCES

Assessor of the District as expert witness, § 14–309.

Assignment of special judge in cases involving condemnation of land for the District of Columbia, § 11–301.

Condemnation for right-of-way of water line from Dalecarlia Reservoir to Arlington County Sanitary District in Virginia, § 43–1532.

Condemnation for streets, alleys, or highways, see § 7–201 et seq.

Condemnation of insanitary buildings, §§ 5–601 to 5–615.

Condemnation of land for children's tuberculosis sanatorium, § 32–312.

Condemnation of land for municipal center, § 9–201.

Condemnation of land for United States, §§ 16–619 to 16–644.

Condemnation of lands for parks and playgrounds, § 8–102.

Condemnation of lands for sites for refuse incinerators, § 6–505.

Condemnation of materials to make or repair public roads, § 7–332.

Condemnation proceeding in cases concerning alleys and minor streets, § 7–301 et seq.

Condemnation proceedings to close useless streets and alleys under Street Adjustment Act, § 7–405.

Condemnation proceedings to establish building lines on streets, § 5–203.

Condemnation proceedings under Alley Dwelling Act, § 5–103.

Condemnation to open, widen, or straighten alleys or minor streets, § 7–313 et seq.

Condemning land in excess of needs, §§ 16–612 to 16–618.

No damages may be paid upon condemnation of telegraph company property for the right to lay conduits, § 43–1417.

Proceeding by certain railroads to acquire land for railroad facilities, § 7–1221.

Proceedings to acquire land for viaducts and subways, § 7–1215.

Sections 16–601 to 16–610 not retroactive, § 16–611.

RULES OF CIVIL PROCEDURE

Rules do not apply to condemnation proceedings, except on appeal, see Rule 81 (a) (7).

CITED

Referred to but not construed in *Beyer* v. *Brownlow* (51 App. D. C. 92, 276 Fed. 460).

NOTES TO DECISIONS

HISTORICAL

On March 1, 1929, Congress changed the method of procedure in condemnation cases in the District of Columbia and different methods were provided for the United States (§§ 16–601 to 16–619). *Willis* v. *United States* (69 App. D. C. 129, 99 Fed. (2d) 362).

ABANDONMENT OF PROCEEDINGS

The Commissioners have the right to discontinue and abandon a condemnation proceeding; and such abandonment need not be in toto, but may be in parte. *Johnson* v. *Reichelderfer* (62 App. D. C. 237, 66 Fed. (2d) 217).

APPROPRIATION NOT MADE

The fact that Congress has made no appropriation for payment of the land condemned at the time condemnation proceedings are instituted is no defense. *Macfarland* v. *Elverson* (32 App. D. C. 81).

COMMISSIONERS

Commissioners of the District have no power to acquire land by condemnation, except by express authority of Congress. *Dougherty* v. *Galliher* (58 App. D. C. 166, 26 Fed. (2d) 538).

Where power to condemn property for public use has been conferred on municipal officers, it rests with such officers to determine whether it shall be exercised and when and to what extent it shall be exercised, and so long as they do not abuse the power delegated to them, courts are powerless to inquire into motives which actuate them or the propriety of the contemplated improvement. *O'Hara* v. *District of Columbia,* 1945 (147 F. 2d 146, 79 U. S. App. D. C. 302, certiorari denied 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1975).

CONSTRUCTION

The words "authorized by Congress" limit only the preceding phrase "or for other municipal purposes," and have no reference to the preceding phrases. *Macfarland* v. *Elverson* (32 App. D. C. 81).

This statute must be strictly construed; if doubt exists as to authority of commissioners to condemn it must be resolved in favor of the landowner. *Macfarland* v. *Elverson* (32 App. D. C. 81).

DISCRETION OF MUNICIPAL OFFICERS

An appellate court will not interfere with the report of Commissioners to correct the amount of damages, except in cases of gross error, showing prejudice or corruption. Hence, for an error in the judgment of Commissioners in arriving at the amount of damages there can be no correction, especially where the evidence is conflicting. *Seufferle* v. *Macfarland* (28 App. D. C. 94).

When power of condemnation is vested in municipal officers "it rests with such officers to determine whether it shall be exercised, and when and to what extent it shall be exercised." *Macfarland* v. *Elverson* (32 App. D. C. 81).

FEE SIMPLE ESTATE

Where land is condemned for school purposes, in absence of special circumstances, it would be reasonable to presume that no estate less than obsolete title is sufficient. *O'Hara* v. *District of Columbia,* 1945 (147 F. 2d 146, 79 U. S. App. D. C. 302, certiorari denied 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1975).

HIGH SCHOOL ATHLETIC FIELD

Land to be condemned for high school athletic field is to be used for "educational" purposes within the meaning of the zoning regulations, and such field may be located in a residential district. *Commissioners of District of Columbia* v. *Shannon & Luchs Constr. Co.* (57 App. D. C. 67, 17 Fed. (2d) 219).

Appropriation for school athletic field authorizes condemnation proceedings by District. *Commissioners of District of Columbia* v. *Shannon & Luchs Constr. Co.* (57 App. D. C. 67, 17 Fed. (2d) 219).

PETITION, SUFFICIENCY OF

Where District of Columbia's petition in condemnation proceeding alleged that land was necessary for purpose of acquiring a site for school purposes, error, if any, in failure to declare that fee simple estate was being condemned could not be raised by collateral attack on order of condemnation, in absence of record affirmatively showing that a lesser estate than a fee simple would have served the public purpose for which the land was sought. *O'Hara* v. *District of Columbia,* 1945 (147 F. 2d 146, 79 U. S. App. D. C. 302, certiorari denied 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1975).

SCHOOL SITES

To condemn land for school sites, district assessor may not testify as expert witness. *Johnson* v. *Reichelderfer* (60 App. D. C. 186, 50 Fed. (2d) 336). But see § 14–309 which changes this rule.

WIDENING STREET

Under the provisions of this statute, condemnation proceedings may be instituted for widening any street. *Nealy* v. *Hazen* (63 App. D. C. 239, 71 Fed. (2d) 692).

§ 16–602 [25: 42]. Petition for condemnation — Contents.

Such petition shall contain a particular description of the property selected, with the names of the

owners thereof and their residences, so far as the same may be ascertained, together with a plan of the land to be taken. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 484; Mar. 1, 1929, 45 Stat. 1437, ch. 439.)

§ 16–603 [25: 43]. Jury—Special list—Qualifications—Procedure for drawing.

The jury commission of the District of Columbia shall prepare a special list of persons having the qualifications of jurors, as prescribed by section 11–1417, and being also freeholders of the District of Columbia. The jury commission shall from time to time as may be necessary write the names contained in said special list on separate and similar pieces of paper, which they shall so fold or roll that the names cannot be seen, and shall place the same in a special box to be provided for the purpose, and shall thereupon seal and lock said special box, and after thoroughly shaking the same shall deliver it to the clerk of the District Court of the United States for the District of Columbia for safekeeping; but the same shall not be unsealed or opened except by said jury commission. From time to time, as ordered by the District Court of the United States for the District of Columbia, or one of the justices thereof holding a special term for the trial for condemnation proceedings, the jury commission shall publicly break the seal of said special box and proceed to draw therefrom by lot and without previous examination the names of such number of persons as the said court may from time to time direct to serve as jurors in condemnation proceedings, and certify the names so drawn to the clerk of said court. At the time of each drawing of condemnation jurors from said special box there shall be in said special box the names of not less than one hundred persons possessing the qualifications hereinbefore prescribed. Except as in this section specially provided, sections 11–1401 to 11–1420, inclusive, so far as the same may be applicable, shall govern the qualifications of said jurors in condemnation cases and the duties and conduct of said jury commissioners under this section. No person shall be eligible to serve as a condemnation juror who has served as such juror within one year. (Mar. 3, 1901, ch. 854, § 484a, as added Apr. 19, 1920, 41 Stat. 565, ch. 153, § 484a; Mar. 1, 1929, 45 Stat. 1437, ch. 439.)

Amendment

The 1929 amendment deleted the words "commissioner or" after the word "condemnation," and the words "commissioner or" after the word "such" in the last sentence.

NOTES TO DECISIONS

Duty of Court

The court has the duty of guiding and directing the jury commission to the end that proper representation is had of all eligible citizens on general juries and also on the special panels in eminent domain proceedings. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D. C., D. C. 1945, 58 F. Supp. 832).

Jury, Definition of

The "jury" in eminent domain proceedings in the District of Columbia is an inquest or commission appointed by the court under this section and differs from an ordinary jury in that its members must be freeholders, need not be unanimous, and may number more or less than 12. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D. C., D. C. 1945, 58 F. Supp. 832).

Powers of Discretion

This section requiring the jury commission to prepare for eminent domain proceedings a special list of freeholders of the District of Columbia having the qualifications of jurors imports a broad discretion in the commission. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D. C., D. C. 1945, 58 F. Supp. 832).

Preparation of Jury Lists

The jury commission should prepare with great care not only the general jury lists but also the lists of jurors for eminent proceedings and keep the lists fluid so that some persons will not be frequently re-called while others, including Negroes, are not called. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D. C., D. C. 1945, 58 F. Supp. 832).

§ 16–604 [25: 44]. Citation to owners—Owners under disability—Selection of jury—Appraisal.

The said court holding a District Court of the United States, shall thereupon cite all the owners and other persons interested to appear in said court, at a time to be fixed by the court, to answer said petition; and if it shall appear to the court that there are any owners or other persons interested who are under disability, the court shall give public notice of the time at which it will proceed with the matter of condemnation; and at such time, if it shall appear that there are any persons under disability who have appeared or who have not appeared, the court shall appoint a guardian ad litem for each such person, and shall thereupon order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint a jury of five capable and disinterested persons, to which jury the court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned, and are not related to the parties interested therein, and that they will, without favor or partiality, and to the best of their judgment, appraise the value of the respective interests of all persons concerned in such lands. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 485; Apr. 19, 1920, 41 Stat. 565, ch. 153; Mar. 1, 1929, 45 Stat. 1437, ch. 439.)

Amendments

The 1920 amendment inserted the words "and shall thereupon order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon," in that part of the section following the second semicolon, and added the words "under such regulations as to notice and hearing as shall seem meet" at the end of the section, which words have been deleted by the 1929 amendment.

The 1929 amendment raised the number of jurors appointed from three to five.

NOTES TO DECISIONS

In General

This section is mandatory and was intended by Congress to require a party in a condemnation proceeding to bring his objections and exceptions to the attention of the court within twenty days, the time limit prescribed, or else be taken to have waived them. *Walker* v. *Hazen* (67 App. D. C. 188, 90 Fed. (2d) 502).

§ 16–605 [25: 44a]. Declaration of taking—Contents—Deposit of estimated compensation—Transfer of title to District of Columbia—Compensation—Interest—Deficiency—Excess—Surrender of possession.

The petitioners may file in a cause, with the petition or at any time before judgment, a declaration of taking, signed by the commissioners, declaring that said lands are thereby taken for use of the District of Columbia. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which the said lands are taken;

(2) A description of the lands taken sufficient for the identification thereof;

(3) A statement of the estate or interest in said lands taken for said public use;

(4) A plan showing the lands taken;

(5) A statement of the sum of money estimated by the commissioners to be just compensation for the land taken.

Notwithstanding the provisions of section 16–608, upon the filing of said declaration of taking and the deposit in the registry of the court, for the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the District of Columbia, and the lands shall be deemed to be condemned and taken for the use of the District, and the right to just compensation for the same shall vest in the persons entitled thereto. Said compensation shall be ascertained and awarded in said proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the registry. No sum so paid into the registry shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the registry of the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled thereto, the court shall enter judgment against the District for the amount of the deficiency. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall be less than the amount of the money so received, the court shall have the power to enter judgment against the party or parties receiving the same for the amount representing the difference between the amount received and the amount awarded by the jury as fair compensation, and writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment.

Upon the filing of the declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioners. The court shall have power to make such orders in respect of incumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, 47 Stat. 647, ch. 462.)

NOTES TO DECISIONS

ABANDONMENT

Where a fee simple estate is acquired in condemnation proceeding, the doctrine of abandonment does not apply. *O'Hara* v. *District of Columbia,* 1945 (147 F. 2d 146, 79 U. S. App. D. C. 302, certiorari denied 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1975).

NONUSE, EFFECT OF

Where District of Columbia's petition in condemnation proceeding alleged that land was necessary for purpose of acquiring a site for school purposes, the District obtained a fee simple absolute upon deposit in court of the damages awarded to the owners and title to premises did not revert back to the original owners because of nonuse by the District for school purposes. *O'Hara* v. *District of Columbia,* 1945 (147 F. 2d 146, 79 U. S. App. D. C. 302, certiorari denied 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1975).

§ 16–606 [25: 45]. Objections to jurors—Appraisement.

The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power and authority to pass upon any such objection, and to excuse any juror or cause any vacancy in the jury, when empaneled, to be filled; and after the jury shall have been organized and shall have viewed and examined the land and premises affected by the condemnation proceeding, they shall proceed, in the presence of the court, to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in such land, where said appraisement shall be recorded. In making their decision, the jury shall take into consideration, whenever a part only is taken, the benefit to the remainder of the tract, and shall give their appraisement accordingly. (Mar. 3, 1901, 31 Stat. 1266, ch. 854, § 486; Mar. 1, 1929, 45 Stat. 1438, ch. 439.)

AMENDMENT

The 1929 amendment struck out this section of the 1901 act and inserted in lieu thereof the above section.

NOTES TO DECISIONS

INSTRUCTIONS

In condemnation proceeding, instruction authorizing jury to appraise property at its full market value is not appropriate if anything less than fee is condemned. *O'Hara* v. *District of Columbia,* 1945 (147 F. 2d 146, 79 U. S. App. D. C. 302, certiorari denied 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1975).

PAYMENT AS CONDITION PRECEDENT

Owner cannot be divested of his property until payment has been made. *Macfarland* v. *Elverson* (32 App. D. C. 81).

"PERSONS IN INTEREST"

In the proceeding before the appraisal commissioners, the District has a right to be heard and therefore is one of the "persons in interest" therein mentioned. *Beyer* v. *Brownlow* (51 App. D. C. 92, 276 Fed. 460).

WITNESSES

It was error to allow a District assessor to testify as an expert witness in proceedings to condemn land for school sites, and certain other municipal purposes. *Johnson* v. *Reichelderfer* (60 App. D. C. 186, 50 Fed. (2d) 336). But see § 14–309 which changes this rule.

§ 16–607 [25: 46]. Objections and exceptions to appraisement—New jury.

The said court shall hear and determine any objections or exceptions that may be filed to any appraisement of the jury and shall have the power to vacate and set any appraisement aside, in whole or in part, when satisfied that it is unjust or unreasonable, in which event the court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed as in the case of the first jury: *Provided,* That if vacated in part the residue of the appraisement as to the land condemned shall not be affected thereby: *And provided further,* That the objections or exceptions to the appraisement shall be filed within twenty days after the return of the appraisement to the court: *And provided further,* That the appraisement of the new jury shall be final when confirmed by the court. (Mar. 3, 1901, 31 Stat. 1266, ch. 854, § 487; Apr. 19, 1920, 41 Stat. 566, ch. 153; Mar. 1, 1929, 45 Stat. 1438, ch. 439.)

AMENDMENTS

The 1920 amendment struck out § 487 of the 1901 act and inserted in lieu thereof a new section which in turn was struck out by the 1929 amendment and the section was made to read as above.

The 1901 act provided that the marshal should summon a jury of seven disinterested men, not related to anyone interested, to meet and view the premises, giving the parties at least six days' notice of the time and place of meeting. Under the 1920 act, the court ordered the jury commission to draw from the special box the names of as many persons as the court might direct, from which the court should appoint a jury of seven capable and disinterested persons for the same purpose.

NOTES TO DECISIONS

DECISION UNDER PRIOR LAW

The words "any of the parties interested" in § 487 of the 1901 Code (this section) were not to be given such a restricted meaning as to include only owners of the land and to exclude the party equally interested in the proceeding, namely, the District. *Beyer* v. *Brownlow* (51 App. D. C. 92, 276 Fed. 460).

Pending an appeal, the lower court may prevent removal or disturbance of improvements until after a view thereof may be had by the jury impaneled or to be impaneled in a condemnation case. *In re Acquisition of Original Lot 14, and Assessment and Taxation Lot in Washington, D. C.* (60 App. D. C. 216, 50 Fed. (2d) 981.)

IN GENERAL

This section provides for the summoning of a jury by the marshal and requires the jury to take certain benefits into consideration in returning their verdict. *Beyer* v. *Brownlow* (51 App. D. C. 92, 276 Fed. 460).

It was the intent of Congress to make these proceedings adversary throughout and allow either party to invoke the jury hearing provided by this section. *Beyer* v. *Brownlow* (51 App. D. C. 92, 276 Fed. 460).

APPRAISAL BY JURY

Jury award of almost $2,000 less than the lowest estimate of the District experts was held to be unjust and unreasonable and sufficient grounds for authorizing reversal for new appraisal. *Branson* v. *Reichelderfer* (62 App. D. C. 129, 65 Fed. (2d) 280).

It was the province of the jury to weigh the evidence after seeing and hearing all the witnesses and viewing the premises, and trial court did not abuse its discretion in refusing to set aside verdict. *Willis* v. *United States* (69 App. D. C. 129, 99 Fed. (2d) 362).

SETTING ASIDE VERDICT

In condemnation proceeding, the court does not have the power to set aside the verdict of a jury in the absence of plain errors of law, misconduct, or grave error of fact indicating plain partiality or corruption. *Johnson* v. *Hazen* (69 App. D. C. 151, 99 Fed. (2d) 384).

§ 16–608 [25: 47]. Payment of award—Transfer of title.

If the appraisement of the jury should not be objected to by the parties interested, it shall be confirmed by the court, or, if the appraisement of the new jury is confirmed by the court, the commissioners of said District shall pay the amount awarded by the jury out of the appropriation made therefor or deposit the same in the same manner as directed in section 7–215, and thereupon the land condemned shall become and be the property of the District. (Mar. 3, 1901, 31 Stat. 1266, ch. 854, § 488; Mar. 1, 1929, 45 Stat. 1438, ch. 439.)

AMENDMENT

The 1929 amendment struck out § 488 of the 1901 act and inserted in lieu thereof the above section.

§ 16–609 [25: 48]. Court to fix time for return of verdict.

In every case involving the condemnation of land in the District of Columbia, at the close of the hearing thereof, the court shall fix a time in which the jury shall return its verdict or to report to the court the reasons why said verdict or appraisement can not be returned by the time fixed: *Provided,* That the court shall have the power, within its discretion, to extend the time for the return of the verdict or appraisement. (Mar. 3, 1901, 31 Stat. 1266, ch. 854, § 489; Mar. 1, 1929, 45 Stat. 1438, ch. 439.)

AMENDMENT

The 1929 amendment struck out § 489 of the 1901 act and inserted in lieu thereof the above section.

§ 16–610 [25: 49]. Proceedings may be abandoned by Commissioners—Liability.

It shall be optional with the Commissioners to abide by the verdict of the jury and occupy the land appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the same: *Provided, however,* That if such condemnation proceeding shall be abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of the court reimburse such owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred

by him or them in such proceeding; and the sum or sums so awarded shall constitute a judgment or judgments against the District of Columbia: *Provided further*, That no such owner shall be entitled to such reimbursement in any case where the proceeding is abandoned at the request or with the consent of the owner of such property. (Mar. 3, 1901, 31 Stat. 1266, ch. 854, § 490; Mar. 1, 1929, 45 Stat. 1439, ch. 439; July 11, 1947, 61 Stat. 312, ch. 228.)

AMENDMENT

The 1929 amendment struck out § 490 of the 1901 act and inserted in lieu thereof the above section.

Act July 11, 1947, cited to text, added the two provisos.

NOTES TO DECISIONS

ABANDONMENT OF PROCEEDING

This section makes it optional with the Commissioners to abide by the verdict of the jury or, within a reasonable time to be fixed by the court, to abandon the proceeding. *Beyer* v. *Brownlow* (51 App. D. C. 92, 276 Fed. 460).

§ 16–611 [25: 50]. Pending proceedings and suits by United States not affected.

Nothing herein contained in sections 16–601 to 16–610 shall affect any suit or proceeding begun prior to March 1, 1929, pending on March 1, 1929, or thereafter to be instituted by or on behalf of the United States for the condemnation of land for any purpose; but all such suits and proceedings shall be conducted in accordance with existing law or such laws as hereafter may be enacted. (Mar. 3, 1901, 31 Stat. 1266, ch. 854, § 491; June 30, 1902, 32 Stat. 530, ch. 1329; Mar. 1, 1929, 45 Stat. 1439, ch. 439.)

AMENDMENT

The 1929 amendment struck out § 491 of the 1901 act, as amended by the 1902 act, and inserted in lieu thereof the above section. The sense of the former section is now contained in § 16–610.

LAND IN EXCESS OF NEEDS

§ 16–612 [25: 50a]. Excess condemnation or purchase—Commissioners or agencies of the United States may acquire excess land.

In order to promote the orderly and proper development of the seat of government of the United States, the commissioners of the District of Columbia, or agencies of the United States authorized by law to acquire real estate, are authorized and empowered to acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land, or rights in or on land or easements or restrictions therein, within said District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to the usefulness of such public uses, works, and improvements, in order to preserve the view, appearance, light, and air and to enhance the usefulness of such public works and improvements to prevent the use of private property adjacent to such public works and improvements in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property. (Apr. 11, 1935, 49 Stat. 152, ch. 57, § 1.)

CROSS REFERENCE

General provisions concerning condemnation, § 16–601 and notes.

§ 16–613 [25: 50b]. Excess land may be sold—Money received to be paid into Treasury—Notice of sale to abutting owners—Sale at appraised value—Authorities may retain excess land for public use.

The commissioners of the District of Columbia or agencies of the United States authorized by law to acquire real estate are further authorized, upon completion of public improvements, to subdivide, and sell at public or private sale, or exchange, any such excess land, and to carry out such purpose or purposes, to convey any lands acquired in excess of that actually needed and which is not essential to the usefulness of such public works, with such reservations concerning the future use and occupation of such real estate as may in their discretion be necessary to protect such public improvements; and any and all moneys received from any sale or transfer of land in accordance with the provisions of sections 16–612 to 16–618 shall be covered into the treasury of the United States, and where the property sold was acquired under an appropriation authorized for the use of the District of Columbia, any and all moneys received from such sale shall be deposited in the treasury to the credit of the revenues of the District of Columbia: *Provided,* That in the event of sale as herein authorized, notice of not less than twenty days before such sale shall be published in a daily newspaper published in the District of Columbia, and notice by registered mail before such sale be mailed to the last-known address of the persons listed on the records of the assessor of the District of Columbia as the owners of the land abutting the land to be sold; and sold at not less than the fair market value at the time sold as determined by appraisement of the assessor of the District of Columbia: *Provided, however,* That whenever the authorities of the United States or the District of Columbia having jurisdiction over such acquired land, or rights or easements, shall elect to retain any or all of the same for use of the United States or the District of Columbia, the said authorities are authorized to use said land, rights, or easements for park, playground, highway, or alley purposes, or for any other lawful purpose which the said authorities shall deem advantageous or in the public interest. (Apr. 11, 1935, 49 Stat. 152, ch. 57, § 2.)

CROSS REFERENCE

Other provisions concerning sale of public lands, § 9–301 et seq.

§ 16–614 [25: 50c]. Appropriations available for purchase of excess land.

Whenever land is purchased as provided in sections 16–612 to 16–618, in excess of that needed in connection with a particular project or improvement, any and all appropriations available for the payment of the purchase price, costs, and expenses incident to such project or improvement are hereby authorized for use in the payment of the purchase price, costs, and expenses of any and all excess land purchased in connection with such project or improvement, as provided in said sections. (Apr. 11, 1935, 49 Stat. 153, ch. 57, § 3.)

§ 16–615 [25: 50d]. Proceedings for condemnation of excess land—Payment of awards, damages, and costs—No assessment for benefits.

Whenever excess land is condemned by the commissioners of the District of Columbia, in accordance with the provisions of sections 16–612 to 16–618, the condemnation proceedings for the acquisition of such land shall be in accordance with sections 16–601 to 16–611, and/or sections 7–301 to 7–305, 7–313 to 7–318 and 7–320 to 7–323: *Provided,* That any and all appropriations available for the payment of awards, damages, and costs in condemnation proceedings under sections 16–601 to 16–611 are hereby authorized for use in the payment of awards, damages, and costs in any and all condemnation proceedings under said sections for the acquisition of excess land, as provided in sections 16–612 to 16–618: *Provided further,* That any and all appropriations available for the payment of awards, damages, and costs in condemnation proceedings under sections 16–601 to 16–611 and/or sections 7–301 to 7–305, 7–313 to 7–318 and 7–320 to 7–323 are hereby authorized for use in the payment of awards, damages, and costs in any and all condemnation proceedings under said sections 16–601 to 16–611 and/or said sections 7–301 to 7–305, 7–313 to 7–318 and 7–320 to 7–323, for the acquisition of excess land as provided in sections 16–612 to 16–618: *And provided further,* That in any and all cases where such excess land is condemned, no assessments for benefits shall be levied by the jury in respect to the acquisition of said excess land. (Apr. 11, 1935, 49 Stat. 153, ch. 57, § 4.)

§ 16–616 [25: 50e]. Proceedings for condemnation of excess land by agencies of the United States—Payment of award, damages, and costs.

Whenever excess land is condemned by agencies of the United States, other than the commissioners of the District of Columbia, as provided in sections 6–612 to 6–618, the condemnation proceedings for the acquisition of such land shall be in accordance with sections 16–619 to 16–644, or any law or laws in effect at the time of such condemnation for the acquisition of land in the District of Columbia for use of the United States: *Provided,* That any and all appropriations available for the condemnation of land under sections 16–619 to 16–644, are hereby authorized for use in the payments of awards, damages, and costs in any and all condemnation proceedings under sections 16–619 to 16–644 for the acquisition of excess land, as provided in sections 6–612 to 6–618. (Apr. 11, 1935, 49 Stat. 153, ch. 57, § 5.)

Cross Reference

Other laws for acquisition of land, see Cross References to § 16–601.

§ 16–617 [25: 50f]. Existing laws pertaining to condemnation or acquisition of streets, alleys, or land not affected.

None of the provisions of sections 16–612 to 16–618 shall be construed as repealing any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia. (Apr. 11, 1935, 49 Stat. 154, ch. 57, § 7.)

Compiler's Note

Section 7 of the 1935 act contains an additional phrase, before the first word of the section above, which reads "with the exception of section 6." This refers to § 6 of the said act, which reads as follows: "That the portion of the Act approved February 25, 1907, entitled 'An Act to amend an Act entitled "An Act to amend an Act entitled 'An Act to establish a Code of Laws for the District of Columbia,' regulating proceedings for condemnation of land for streets".' (34 Stat. 930, ch. 1195, § 491g), reading: 'And where part of any lot, piece, parcel, or tract of land has been dedicated for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the jury, in determining whether the remainder of said lot, piece, parcel, or tract is to be assessed for benefits, and the amount of benefits, if any to be assessed thereon, shall also take into consideration the fact of such dedication and the value of the land so dedicated' is hereby repealed."

Cross Reference

See note to § 7–208.

§ 16–618 [25: 50g]. Saving clause.

If any provision of sections 16–612 to 16–618 is held invalid, the remainder of said sections shall not be affected thereby. (Apr. 11, 1935, 49 Stat. 154, ch. 57, § 8.)

ACQUISITION OF LAND IN THE DISTRICT OF COLUMBIA FOR USE OF THE UNITED STATES

§ 16–619 [25: 100]. Condemnation of land for United States—Proceeding by Attorney General in District Court of the United States for the District of Columbia.

Whenever the head of any executive department or independent bureau, or other officer of the United States, or any board or commission of the United States, hereinafter referred to as the acquiring authority, has been, or hereafter shall be, authorized by law to acquire real property in the District of Columbia for the construction of any public building or work, or for parks, parkways, public playgrounds, or any other public purpose, such acquiring authority shall be, and hereby is, authorized to acquire the same in the name of the United States by condemnation under judicial process whenever in the opinion of such acquiring authority it is necessary or advantageous so to do; and in every such case the Attorney General of the United States, upon the request of such acquiring authority, shall cause a proceeding in rem for such condemnation to be instituted in the District Court of the United States for the District of Columbia, holding a special term as a District Court of the United States, which court is hereby vested with jurisdiction of all such cases of condemnation with full power to hear and determine all issues of law and fact that may arise in the same. (Mar. 1, 1929, 45 Stat. 1415, ch. 416, § 1.)

Statutory Reference

Street extensions and parks—Condemnation of land—Payment of cost.—"Hereafter the United States shall not bear any part of the cost of the acquisition of land for street extensions, but when the condemnation of any land for such purposes is authorized by law the total cost of the land and the expenses of the condemnation proceedings shall be assessed as benefits; in any case where land is condemned for a parkway, including a street or streets, where such parkway is of considerable length with

relation to its width, not less than one-half of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits; and in any case where land is condemned for a public park, not less than one-third of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits." (June 26, 1912, 37 Stat. 139, ch. 182.)

CROSS REFERENCES

Condemnation proceedings in cases concerning alleys and minor streets, § 7–301 et seq.

Generally provisions concerning condemnation, § 16–601 and notes.

See §§ 16–612 to 16–618, providing for excess condemnation by agencies of the United States.

NOTES TO DECISIONS

CONSTITUTIONALITY

Act permitting head of executive department to obtain realty in the District of Columbia for public buildings is constitutional as against the contention that it is invalid in that "it does not provide for the payment of damages to the owner of the land and the vesting of title in the United States contemporaneously." *Potomac Elec. Power Co.* v. *United States* (66 App. D. C. 77, 85 Fed. (2d) 243, cert. den. 299 U. S. 565, 81 L. Ed. 416, 57 Sup. Ct. 27).

SITES FOR GOVERNMENT BUILDINGS

Under authority of this and other acts the Secretary of the Treasury was authorized to acquire site for Department of Interior building. *Potomac Elec. Power Co.* v. *United States* (66 App. D. C. 77, 85 Fed. (2d) 243, cert. den. 299 U. S. 565, 81 L. Ed. 416, 57 Sup. Ct. 27).

§ 16–620 [25: 101]. Procedure—Petition—Contents.

Every such condemnation proceeding shall be instituted by filing in said court a verified petition which shall contain or have annexed thereto the following:

(1) A statement of the authority under which and the public use for which the lands are to be acquired.

(2) A description of the lands to be acquired sufficient for the identification thereof. Where such lands, taken together, constitute all privately-owned land in any square in the City of Washington it shall be sufficient to designate the same by the number of the square as the same appears on the records of squares in the office of the surveyor of the District of Columbia.

(3) A plan showing the lands to be acquired.

(4) The names of the owners of the lands to be acquired, so far as ascertainable by reasonable inquiry, and of the persons in actual and open possession of the same. If it shall appear from the land records of the District of Columbia that a right, title, interest, or estate in said lands was formerly vested in any person who is known, or may be presumed, to be deceased, which right, title, interest, or estate, if valid and subsisting, would be adverse to the person in present possession claiming to be owner of said lands, and the names of the heirs or devisees of such deceased person are not known, it shall be sufficient to describe them in the petition and in any order of citation or publication or other process thereon as "the unknown heirs or devisees" of such deceased person. And such designation shall be valid and effective to all intents and purposes as if all persons claiming by, through, or under said deceased person had been specifically named.

(5) A statement of the estate or interest in said lands which petitioner intends to acquire for the public use stated.

(6) A prayer that said lands be condemned and taken for the use of the United States and that the title to the same in fee simple, or such estate or interest as may be specified, be vested in the United States. (Mar. 1, 1929, 45 Stat. 1415, ch. 416, § 2.)

§ 16–621 [25: 102]. Citation and notice.

The court shall cause public notice of the institution of such proceeding to be given by an order of citation requiring all persons claiming to have any right, title, interest, or estate in the lands to be acquired, or to be entitled to compensation in respect of the taking of the same, and all persons occupying the same, to appear in said court on a day to be named in said order of citation to answer the petition and make claim for the compensation to which they deem themselves entitled. (Mar. 1, 1929, 45 Stat. 1416, ch. 416, § 3.)

§ 16–622 [25: 103]. Contents of citation.

Such order of citation shall contain a description of the lands to be acquired sufficient for the identification thereof and the names of the persons given in the petition as claiming to have any right, title, interest, or estate in said lands or to be entitled to compensation in respect of the taking of the same and as occupying the same. If any such person is alleged in said petition to be a nonresident of the District of Columbia, the order of citation shall also state the last place of residence of such person, if known. (Mar. 1, 1929, 45 Stat. 1416, ch. 416, § 4.)

§ 16–623 [25: 104]. Publication of citation.

Said order of citation shall be published at least once a week for three consecutive weeks in some newspaper of general circulation published in the District of Columbia. (Mar. 1, 1929, 45 Stat. 1416, ch. 416, § 5.)

§ 16–624 [25: 105]. Service of citation.

The court shall also direct service of a copy of said order of citation before the return date of the said order upon each of the persons named therein who is, so far as ascertainable by reasonable inquiry, residing or sojourning at the time within the District of Columbia. The court shall also require a copy of said order of citation to be mailed, postpaid, to such of the persons named therein as may be shown by said petition or affidavit to be nonresidents of the District of Columbia, such copy to be addressed to such persons at their last-known places of residence. (Mar. 1, 1929, 45 Stat. 1416, ch. 416, § 6.)

§ 16–625 [25: 106]. Default in appearance—Consent presumed.

In default of appearance on or before the return day specified in said order of citation (or on or before such further day as the court for cause shown may allow for the purpose) every person having any right, title, interest, or estate in the lands described in said order, or entitled to compensation in respect of the taking of the same or entitled to the possession of, or occupying the same, shall be deemed to have

consented to the taking and condemnation of said lands for the public purpose stated at and for such compensation as may be finally awarded therefor in the proceeding and shall be bound by all orders, judgments, and decrees that may be entered in said proceeding. (Mar. 1, 1929, 45 Stat. 1416, ch. 416, § 7.)

§ 16–626 [25: 107]. Appearance after default.

The court may, by order, upon application and for cause shown, at any time prior to final judgment permit any person claiming any right, title, interest, or estate in the lands to be acquired or to be entitled to compensation in respect of the taking of the same to appear in said proceeding upon such terms and conditions as the court may direct. (Mar. 1, 1929, 45 Stat. 1416, ch. 416, § 8.)

§ 16–627 [25: 108]. Guardians ad litem.

If any person having, or claiming to have, any right, title, interest, or estate in the lands to be acquired, or entitled, or claiming to be entitled, to compensation in respect of the taking of the same, or entitled or claiming to be entitled, to the possession of the same, appears to be under legal disability by reason of infancy, insanity, idiocy, or other like cause, the court, after the return day specified in the order of citation, upon the application of any person interested, shall appoint some suitable person as guardian ad litem to appear for such person under disability. Failure to apply for the appointment of a guardian ad litem for any such person under disability shall not affect the validity of the proceedings. (Mar. 1, 1929, 45 Stat. 1417, ch. 416, § 9.)

§ 16–628 [25: 109]. Declaration of taking—Contents—Vesting of title and right to compensation—Taking possession.

The petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing of said declaration of taking and of the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the registry. No sum so paid into the registry shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the registry of the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands or any parcel thereof shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. (Mar. 1, 1929, 45 Stat. 1417, ch. 416, § 10.)

NOTES TO DECISIONS

CONSTITUTIONALITY

Section permitting the advance taking of property for public use and providing for judgment against the United States with six per cent. interest until paid does not violate the Fifth Amendment to the Constitution. *Lee* v. *United States* (61 App. D. C. 153, 58 Fed. (2d) 879).

JUDGMENT AGAINST UNITED STATES

Judgment may be obtained against the United States in condemnation case, not enforceable by execution and levy. *Lee* v. *United States* (61 App. D. C. 153, 58 Fed. (2d) 879).

LIABILITY FOR LOCAL ASSESSMENT

Where landowners contended that while proceeding to condemn land for street purposes instituted by District of Columbia was pending, Federal Government filed declaration of taking against their property and took title thereto whereupon compensation was paid to them by the Federal Government and that thereafter land was no longer subject to assessment for benefits by District of Columbia, issue thus tendered was not appropriate for decision in the condemnation proceeding. *Brown* v. *District of Columbia,* 1944 (143 F. 2d 374, 79 U. S. App. D. C. 148).

§ 16–629 [25: 110]. Setting date for trial—Jury—Selection—Qualifications.

When all the persons who have been summoned or published against in said case, as hereinbefore provided, have either answered or are in default as aforesaid, and all persons under legal disability have answered by their guardians ad litem, or in the judgment of the court ample opportunity has been given for the same, the case shall be regarded as ready for trial, and, upon the application of any party to said suit, the court shall forthwith set an early date to be especially fixed by it, not less than

ten nor more than twenty days from the date of such application, for the trial of the issues of law and fact raised in said case, and the ascertainment of the compensation or damages to be awarded for the taking of the lands to be condemned. The court shall thereupon order the jury commission to draw from the special box provided for by law the names of as many persons, not less than twenty, as the court may direct, and to certify said names to the clerk of the District Court of the United States for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in said court on the day specially fixed for the trial of said cause. Before selecting or impaneling said jury, the court may, in its discretion, cause a second, third, or other further list of prospective jurors to be drawn, certified, and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who shall have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto shall be freeholders of said district and shall not be in the service or employment of the United States or of the District of Columbia. (Mar. 1, 1929, 45 Stat. 1418, ch. 416, § 11.)

NOTES TO DECISIONS

VALUATION OF PROPERTY

Instruction was proper which stated that recent bona fide sales under fair market conditions, or recent contracts of sale under like conditions of any lot or lots, parcel or parcels within the limits of the area to be condemned, or in the vicinity thereof, or so situated as to have a bearing upon the market value of the land to be condemned, may be considered by the jury in so far as such sales or sale contracts may reasonably be regarded as throwing light upon the fair market value of the land to be condemned. *Loughran* v. *United States* (62 App. D. C. 57, 64 Fed. (2d) 555).

§ 16–630 [25: 110a]. Oath of juror.

To the jurors so selected and impaneled the court shall administer an oath or affirmation that they are not interested in any manner in the lands to be condemned and that they are not to their knowledge related to any person interested therein, and that they will impartially and to the best of their judgment ascertain, appraise, and award just compensation for the lands to be condemned and taken in said proceeding. (Mar. 1, 1929, 45 Stat. 1418, ch. 416, § 12.)

§ 16–631 [25: 110b]. Jury to view lands—Parties.

After being selected, impaneled, and sworn, and before hearing the evidence, the jury shall be taken by the marshal upon the lands to be acquired at a time to be fixed by the court in order to view the said lands; and all parties in interest, their attorneys, and representatives shall have the right to be present at such view. (Mar. 1, 1929, 45 Stat. 1418, ch. 416, § 13.)

§ 16–632 [25: 110c]. Trial—Measure of compensation.

After such view and the jury shall have returned to the court, the trial of said cause shall be proceeded with before the court and jury. Any person who has appeared in the cause claiming any right, title, interest, or estate in the land to be taken, or compensation on account of the taking of the same, shall have the right to submit evidence concerning the value of such land, parcel by parcel, the nature and extent of his right, interest, or estate therein, and the compensation justly due for the taking of the same. No new structure or substantial alteration of a permanent nature, the purpose or natural effect of which is to enhance the value of the land to be taken, erected, or made thereon after the institution of the condemnation proceedings shall be taken into consideration in assessing and awarding compensation for said land. If the land to be valued shall have been taken by virtue of a declaration of taking, as provided in sections 16–619 to 16–644, said land shall be valued for the purposes of compensation as of the date of such taking; and if, by act of the owner or other party claiming to be entitled to compensation, the value of the land for the use for which it is to be taken has been diminished, as by cutting trees, excavating, grading, or otherwise altering its physical condition, allowance, if petitioner so elects, shall be made in assessing compensation for such diminution in value. Every party, whether petitioner or respondent, may except to any ruling of the court admitting or excluding evidence, granting, rejecting, or modifying prayers for instruction, or other ruling made in the cause in like manner as in other civil trials. (Mar. 1, 1929, 45 Stat. 1418, ch. 416, § 14.)

NOTES TO DECISIONS

BURDEN OF PROOF

In a condemnation proceeding, the party who offers evidence to prove the price paid for parcels other than those involved following negotiation and purchase, has the burden of establishing as a preliminary fact that purchase was made without compulsion, coercion, or compromise. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

EVIDENCE

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, opinion evidence concerning whether price paid by defendant for one lot in issue was reasonable was properly excluded, where evidence related to a sale made 15 years before commencement of proceeding, and record failed to reveal witness' qualifications to testify concerning changed conditions or to give other than hearsay testimony. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

In a condemnation proceeding, the reception of evidence offered to prove the price paid for parcels other than those involved following negotiation and purchase calls for the exercise of discretion by the trial court. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, exclusion of evidence of an offer to purchase made to property owner by a third person was not error where consideration offered consisted in part of other property and consequently involved collateral issues concerning its value. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, even if evidence offered to prove price paid by the United

States following negotiation and purchase for parcels other than those of defendants was admissible, exclusion of that evidence was not error where defendants did not establish as a preliminary fact that purchase was made without compulsion, coercion, or compromise. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

§ 16–633 [25: 110d]. Verdict.

At the close of the evidence the court shall charge the jury as in other trials at law and furnish them with a written form to be used in returning their verdict. The members of the jury may separate when not engaged in the consideration of their verdict. When the jury, or a majority thereof, shall have agreed upon their verdict they shall, through their foreman, so notify the court, which shall thereupon pass an order setting a day for the return of the verdict in open court. The verdict shall be in writing subscribed by the jurors concurring therein, and shall set forth, parcel by parcel, the compensation to be paid for the taking of the lands to be condemned. (Mar. 1, 1929, 45 Stat. 1419, ch. 416, § 15.)

§ 16–634 [25: 110e]. Power to set aside verdict—Procedure for new trial.

The court shall have power to set aside or vacate the verdict of the jury, or any award contained therein, and to grant a new trial upon the same grounds as in other trials at law and upon the ground that said verdict, or any award contained therein is, in the judgment of the court, grossly excessive, or inadequate, or otherwise unreasonable or unjust. In case the verdict or any award contained therein is set aside or vacated, the court shall award a new trial with respect to the lands as to which said verdict or such award is set aside or vacated; and the court shall fix a date for a new trial and order a new panel of prospective jurors to be drawn, certified, and summoned as hereinbefore provided; and the cause shall be proceeded with as if no such verdict or award had been rendered. (Mar. 1, 1929, 45 Stat. 1419, ch. 416, § 16.)

NOTES TO DECISIONS

Motion for New Trial

Where in a proceeding by the United States to condemn property in the District of Columbia, appellant did not file motion for a new trial, but objected to the finding of the jury as if action had been brought by the District; said objection was treated as motion for new trial. *Willis* v. *United States* (69 App. D. C. 129, 99 Fed. (2d) 362).

Permissive Nature of Proceedings

The provisions appearing in § 16–634 et seq. relating to acquisition of land in the District of Columbia for use of the United States concerning motions for new trial and other proceedings after verdict are "permissive", in sharp contrast to corresponding provisions appearing in § 16–607 relating to acquisition of land for the District of Columbia. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

§ 16–635 [25: 110f]. Motion for new trial—Judgment final.

No motion for a new trial or to set aside or vacate the verdict, in whole or in part, or any award contained therein, shall be made after the expiration of twenty days, Sundays and legal holidays excluded, from the rendition thereof; and if no such motion be filed within such time, the verdict and the award or awards contained therein shall become final and conclusive, and judgment shall be entered thereon. (Mar. 1, 1929, 45 Stat. 1419, ch. 416, § 17.)

§ 16–636 [25: 110g]. Judgment.

In the event that any verdict or any award contained therein shall become final by lapse of time or that any motion filed to set aside or vacate the same or to grant a new trial in respect thereof shall have been denied or overruled, the court shall enter judgment against the United States in favor of the parties entitled for the sum or sums awarded as just compensation, respectively, for the lands condemned for the use of the United States. (Mar. 1, 1929, 45 Stat. 1420, ch. 416, § 18.)

§ 16–637 [25: 110h]. Payment of judgment.

Any final judgment rendered against the United States under any provision of sections 16–619 to 16–644 shall have like force and effect as a money judgment rendered against the United States by the Court of Claims in a suit in respect of which the United States has expressly consented to be sued; and the amount of any such final judgment shall be paid out of any specific appropriation applicable to the case, if any such there be; and when no such appropriation exists, said judgment shall be paid in the same manner (except with respect to interest) as judgments rendered by the Court of Claims in cases under its general jurisdiction. (Mar. 1, 1929, 45 Stat. 1420, ch. 416, § 19.)

§ 16–638 [25: 110i]. Appeal—Deficiency judgment.

Any party aggrieved by any final judgment in a proceeding under sections 16–619 to 16–644 may appeal therefrom to the United States Court of Appeals for the District of Columbia, and upon such appeal said court shall have power to review said judgment and affirm, reverse, or modify the same as on appeals in other actions at law. No such appeal, nor any bond or undertaking given therein, shall operate to prevent or delay the vesting of title to said lands in the United States, but upon the filing of a declaration of taking or (if no declaration of taking is filed) upon payment to the party entitled or deposit in the registry of the court, of the amount awarded by any judgment, title shall vest in the United States, saving to all parties their right to just compensation. In the event that the compensation finally awarded and adjudged for such lands shall exceed the amount awarded and adjudged by the judgment appealed from, said court shall enter judgment for the deficiency with interest as hereinbefore provided. (Mar. 1, 1929, 45 Stat. 1420, ch. 416, § 20.)

NOTES TO DECISIONS

Right to Appeal

Defendants were not foreclosed from maintaining an appeal from judgment entered in condemnation proceeding by their failure to move to set aside the verdict and for a new trial, where proceeding was brought to acquire land in the District of Columbia for use of the United States. *Hannan* v. *U. S.*, 1942 (131 F. 2d 441, 76 U. S. App. D. C. 118).

§ 16–639 [25: 110j]. Payment of compensation into court—Vesting of title.

Payment into the registry of the court for the use of all parties entitled of the sum of money ad-

judged to be just compensation for the lands to be condemned and taken, or for any parcel thereof, or any interest therein, shall constitute payment of such compensation. Upon such payment, the petitioner shall be entitled to an order declaring that the title to the lands in respect of which such compensation is so paid is vested in the United States of America. The money so paid into the registry of the court shall be deemed to be vested in the persons owning or interested in said lands, according to their respective estates and interests, and said money shall take the place and stand in lieu of the lands condemned. The court, upon the application of the petitioner or of any party in interest, shall have power to determine and direct who is entitled to receive payment of the money so paid into the registry, and may, in its discretion, order a reference to the auditor of the court or a special master to ascertain the facts on which such determination and direction are to be made. (Mar. 1, 1929, 45 Stat. 1420, ch. 416, § 21.)

§ 16–640 [25: 110k]. Delivery of possession.

In cases in which possession shall not have been awarded pursuant to a declaration of taking, when the adjudged compensation shall have been paid into the registry as directed in the judgment of the court and a certified copy of such judgment, with a certificate of the clerk of the court showing such payment, has been served upon the person in possession of said lands, such person shall, upon demand, deliver possession thereof to the petitioner. In case possession is not delivered when so demanded, the petitioner may apply to the court without notice (unless the court shall require notice to be given) for a writ of assistance, and the court, upon proof of the service of the copy of the final order or judgment and certificate of the clerk showing payment as aforesaid, shall thereupon cause such writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property. (Mar. 1, 1929, 45 Stat. 1421, ch. 416, § 22.)

§ 16–641 [25: 110*l*]. Amendments.

In all proceedings under sections 16–619 to 16–644 the court shall have power at any stage of the proceeding to allow amendments in form or substance in any petition, citation, summons, process, answer, declaration of taking, order, verdict, or other proceeding, including amendment in the description of the lands sought to be condemned, whenever such amendment will not impair the substantial right of any party in interest. (Mar. 1, 1929, 45 Stat. 1421, ch. 416, § 23.)

§ 16–642 [25: 110m]. General provisions.

In all proceedings under sections 16–619 to 16–644 where the mode or manner of conducting the proceeding is not expressly provided for by law, the court shall have power to make all necessary orders and give all necessary directions to carry into effect the object and intent of sections 16–619 to 16–644 and of the several Acts of Congress heretofore or hereafter enacted conferring authority to acquire lands for the use of the United States. (Mar. 1, 1929, 45 Stat. 1421, ch. 416, § 24.)

§ 16–643 [25: 110n]. Provisions for saving pending proceedings.

The repeal, express or implied, of any existing law or the alteration or amendment thereof by virtue of anything in sections 16–619 to 16–644 contained shall not affect (1) any act done or any right, including the right to appeal, accruing or accrued under the law so repealed, altered, or amended, or (2) any suit or proceeding pending in the District Court of the United States for the District of Columbia, or in the United States Court of Appeals for the District of Columbia, or the Supreme Court of the United States upon writ of error, appeal, certificate, writ of certiorari, or upon application for writ of error, appeal, certificate, or writ of certiorari at the time of the taking effect of sections 16–619 to 16–644; but all suits and proceedings shall be proceeded with and disposed of in the same manner and with the same effect as if sections 16–619 to 16–644 had not been passed, save and except only that in any condemnation suit or proceeding for the condemnation of land for the use of the United States pending in the District Court of the United States for the District of Columbia in which commissioners of appraisement shall not have been appointed by the court at the time of the taking effect of sections 16–619 to 16–644, the trial of said condemnation suit or proceeding shall proceed and be conducted from that point forward in accordance with sections 16–619 to 16–644; and all evidence as to the value of the property to be condemned and taken shall be given before the court and jury as in sections 16–619 to 16–644 prescribed and the matter shall be proceeded with and disposed of in the same manner and with like effect as if the proceeding had been originally begun and the petition filed and all prior proceedings had under and pursuant to the provisions of sections 16–619 to 16–644 and after the taking effect of the same. (Mar. 1, 1929, 45 Stat. 1421, ch. 416, § 25.)

§ 16–644 [25: 110*o*]. Proceedings on behalf of the District of Columbia, not affected by sections 16–619 to 16–644.

Sections 16–619 to 16–644 shall not affect any suit or proceeding begun, pending, on March 1, 1929, or hereafter to be instituted under sections 16–601 to 16–611 by or on behalf of the commissioners of the District of Columbia for the condemnation of lands for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use; but as to all such suits and proceedings, and the right of said commissioners to institute the same, said sections 16–601 to 16–611 shall be and remain in full force and effect as if said sections had not been made. (Mar. 1, 1929, 45 Stat. 1422, ch. 416, § 26.)

Chapter 7.—GAMING TRANSACTIONS

Sec.
16–701. Contracts growing out of gaming transactions to be void.
16–702. Suits to recover losses at gaming.

Sec.
16–703. Defendant relieved upon discovery and repayment of losses.
16–704. Winning more than $26.67 by fraud—Penalty.
16–705. Penalty for assaulting, beating, or fighting on account of money won by gaming.
16–706. Deceits and fraud in gaming—Penalty—How recovered.
16–707. Certain gaming contracts void—Penalty—How recovered.

§ 16–701 [19: 101]. Contracts growing out of gaming transactions to be void.

All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, given, granted, drawn, or entered into, or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities, shall be for any money, or other valuable things whatsoever, won by gaming or playing at cards, dice, tables, tennis, bowls or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent, or advanced for such gaming or betting, as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so gaming or betting, as aforesaid, or that shall, during such play, so play or bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever; any statute, law, or usage to the contrary thereof in any wise notwithstanding: and that where such mortgages, securities, or other conveyances, shall be of lands, tenements, or hereditaments, or shall be such as encumber or affect the same, such mortgages, securities, or other conveyances, shall enure and be to and for the sole use and benefit of, and shall devolve upon such person or persons as should or might have, or be entitled to such lands, tenements, or hereditaments, in case the said grantor or grantors thereof, or the person or persons so encumbering the same, had been naturally dead, and as if such mortgages, securities, or other conveyances, had been made to such person or persons so to be entitled after the decease of the person or persons so incumbering the same; and that all grants or conveyances to be made for the preventing of such lands, tenements, or hereditaments, from coming to, or devolving upon such person or persons hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever. (9 Ann, ch. 14, § 1, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 689; Comp. Stat., D. C., p. 243, § 12.)

Compiler's Note

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

NOTES TO DECISIONS

Credit Transactions

Contracts growing out of gaming transactions are declared by law to be void, but credit transactions could not be deemed gaming within the meaning of the statute in absence of rule of law which says that one who sells on credit has no standing in court because he knew or should have known that the purchaser was a bad credit risk. *Universal Jewelry Company, Inc.* v. *McIver* (D. C. Mun. App. 1949, 68 A. 2d 226).

Effect of Negotiable Instruments Law

Insofar as this chapter may or would, if in force, affect the validity of negotiable instruments embraced by the Negotiable Instruments Law they are inconsistent with the provisions of the last-mentioned act, and are to that extent repealed and are no longer, as to negotiable instruments, in force in the District of Columbia. *Wirt* v. *Stubblefield* (17 App. D. C. 283).

§ 16–702 [19: 102]. Suits to recover losses at gaming.

Any person or persons whatsoever, who shall, at any time or sitting, by playing at cards, dice, tables, or other game or games whatsoever, or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting, in the whole, the sum or value of twenty-six dollars and sixty-seven cents, and shall pay or deliver the same, or any part thereof, the person or persons so losing, and paying and delivering the same, shall be at liberty, within three months then next, to sue for and recover the money or goods so lost, and paid or delivered, or any part thereof, from the respective winner and winners thereof, with costs of suit, by action of debt founded on this section, to be prosecuted in any court of record, in which actions or suits no more than one imparlance shall be allowed; in which actions it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won of the plaintiff's to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this section, without setting forth the special matter; and in case the person or persons who shall lose such money, or other thing, as aforesaid, shall not, within the time aforesaid, really and bona fide, and without covin or collusion, sue, and with effect prosecute for the money, or other thing, so by him or them lost, and paid or delivered, as aforesaid, it shall and may be lawful to and for any person or persons, by any such action or suit, as aforesaid, to sue for and recover the same, and treble the value thereof, with cost of suits, against such winner or winners, as aforesaid; the one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the District of Columbia. (9 Ann, ch. 14, § 2, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 690; Md. Act 1781, ch. 16, § 1; Comp. Stat. D. C., p. 244, § 13 R. S., D. C., 837; Md. Act 1777, ch. 6, § 1.)

Cross Reference

See Compiler's Note to § 16–701.

§ 16–703 [19: 103]. Defendant relieved upon discovery and repayment of losses.

Upon the discovery and repayment of the money, or other thing so to be discovered and repaid, as aforesaid, the person or persons, who shall so discover and repay the same, as aforesaid, shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, which he or they may have incurred by the playing for, or winning such money or other thing so dis-

covered and repaid, as aforesaid. (9 Ann, ch. 14, § 4, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Comp. Stat. D. C., p. 244, § 15.)

§ 16–704 [19: 104]. Winning more than $26.67 by fraud—Penalty.

If any person or persons whatsoever, at any time or times, do, or shall, by any fraud or shift, cousenage, circumvention, deceit, or unlawful device or ill practice whatsoever, in playing at or with cards, dice, or any the games aforesaid, or in or by bearing a share or part in the stakes, wagers or adventures, or in or by betting on the sides or hands of such as do or shall play, as aforesaid, win, obtain or acquire to him or themselves, or to any other or others, any sum or sums of money or other valuable thing or things whatsoever, or shall at any one time or sitting, win of any one or more person or persons whatsoever, above the sum or value of $26.67, that then every person or persons so winning by such ill practice, as aforesaid, or winning at any one time or sitting above the said sum or value of $26.67, and being convicted of any of the said offences, upon any indictment or information to be exhibited against him or them, for that purpose, shall forfeit five times the value of the sum or sums of money, or other thing so won, as aforesaid; and in case of such ill practice, as aforesaid, shall be deemed infamous; and such penalty to be recovered by such person or persons as shall sue for the same by such action, as aforesaid. (9 Ann, ch. 14, § 5, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Md. Act 1780, ch. 23, § 3; Md. Act 1781, ch. 16, § 1; Comp. Stat., D. C., p. 245, § 16.)

Compiler's Note

The original British statute set out in this section provided for an amount of 10 pounds. This amount was reduced by the codifiers to a dollar equivalent of $26.67. The dollar equivalent was reached by a consideration of the Maryland act of 1781 (ch. 16, §§ 1, 2), which provided that all fines could only be imposed in current money at the rate in value of 7 shillings 6 pence for $1, or "Spanish milled pieces of 8," which was the Spanish dollar declared to be of the value of 100 cents. (1 Stat. § 9, pp. 248, 300.)

Cross Reference

Gambling offenses generally, §§ 22–1501 to 22–1512.
See note to § 16–701.

Statutory Reference

The punishment of whipping and of standing in pillory abolished, U. S. C., Title 18, § 545.

§ 16–705 [19: 105]. Penalty for assaulting, beating, or fighting on account of money won by gaming.

In case any person or persons whatsoever, shall assault and beat, or shall challenge or provoke to fight any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or provoking to fight such other person or persons upon the account aforesaid, being thereof convicted upon an indictment or information to be exhibited against him or them for that purpose, shall suffer imprisonment during the term of two years. (9 Ann, ch. 14, § 8, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 692; Comp. Stat., D. C., p. 245, § 17.)

Cross Reference

Assaults and disorderly conduct generally, §§ 22–501 to 22–507, 22–1101 to 22–1120.

Statutory Reference

No conviction or judgment shall work corruption of blood or any forfeiture of estate, U. S. C., Title 18, § 544.

§ 16–706 [19: 106]. Deceits and fraud in gaming—Penalty—How recovered.

If any person or persons do, or shall by any fraud, shift, cousenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, tables, tennis, bowls, kittles, shovelboard; or in or by cock-fightings, horseraces, dogmatches, or foot-races, or other pastimes, game or games whatsoever, or in, or by bearing a share, or part of the stakes, wagers, or adventures, or in, or by betting on the sides or hands of such as do, or shall play, act, ride or run, as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever, that then every person and persons so offending, as aforesaid, shall *ipso facto* forfeit and lose treble the sum or value of money, or other thing or things so won, gained, obtained or acquired; the one moiety thereof to the District of Columbia; and the other moiety thereof unto the person or persons grived, or who shall lose the money, or other thing or things so gained; so as every such loser and person grieved in that behalf, do, or shall prosecute and sue for the same within six calendar months next after such play: and in default of such prosecution, the same other moiety to such person or persons as shall or will prosecute or sue for the same within one year next after the said six months expired: And the said forfeiture shall or may be sued for, or recovered by action of debt, bill, plaint, or information; and all and every such plaintiff or plaintiffs, informer or informers, shall in every such suit and prosecution have and recover his and their treble costs against the person offending and forfeiting, as aforesaid. (16 Car. 2, ch. 7, § 2, 1664; Kilty's Rept., p. 239; Alex. Brit. Stat., p. 476; Comp. Stat., D. C., p. 242, § 10; R. S., D. C., § 837.)

Cross Reference

See Compiler's Note to § 16–701.

§ 16–707 [19: 107]. Certain gaming contracts void—Penalty—How recovered.

If any person or persons shall at any time or times, play at any of the said games, or any other pastime, game or games whatsoever (other than with and for ready money) or shall bett on the sides or hands of such as do, or shall play thereat, and shall lose any sum or sums of money, or other thing or things so played for, exceeding the sum of two hundred and sixty-six dollars and sixty-seven cents at any one time or meeting, upon ticket or credit, or otherwise, and shall not pay down the same at the time when he or they shall so lose the same, the party and parties who loseth or shall lose the said monies, or other thing or things so played or to be played for, above the said sum, shall not in that case be bound or compelled, or compellable to pay or make good the same; but the contract and contracts for the same,

and for every part thereof, and all and singular judgments, statutes, recognizances, mortgages, conveyances, assurances, bonds, bills, specialties, promises, covenants, agreements and other acts, deeds and securities whatsoever, which shall be obtained, made, given, acknowledged or entered into for security or satisfaction, of, or for the same, or any part thereof, shall be utterly void and of none effect: And that the person or persons so winning the said monies, or other things shall forfeit, and lose treble the value of all such sum and sums of money, or other thing or things, which he shall so win, gain, obtain or acquire, above the said sum, the one moiety thereof to the District of Columbia; and the other moiety thereof to such person or persons as shall prosecute or sue for the same within one year next after the time of such offence committed; and to be sued for by action of debt, bill, plaint, or information; and that every such plaintiff or plaintiffs, informer or informers, shall in every such suit and prosecution, have and receive his treble costs against the person and persons offending and forfeiting as aforesaid. (16 Car. 2, ch. 7, § 3, 1664; Kilty's Rept., p. 239; Alex. Brit. Stat., p. 477; Md. Act, 1781, ch. 16, § 1; Comp. Stat. D. C., p. 243, § 11; R. S., D. C., § 837.)

STATUTORY REFERENCE

The punishment of whipping and standing in pillory abolished, U. S. C., Title 18, § 545.

Chapter 8.—HABEAS CORPUS

Sec.

16–801. Petition—Sufficiency—Issuance of writ by court or justice.
16–802. Service of writ—Return.
16–803. Evasion of writ.
16–804. Refusal to produce—Forfeiture—Penalty.
16–805. Right to true copy of commitment—Forfeiture.
16–806. Inquiry into cause of detention—Bail—Bond.
16–807. Traversing return.
16–808. Right of parent, guardian, committee, or husband to writ.

§ 16–801 [24: 201]. Petition—Sufficiency—Issuance of writ by court or justice.

Any person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or any person in his or her behalf, may apply by petition to the District Court of the United States for the District of Columbia, or any justice thereof, for a writ of habeas corpus, to the end that the cause of such commitment, detainer, confinement, or restraint may be inquired into; and the court or the justice applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant such writ, directed to the officer or other person in whose custody or keeping the party so detained shall be, returnable forthwith before said court or justice. (Mar. 3, 1901, 31 Stat. 1372, ch. 854, § 1143.)

CROSS REFERENCE

Special proceedings for commitment or discharge of feeble-minded person do not abridge right to petition for writ of habeas corpus, § 32–618.

RULES OF CIVIL PROCEDURE

Application of rules, see Rule 81 (a) (2).

NOTES TO DECISIONS

ALIENS

Immigration officers have jurisdiction under the statute to exclude an alien who is not entitled under some statute or treaty to come into the United States, yet if the alien is entitled, of right, by some law or treaty, to enter this country, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restraining the alien of his liberty, presents a judicial question for the decision of which the courts may intervene upon a writ of habeas corpus. *Lem Moon Sing* v. *United States* (158 U. S. 538, 39 L. Ed. 1082; 15 Sup. Ct. 967).

A petition for habeas corpus ought not to be entertained unless the court is satisfied that the petitioner can make out at least a prima facie case. *United States* v. *Sing Tuck* (194 U. S. 161, 48 L. Ed. 917, 24 Sup. Ct. 621).

Habeas corpus will lie to test the legal authority of the Secretary of Labor to deport alien contract laborers and to revoke the permit of entry. *Bata Shoe Co.* v. *Perkins* ((D. C.–D. C.), 33 Fed. Supp. 508).

ALLEGATIONS OF PETITION

Habeas corpus petition alleging unlawful confinement of petitioner because he was incompetently represented by counsel who advised him to plead guilty due to arrangement for a light sentence, but not alleging that petitioner misunderstood the nature of the charges or that he did not knowingly plead guilty or was coerced by judge or prosecutor to enter the plea, was properly dismissed. *Thompson* v. *Huff* (App. D. C. 1945, 149 F. 2d 842).

If prior application for writ of habeas corpus has been made, in same case, by petitioner or in his behalf, petition should so state and such other facts and documents should be set out as will allow judge properly to determine whether issues presented by present petition were decided in former proceeding. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, 80 U. S. App. D. C. 9, certiorari denied 65 S. Ct. 1580, 325 U. S. 890, 89 L. Ed. 2003).

Mere general assertions of incompetency or disinterest on part of counsel do not constitute prima facie showing required by this section to support a petition for writ of habeas corpus. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Petition for writ of habeas corpus should state by what authority respondent purports to detain petitioner, and, if that authority is a warrant of commitment, a copy of it, together with the transcript of record, or its essential parts, in proceeding which resulted in the commitment should be attached to or set out in the petition. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Mere mistakes of counsel cannot be reviewed on a petition for habeas corpus and, to justify a writ on allegations regarding incompetency of attorney, an extreme case must be disclosed. *Jones* v. *Huff* (App. D. C. 1945, 152 F. 2d 14, 80 U. S. App. D. C. 254). *Council* v. *Clemmer* (App. D. C. 1948, 165 F. 2d 249; see also 177 F. 2d 22, 85 U. S. App. D. C. 74, certiorari denied 70 S. Ct. 150, 338 U. S. 880, 94 L. Ed. 114).

AMENDMENT OF PETITION

If petition for writ of habeas corpus is insufficient in substance, the judge to whom it is presented may, in interest of justice, permit or require its amendment, especially where petition is product of petitioner's own inexpert draftsmanship. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

APPOINTMENT OF COUNSEL

Court passing on sufficiency of petition for writ of habeas corpus is not required to appoint an attorney for petitioner and no deprivation of constitutional rights results from failure to do so. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

A prisoner may not obtain a writ of habeas corpus on sole ground that counsel, properly appointed by court to defend him, acted incompetently or negligently during

the criminal proceeding. *Diggs* v. *Welch* (App. D. C. 1945, 148 F. 2d 667, certiorari denied 65 S. Ct. 1576, 89 L. Ed. 2002).

Where petition for writ of habeas corpus stated a cause of action entitling petitioner to discharge from custody if allegations thereof were true and petitioner made affidavit stating that he was a poor person unable to pay costs, petitioner was entitled to appointment of competent counsel under the forma pauperis statute, 28 U. S. C. §§ 832 to 836. *Ex parte Rosier,* 1942 (133 F. 2d 316, 76 U. S. App. D. C. 214).

Petition for writ of habeas corpus alleging that, prior to trial in criminal prosecution, petitioner was brought from Virginia to the District of Columbia without extradition proceedings in spite of his protest and his unwillingness to waive extradition, presented no substantial question, and denial of petition without appointment of counsel for defendant was not error. *Sheehan* v. *Huff,* 1944 (142 F. 2d 81, 78 U. S. App. D. C. 391, certiorari denied 64 S. Ct. 1287, 322 U. S. 764, 88 L. Ed. 1591).

Where petition for a writ of habeas corpus charged, in effect, that attorney appointed by court to represent petitioner in a criminal case gave petitioner such bad advice through negligence or ignorance in connection with entering his plea that he could not be said to have been represented by competent counsel, but there was no allegation that court did not select counsel with care, and with due regard for petitioner's constitutional rights, appellate court was required to presume that court appointed a reputable member of bar in whom it had confidence. *Diggs* v. *Welch* (App. D. C. 1945, 148 F. 2d 667, certiorari denied 65 S. Ct. 1576, 89 L. Ed. 2002).

Where a petition for writ of habeas corpus has been presented, legally sufficient on its face to start the court's machinery in motion, the judge should appoint either a guardian or counsel to represent the petitioner in the further stages of the proceeding. *Overholser* v. *Treibly,* 1945 (147 F. 2d 705, 79 U. S. App. D. C. 389, certiorari denied 66 S. Ct. 38, 89 L. Ed. 2002).

Coercion or Restraint

Alleged fact that petitioner had been seized and deprived of his liberty by police force and had been lodged in a cell and held in custody incommunicado and brutally beaten, for purpose of having petitioner make confession of guilt, was not sufficient to justify issuance of writ of habeas corpus, where no confession had been received or offered in evidence in criminal trial and petitioner was under no coercion when he appeared in court at criminal trial. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Consideration of Petition

A petition for writ of habeas corpus must be carefully considered by judge regardless of source of the petition, and the petition should not be scrutinized with technical nicety nor duty of consideration discharged as a mere matter of routine. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Construction

This section must be so interpreted as to preserve, in full vigor, the writ of habeas corpus, but it is necessary to give full meaning to all the language of the section and thus protect the writ from abuse. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, 80 U. S. App. D. C. 9, certiorari denied 65 S. Ct. 1580, 325 U. S. 890, 89 L. Ed. 2003).

Duty of Court

Where prisoner filed letter as petition for writ of habeas corpus, action of court in designating competent counsel to take such steps as might seem advisable in protection of rights of prisoner was proper and fully within court's discretion, but views of counsel could not be a substitute for duty of court to determine its action in respect to the writ from petition itself and return and traverses filed thereto. *Jones* v. *Huff* (App. D. C. 1945, 152 F. 2d 14, 80 U. S. App. D. C. 254).

Federal Prisoner

A court in the District of Columbia does not have jurisdiction to issue a writ of habeas corpus against Attorney General of the United States or his representative on petition of a federal prisoner confined outside the District, although Attorney General designates place of confinement of person convicted of an offense against the United States. *Sanders* v. *Bennett* (App. D. C. 1945, 148 F. 2d 19).

Insanity Cases

Habeas corpus is available to inmate of hospital for insane, not for purpose of determining inmate's mental condition, but as a method of initiating an appropriate procedure for determination of the inmate's mental condition. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

"Habeas corpus" is a proper remedy to challenge the continued confinement in mental hospital of persons who claim to be restored to mental health. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

Issuance by Court of Appeals

Application for habeas corpus to the various District Judges within District must first be shown before justice of federal appellate court will entertain application for writ of habeas corpus. *In re Gersing,* 1944 (145 F. 2d 481, 79 U. S. App. D. C. 245).

The United States Court of Appeals for the District of Columbia cannot entertain an original petition for writ of habeas corpus, since no statute confers such jurisdiction upon the court. *In re Greene,* 1944 (140 F. 2d 175, 78 U. S. App. D. C. 320).

Appropriate procedure to procure writ of habeas corpus in District of Columbia should have been to address petition to District Court or one of the twelve judges thereof, and petition addressed to one of the justices of the United States Court of Appeals would be denied. *In re Holzworth* (D. C., D. C. 1947, 74 F. Supp. 388).

Issuance of Writ

When a petition for writ of habeas corpus is presented to a judge with a request for leave to file it, the judge may, if petitioner is not entitled to a writ, deny leave to file it. *Young* v. *Gill* (App. D. C. 1945, 149 F. 2d 843).

Alleged inconsistencies in the proof and insufficiency of evidence on which to sustain conviction were matters reviewable only on appeal and would not support issuance of writ of habeas corpus. *Young* v. *Gill* (App. D. C. 1945, 149 F. 2d 843).

After a petition for writ of habeas corpus has been filed, if it satisfies statutory requirements, the judge should issue the writ forthwith. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Jurisdiction

Courts in the District of Columbia may issue writs of habeas corpus directed to those in direct charge of penal institutions of the District which happen to be located just outside its borders, since it is the duty of the District to adjudicate matters arising out of the conduct of its own institutions. *Sanders* v. *Bennett* (App. D. C. 1945, 148 F. 2d 19).

Petition for writ of habeas corpus can challenge jurisdiction of court which committed petitioner by showing either that court had no jurisdiction to try petitioner or that during its proceeding his constitutional rights were so far denied that the court lost jurisdiction. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Petition for writ of habeas corpus should establish jurisdiction of court by showing place of petitioner's confinement, that it is within territorial jurisdiction of court, name, and address of person in whose custody petitioner is restrained, and any other jurisdictional facts which nature of case may require. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

District Court has jurisdiction of habeas corpus proceedings filed by inmates of the District of Columbia Reformatory at Lorton, Virginia, despite the fact that the

institution is not within the District. *Burns* v. *Welch* (App. D. C. 1947, 159 F. 2d 29).

District Court was without jurisdiction to entertain petition for writ of habeas corpus attacking petitioner's original conviction, where petitioner was held in jurisdiction solely by reason of writ of habeas corpus ad prosequendum. *Pelley* v. *Mathews U. S. Marshal* (App. D. C. 1947, 163 F. 2d 700, 82 U. S. App. D C. 264, certiorari denied 68 S. Ct. 113, 392 U. S. 811, 92 L. Ed. 388, rehearing denied 68 S. Ct. 207, 332, U. S. 832, 92 L. Ed. 406).

United States District Court for District of Columbia has authority to entertain petitions for habeas corpus on behalf of persons confined in the District workhouse at Occoquan, Virginia, or in the District of Columbia Reformatory at Lorton, Virginia, though located outside the District. *In re Flick* (D. C., D. C. 1948, 76 F. Supp. 979, affirmed 174 F. 2d 983, 85 U. S. App. D. C. 70, certiorari denied 70 S. Ct. 150, 338 U. S. 879, 94 L. Ed. 114, rehearing denied 70 S. Ct. 158, 338 U. S. 940, 94 L. Ed. 114).

United States District Court for District of Columbia is without jurisdiction to issue habeas corpus to test legality of imprisonment of a person incarcerated in the American Occupation Zone of Germany by judgment of a United States Military Tribunal, though there might be no other tribunal in which relief could be had. *In re Flick* (D. C., D. C. 1948, 76 F. Supp. 979, affirmed 174 F. 2d 983, 85 U. S. App. D. C. 70, certiorari denied 70 S. Ct. 150, 338 U. S. 879, 94 L. Ed. 114, rehearing denied 70 S. Ct. 158, 338 U. S. 940, 94 L. Ed. 114.

Justices May Issue

The justices of the District Court of the United States for the District of Columbia have power to issue writ of habeas corpus ad prosequendum. *Downey* v. *United States* (67 App. D. C. 192, 91 Fed. (2d) 223).

Nature of Writ

The writ of habeas corpus in respect of lunacy is one of relief rather than of original adjudication. *Barry* v. *Hall* (68 App. D. C. 350, 98 Fed. (2d) 222).

"Habeas corpus" can be sought only to effectuate a prisoner's immediate release, and not to test the legality of imprisonment at some future time. *Pope* v. *Huff,* 1941 (117 F. 2d 779, 73 App. D. C. 170, certiorari denied 62 S. Ct. 134, 314 U. S. 669, 86 L. Ed. 535, rehearing denied 62 S. Ct. 299, 314 U. S. 713, 86 L. Ed. 568, rehearing denied 62 S. Ct. 358, 314 U. S. 714, 86 L. Ed. 569).

Habeas corpus proceeding is not a "criminal proceeding" within provision of U. S. Const. Amend. for assistance of counsel. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, 80 U. S. App. D. C. 9, certiorari denied 65 S. Ct. 1580, 325 U. S. 890, 89 L. Ed. 2003).

The use of writ of habeas corpus extends to those exceptional cases where conviction has been in disregard of constitutional rights of accused and where writ is only effective means of preserving his rights. *Jones* v. *Huff* (App. D. C. 1945, 152 F. 2d 14, 80 U. S. App. D. C. 254).

Parole Eligibility

Eligibility to parole cannot be tried in habeas corpus. *Jones* v. *Welch* (App. D. C. 1945, 151 F. 2d 769, 80 U. S. App. D. C. 253).

Where allegations of petition for habeas corpus related to manner in which parole board arrived at its decision not to admit petitioner to parole, the petition was properly denied. *Jones* v. *Welch* (App. D. C. 1945, 151 F. 2d 769, 80 U. S. App. D. C. 253).

Procedure on Application

It is the usual procedure on an application for a writ of habeas corpus in a Federal court for the court to issue the writ and on the return, to hear and dispose of the case but it may without issuing the writ consider and determine whether the facts alleged by the petition, if proved, would warrant discharge of the prisoner. *Ex parte Quirin,* 1942 (63 S. Ct. 2, 317 U. S. 1, 87 L. Ed. 3, affirming 47 F. Supp. 431).

Where petition for writ of habeas corpus stated a cause of action entitling petitioner to discharge from custody if allegations were true, failure to accord petitioner a hearing in respect of the merits of his petition was error. *Ex parte Rosier,* 1942 (133 F. 2d 316, 76 U. S. App. D. C. 214).

Representation by Counsel

The mere fact that an accused was not represented by counsel is not in itself a sufficient basis for granting a writ of habeas corpus. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Rule to Show Cause

If, upon consideration of a petition which has been filed, it appears that petitioner is not entitled to writ of habeas corpus, the court should refuse to issue it, but, if allegations of petition are inconclusive, the judge may issue rule to show cause why writ should not be granted. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Where rule to show cause why writ of habeas corpus should not be granted has been issued and judge finds from facts exhibited by opposing party that no issue of fact or law is involved, the judge may refuse to grant the writ, in which event it is not necessary to hold a hearing. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Service

The proper person to be served in ordinary habeas corpus proceeding by a federal prisoner confined outside the District of Columbia is warden of penitentiary in which prisoner is confined, rather than an official in District of Columbia who supervises the warden. *Sanders* v. *Bennett* (App. D. C. 1945, 148 F. 2d 19).

Subsequent Petitions

Where judge to whom is presented a petition for writ of habeas corpus, together with a request for leave to file, ascertains that petitioner has on a previous petition had a full hearing on same identical allegations, leave to file second petition should be denied. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Where comparison of present habeas corpus petition with prior petition disclosed that all matters sought to be raised on the second petition with one exception were raised on the prior petition district court would not grant the writ raising the same points tried out in the prior proceeding where there were no extraordinary circumstances. *Jordon* v. *Clemmer* (D. C., D. C. 1948, 80 F. Supp. 539).

Sufficiency of Petition

Petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammerer* v. *Huff* (71 App. D. C. 246, 110 Fed. (2d) 113).

A petition alleging that petitioner was restrained of his liberty, describing the person detaining him and the place of the detention, and asserting illegality of the restraint by alleging that the petitioner was at the time of the filing of the petition of sound mind and that his original criminal sentence had expired, stated a cause of action for discharge or issuance of a rule to show cause. *Ex parte Rosier,* 1942 (133 F. 2d 316, 76 U. S. App. D. C. 214).

A petitioner seeking a writ of habeas corpus must make a prima facie case, that is, his petition must show he is entitled to the writ. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Judgment under which petitioner seeking writ of habeas corpus is detained in penal institution is impervious to collateral attack unless his petition sufficiently challenges the jurisdiction of the court which committed him. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Petition for writ of habeas corpus on ground that conviction had been obtained by use of improper evidence and that petitioner had been deprived of effective assistance of counsel was properly denied without hearing, where there was no transcript of proceedings in the criminal trial and petition did not disclose exceptional circumstances. *Strong* v. *Huff* (App. D. C. 1945, 148 F. 2d 692, followed in 149 F. 2d 30, 2 cases).

Petition for writ of habeas corpus charging, in effect, that attorney appointed by court to represent petitioner in criminal prosecution gave him such bad advice through negligence or ignorance in connection with entering his plea that petitioner did not have effective or competent representation by counsel, was insufficient to require a hearing. *Diggs* v. *Welch* (App. D. C. 1945, 148 F. 2d 667, certiorari denied 65 S. Ct. 1576, 89 L. Ed. 2002).

Petition for writ of habeas corpus, alleging in substance that attorney representing defendant, at trial on charge of forgery, failed to object to admission in evidence of an involuntary confession, failed to call witnesses who would have established innocence of defendant, failed to offer defense although defendant was innocent, and failed to take such steps as would have permitted jury to see a sample of defendant's handwriting after a request for such evidence had been made by a juror, was sufficient and denial of petition without hearing was improper. *Jones* v. *Huff* (App. D. C. 1945, 152 F. 2d 14, 80 U. S. App. D. C. 254).

TIME FOR APPLICATION

Before trial in District Court where indictment is pending, accused may not test, by means of habeas corpus proceeding, validity of statute which he is charged with having violated. *Pelley* v. *Botkin* (App. D. C. 1945, 152 F. 2d 12, 80 U. S. App. D. C. 251).

Where application for writ of habeas corpus showed that petitioner was held in custody to await trial under an indictment which accused him of violating 18 U. S. C. §§ 9–13 and that petitioner sought to be released solely because of alleged unconstitutionality of said sections, the application was premature. *Pelley* v. *Botkin* (App. D. C. 1945, 152 F. 2d 12, 80 U. S. App. D. C. 251).

WAIVER OF COUNSEL

Where court granted four successive continuances at request of accused, and thereafter accused reported his attempts made to employ certain counsel, declined the court's offer to appoint counsel, did not request another continuance, and said he preferred to represent himself, which he proceeded to do competently, accused waived right to counsel and allegation in support of petition for writ of habeas corpus that he was denied right to have assistance of counsel was frivolous. *Koehne* v. *Matthews* (C. A., D. C. 1948, 169 F. 2d 889, certiorari denied 69 S. Ct. 654, 336 U. S. 929, 93 L. Ed. 1089, rehearing denied 69 S. Ct. 810, 336 U. S. 944, 93 L. Ed. 1100).

WRIT AS AN APPEAL

The writ of habeas corpus cannot be used for purpose of an appeal, or to retry issues, whether of law or of fact. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, 80 U. S. App. D. C. 9, certiorari denied 65 S. Ct. 1580, 325 U. S. 890, 89 L. Ed. 2003).

The writ of habeas corpus is not intended to serve the purposes of an appeal. *Eury* v. *Huff*, 1944 (146 F. 2d 17, 79 U. S. App. D. C. 289); *Fowler* v. *Gill* (App. D. C. 1946, 156 F. 2d 565, 81 U. S. App. D. C. 167, certiorari denied 67 S. Ct. 352, 329 U. S. 791, 91 L. Ed. 677, rehearing denied 67 S. Ct. 488, 329 U. S. 832, 91 L. Ed. 705).

Petition for writ of habeas corpus may not be used as a substitute for an appeal or writ of error. *Council* v. *Clemmer* (App. D. C. 1948, 165 F. 2d 249; see also 177 F. 2d 22, 85 U. S. App. D. C. 74, certiorari denied 70 S. Ct. 150, 338 U. S. 880, 94 L. Ed. 114).

§ 16–802 [24: 202]. Service of writ—Return.

The said writ shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained; and such officer or other person shall forthwith, or within such reasonable time as the court or justice shall direct, make return of the writ and cause the person detained to be brought before the court or justice, according to the command of the writ, and shall likewise certify the true cause of his detainer or imprisonment, if any, and under what color or pretense such person is confined or restrained of his liberty. (Mar. 3, 1901, 31 Stat. 1372, ch. 854, § 1144.)

NOTES TO DECISIONS

PRIVILEGED COMMUNICATIONS

Statements made by superintendent of hospital, in response to writ of habeas corpus, that petitioner was insane and dangerous, were entitled to immunity of absolute privilege, and could not be made basis of a libel complaint. *Cassel* v. *Overholser* (C. A., D. C. 1948, 169 F. 2d 683, certiorari denied 69 S. Ct. 741, 336 U. S. 939, 93 L. Ed. 1097).

PROCESS

Service on the commissioners of the District, the Director of Public Welfare, and the Superintendent of Penal Institutions, was sufficient to give the District Court jurisdiction to issue habeas corpus in District of Columbia workhouse located outside of the District. *Sanders* v. *Allen* (69 App. D. C. 307, 100 Fed. (2d) 717).

Although District Court had jurisdiction of habeas corpus proceeding filed by inmate of the District Reformatory at Lorton, Virginia, the court had no jurisdiction to issue writ directed to the Superintendent of the Reformatory who had neither home nor office in the District but resided at Lorton. *Burns* v. *Welch* (App. D. C. 1947, 159 F. 2d 29).

§ 16–803 [24: 203]. Evasion of writ.

On any application for a writ of habeas corpus, if probable cause be shown for believing that the person charged with confining or detaining the person applying or on whose behalf the application is made is about to remove the person so detained from the place where he may then be, for the purpose of evading any writ of habeas corpus or for other purposes, or that he would evade or not obey any such writ, the court or justice shall insert in the writ a clause commanding the marshal to serve the writ on the person to whom it is directed and cause said person immediately to be and appear before the court or justice, together with the person so confined or detained, and it shall thereupon be the duty of the marshal immediately to carry the person charged with the detention, together with the person detained, before the court or justice, and said court or justice shall proceed to inquire into the matter. (Mar. 3, 1901, 31 Stat. 1372, ch. 854, § 1145.)

§ 16–804 [24: 204]. Refusal to produce—Forfeiture—Penalty.

If any officer or other person to whom a writ of habeas corpus may be directed shall neglect or refuse to make return thereof, or to bring the body of the person detained, according to the command of the writ, he shall forfeit to the person detained the sum of five hundred dollars, and besides shall be liable to attachment and punishment as for a contempt. (Mar. 3, 1901, 31 Stat. 1372, ch. 854, § 1146.)

§ 16–805 [24: 205]. Right to true copy of commitment—Forfeiture.

Any person committed or detained, or any person in his behalf, may demand a true copy of the warrant of commitment or detainer, and any officer or other person detaining him who shall refuse or neglect to deliver to him a true copy of the warrant of commitment or detainer, if any there be, within six hours after the demand, shall forfeit to the party so

detained the sum of five hundred dollars. (Mar 3, 1901, 31 Stat. 1372, ch. 854, § 1147.)

§ 16–806 [24: 206]. Inquiry into cause of detention—Bail—Bond.

On the return of the writ of habeas corpus and the production of the person detained the court or justice shall immediately inquire into the legality and propriety of such confinement or detention, and if it shall appear that such person is detained without legal warrant or authority, he shall immediately be released or discharged; or if the court or justice shall deem his detention to be lawful and proper, he shall be remanded to the same custody, or, in a proper case, admitted to bail, if he be confined on a charge of a bailable criminal offense; and if he be bailed, the court or justice shall require a sufficient bond or recognizance to answer in the proper court, and transmit the same to said court. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1148.)

CROSS REFERENCE

Other provisions concerning bail, § 11–602 and notes.

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE

Official hospital records concerning a shooting in a Maine hospital were properly received in evidence in habeas corpus proceeding where issue was whether petitioner was sane or insane. *Williams* v. *Overholser* (App. D. C. 1945, 151 F. 2d 457).

EXAMINATION IN MENTAL CASES

Where petitioner seeks writ of habeas corpus to obtain release from confinement in mental hospital on ground that his mental health is restored, and petitioner demands an examination by independent experts, or in a doubtful case, even in absence of such a demand, it is the right of court to seek assistance of Commission on Mental Health in determining sanity of petitioner. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

In habeas corpus proceeding where petitioner sought release from confinement on ground that his mental health was restored, and requested that court provide expert witnesses in petitioner's behalf, not members of Commission on Mental Health, court denying request should have offered petitioner an examination by the Commission, but defect was cured by petitioner's insistence in appellate court that such relief if offered would be refused. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

Section 21–308 establishing the Commission of Mental Health vests a discretion in court to require the Commission's expert assistance in a habeas corpus proceeding in which by reason of his poverty petitioner is unable to secure the testimony of other professional witnesses. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

In habeas corpus proceeding by petitioner who has been duly committed to hospital for insane, the issue which must ultimately be decided is whether petitioner has sufficiently recovered from mental disease so that he may safely be released, and if despite judgment of hospital staff that petitioner has not recovered, there is substantial doubt on the question, it becomes duty of court to see that a new judgment on petitioner's sanity is made according to statutory procedure. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

If proceeding to determine mental condition of a civilian committed to hospital for insane was originally commenced but was not properly carried out and if judge, to whom petition for writ of habeas corpus is presented, is satisfied that, as a consequence, the petitioner was improperly committed, the judge should order that proceedings be reopened and a proper determination made of the petitioner's present mental condition. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

The frequency with which reexamination regarding present mental condition of a person committed to hospital for insane should be required must depend, in each case, upon the petition presented, the type of insanity for which petitioner was originally committed, time elapsed since last inquiry, and other considerations on record, of which judge is required to take judicial notice. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the only question before court was whether record raised sufficient doubt as to petitioner's insanity at present time to justify reopening commitment proceeding. *Ex parte De Marcos* (D. C., D. C. 1946, 65 F. Supp. 231).

EXPERT TESTIMONY

An inmate of hospital for insane, petitioning for writ of habeas corpus, may demand the expert testimony of members of the Commission on Mental Health, or court of its own motion may require such testimony. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

INSANE PERSONS

In habeas corpus proceeding, it is not function of judge to determine mental condition of a person who has been committed for insanity, but purpose of such proceeding is rather to determine whether substantial doubt of insanity exists which requires an order reopening proceeding under which petitioner was originally committed to hospital. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

If original commitment to hospital for insane was made under 24 U. S. C. § 191, which authorizes detention of insane persons in military service on order of military authority, and the judge, to whom petition for writ of habeas corpus is presented, is satisfied that a sufficient showing of present sanity is made, the judge should order that petitioner be released unless, within a reasonable time specified, the proper military authority orders his recommitment. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Where there was evidence in habeas corpus proceeding that petitioner, who had been convicted of manslaughter in Canada and sentenced to life imprisonment prior to his removal to United States, continued to be a person of unsound mind and was not a proper person to be at large, he should be committed to custody of superintendent of hospital of which he had been an inmate pending disposition of appeal from order discharging him, or further order of court. *Overholser* v. *De Marcos,* 1945 (147 F. 2d 145, 79 U. S. App. D. C. 397).

INVOLUNTARY CONFESSIONS

The question whether an involuntary confession was received in evidence in criminal prosecution could not be retried by habeas corpus. *Eury* v. *Huff,* 1944 (146 F. 2d 17, 79 U. S. App. D. C. 289).

JUDICIAL NOTICE

In ruling on petition for writ of habeas corpus, court could take judicial notice of its record showing a denial of a prior petition for habeas corpus. *Rookard* v. *Huff,* 1944 (145 F. 2d 708, 79 U. S. App. D. C. 291).

In habeas corpus proceeding by bankrupts who had been committed to jail for failure to comply with order directing them to turn over certain assets to bankruptcy trustee, justice of federal appellate court could take judi-

cial notice of fact that on former appeals of the bankrupts it was clearly made to appear that bankrupts had been guilty of gross fraud upon bankruptcy court. *In re Gersing,* 1944 (1945 F. 2d 481, 79 U. S. App. D. C. 245).

Jurisdiction of Military Commission

Charge that enemies with purpose of destroying war materials and utilities entered or after entry remained in United States territory without uniform alleged an offense which the President was authorized to order tried by military commission and the President's order convening the commission and laying down the procedure to be followed on trial before the commission and for review of its findings and sentence and the procedure followed by the commission were lawful so that the accused were not entitled to discharge on habeas corpus. *Ex parte Quirin,* 1942 (63 S. Ct. 2, 317 U. S. 1, 87 L. Ed. 3, affirming 47 F. Supp. 431).

Writs of habeas corpus were properly denied petitioners held in custody for trial before military commission appointed by the President, on grounds that the President was authorized to order trial before commission, that commission was lawfully constituted and that petitioners were held in lawful custody. *Ex parte Quirin,* 1942 (63 S. Ct. 1, 317 U. S. 1, 87 L. Ed. 3, affirming 47 F. Supp. 431).

Moot Questions

Where husband had been improperly imprisoned for contempt for noncompliance with order awarding maintenance pendente lite and suit money, in wife's suit for maintenance, the fact that he had been released from custody on giving bond for satisfaction of contempt judgment did not require dismissal of appeal from order denying writ of habeas corpus as "moot", since husband was in custody of law and was restrained of his liberty. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

New Evidence

Contention on habeas corpus petition that the murder for which petitioner was convicted did not take place as alleged could not be raised by writ of habeas corpus but only on a motion for new trial on the ground of newly discovered evidence. *Jordon* v. *Clemmer* (D. C., D. C. 1948, 80 F. Supp. 539).

Presumptions

Presumption existed that staff of hospital for insane was competent and that its opinion regarding sanity of an inmate, based on observation and treatment, was correct. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

In determining whether evidence in habeas corpus proceeding by petitioner who had been duly committed to hospital for insane raised doubt regarding validity of judgment of hospital staff sufficient to require reopening of commitment proceeding, presumption that persons legally committed to hospital for insane are insane was to be considered. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

The presumption in favor of regularity of judicial proceeding must be fully indulged in habeas corpus proceeding. *Jones* v. *Huff* (App. D. C. 1945, 152 F. 2d 14, 80 U. S. App. D. C. 254).

Purpose

A hearing on habeas corpus is not intended as a substitute for functions of a trial court. *Pelley* v. *Botkin* (App. D. C. 1945, 152 F. 2d 12, 80 U. S. App. D. C. 251).

Remand

Where petition for habeas corpus was inexpertly drawn by unschooled petitioner but petition did allege as defects in proceedings leading to imprisonment that petitioner was denied assistance of counsel at preliminary hearing and arraignment, that he was innocent of alleged crime, that his prior prison record was called to jury's attention and that his counsel failed to take promised appeal, order dismissing petition would be reversed and case remanded for amendment of petition and hearing on the merits. *Council* v. *Clemmer* (App. D. C. 1948, 165 F. 2d 249; see also 177 F. 2d 22, 85 U. S. App. D. C. 74, certiorari denied 70 S. Ct. 150, 338 U. S. 880, 94 L. Ed. 114).

Release of Petitioner

In habeas corpus proceeding, judgment should not order unconditional release of a person committed for insanity. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

A person held in hospital for insane because of insanity should not be ordered released, unconditionally, in a habeas corpus proceeding. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

If a civilian is committed to hospital for insane without a judicial determination of his mental condition, the judge in habeas corpus proceeding, should order that the petitioner be released unless, within a reasonable time specified, a proper proceeding shall have been commenced to secure such a judicial determination. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

A parole violator, who was returned to prison without permitting counsel who had previously represented prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. *Fleming* v. *Tate* (App. D. C. 1946, 156 F. 2d 848).

Res Judicata

The rule of res judicata does not apply in habeas corpus proceedings but the trial judge to whom petition is presented may examine the record in making his determination whether its allegations are sufficient, and he may do so even without issuing a rule to show cause. *Rookard* v. *Huff,* 1944 (145 F. 2d 708, 79 U. S. App. D. C. 291).

Where contention that jurors in second criminal trial were not impartial was made and supported by evidence in second habeas corpus proceeding which was dismissed and third petition for writ of habeas corpus showed that new evidence was in petitioner's possession when he filed second petition, and no reason was offered for not presenting the proof in second proceeding, controlling weight was properly given to the prior adjudication, and third petition was properly dismissed. *Pope* v. *Huff,* 1944 (141 F. 2d 727, 79 U. S. App. D. C. 18).

The doctrine of res judicata does not apply to habeas corpus proceedings, but the fact that same issues have been decided in a former proceeding may, as a matter of judicial discretion, be given controlling weight. *Pope* v. *Huff,* 1944 (141 F. 2d 727, 79 U. S. App. D. C. 18); *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Where District Court had jurisdiction in first instance to try petitioner and, before trial, had denied a motion to suppress evidence, the admission of the evidence was not such a denial of constitutional rights as to cause district court to lose jurisdiction, and writ of habeas corpus sought on theory that court had lost jurisdiction was properly denied. *Fowler* v. *Gill* (App. D. C. 1946, 156 F. 2d 565, 81 U. S. App. D. C. 167, certiorari denied 67 S. Ct. 352, 329 U. S. 791, 91 L. Ed. 677 rehearing denied, 67 S. Ct. 488, 329 U. S. 832, 91 L. Ed. 705).

A determination in habeas corpus proceeding is not strictly res judicata but the court will not grant a second writ raising the same point that was thoroughly tried out and determined in the prior proceeding, except under extraordinary circumstances. *Jordon* v. *Clemmer* (D. C., D. C. 1948, 80 F. Supp. 539).

Review

Presentation for judicial review of petition for writ of habeas corpus is the "institution of a suit" so that the denial by federal district court of leave to file the petition was a "judicial determination" reviewable on appeal to the United States Court of Appeals for the District of Columbia and reviewable in the Supreme Court by certiorari. *Ex parte Quirin,* 1942 (63 S. Ct. 2, 317 U. S. 1, 87 L. Ed. 3, affirming 47 F. Supp. 431).

On application for leave to file petition for habeas corpus to determine authority of the President to order accused charged with violating the law of war tried by military tribunal and on petition for certiorari to review

orders of district court denying application for leave to file petition for habeas corpus, the Supreme Court was not concerned with any question of guilt or innocence of the petitioners. *Ex parte Quirin,* 1942 (63 S. Ct. 2, 317 U. S. 1, 87 L. Ed. 3, affirming 47 F. Supp. 431).

Where first specification of charge against accused set forth violation of the law of war triable by military commission on application for leave to file petitions for habeas corpus and for certiorari to review orders of district court denying applications for such leave, the Supreme Court would not consider whether other charges were sufficient. *Ex parte Quirin,* 1942 (63 S. Ct. 2, 317 U. S. 1, 87 L. Ed. 3, affirming 47 F. Supp. 431).

Allegedly erroneous rulings on questions of evidence could be considered only on an appeal from the criminal sentence itself and could not be availed of in a habeas corpus proceeding, since the "writ of habeas corpus" is not a substitute for such an appeal. *Curtis* v. *Rives,* 1942 (123 F. 2d 936, 75 U. S. App. D. C. 66, affirming 36 F. Supp. 408).

Where charges that accused was not adequately represented in criminal trial and that he was denied the right of the assistance of counsel in perfecting appeal from judgment of conviction were not within the issues in habeas corpus hearing, and there was no finding of fact in respect of either of them, the reviewing court could not consider those charges on appeal from final order entered in habeas corpus proceeding. *Curtis* v. *Rives,* 1942 (123 F. 2d 936, 75 U. S. App. D. C. 66, affirming 36 F. Supp. 408).

Where evidence was conflicting as to whether person seeking discharge on writ of habeas corpus was insane, conclusions of trial court which discharged the writ on ground that petitioner was still insane could not be disturbed on appeal. *Williams* v. *Overholser* (App. D. C. 1945, 151 F. 2d 457).

Right to Jury Trial

In habeas corpus for release from an insane asylum petitioner is not entitled to jury trial, although the court may call a jury to render an advisory verdict. *Barry* v. *White* (62 App. D. C. 69, 64 Fed. (2d) 707).

The right to a jury trial does not exist on the issue of insanity in a habeas corpus proceeding. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the record raised sufficient doubt as to petitioner's insanity at present time to require a reexamination of his mental condition by the Commission on Mental Health in accordance with § 21–308 et seq. under which he was committed. *Ex parte De Marcos* (D. C., D. C. 1946, 65 F. Supp. 231).

Scope of Review

The scope of review on habeas corpus is limited to examination of the jurisdiction of the court whose judgment of conviction is challenged and does not include the consideration of guilt or innocence of the petitioner. *Evans* v. *Rives,* 1942 (126 F. 2d 633, 75 U. S. App. D. C. 242).

A judgment of conviction in criminal case cannot be attacked in habeas corpus proceeding except on jurisdictional grounds. *Blount* v. *Huff,* 1944 (144 F. 2d 21, 79 U. S. App. D. C. 204, certiorari denied 65 S. Ct. 276, 323 U. S. 787).

Facts of record with regard to what occurred at a trial cannot be attacked on habeas corpus. *Williams* v. *Huff,* 1944 (142 F. 2d 91, 79 U. S. App. D. C. 31).

Even if postponement of sentence under first conviction until after second conviction vitiated sentence imposed under first conviction, eligibility to parole, which might be affected, could not be tried in habeas corpus. *Pope* v. *Huff,* 1944 (141 F. 2d 727, 79 U. S. App. D. C. 18).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane, the only question before court was whether evidence raised a doubt regarding validity of judgment of hospital staff sufficient to require reopening of commitment proceeding. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

Where writ of habeas corpus is sought on ground that court which committed petitioner lost jurisdiction because of denial of petitioner's constitutional rights, the writ may be used not only to search record, but to inquire into facts regardless of whether they appear on record, thus giving to person in custody a judicial inquiry into truth and essence of the causes of his detention. *Dorsey* v. *Gill* (App. D. C. 1945, 148 F. 2d 857, certiorari denied 65 S. Ct. 1580, 89 L. Ed. 2003).

Where petitioner had been brought to the District of Columbia from a federal penitentiary outside the District on a writ of habeas corpus ad prosequendum, petitioner could not in habeas corpus proceeding to obtain his release under the prior writ have the court examine alleged errors in the prior trial which resulted in his confinement in penitentiary. *Noble* v. *Botkin* (App. D. C. 1946, 153 F. 2d 228, 80 U. S. App. D. C. 354).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

When directed to an inquiry into cause of imprisonment in judicial proceedings, scope of review on habeas corpus extends only to questions affecting jurisdiction of the court and sufficiency in point of law of the proceedings. *Council* v. *Clemmer* (App. D. C. 1948, 165 F. 2d 249; see also 177 F. 2d 22, 85 U. S. App. D. C. 74, certiorari denied 70 S. Ct. 150, 338 U. S. 880, 94 L. Ed. 114).

The guilt or innocence of the petitioner is a matter that cannot be reviewed in a habeas corpus proceeding which is limited to questions of jurisdiction and questions of constitutional rights. *Jordon* v. *Clemmer* (D. C., D. C. 1948, 80 F. Supp. 539).

Sufficiency of Evidence

Sufficiency of evidence to support a conviction is not jurisdictional and is not open to review in habeas corpus proceeding. *Eury* v. *Huff,* 1944 (146 F. 2d 17, 79 U. S. App. D. C. 289).

Evidence was insufficient to sustain order in habeas corpus proceeding discharging petitioner from custody of hospital for insane on ground that petitioner was sane. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

In habeas corpus proceeding by inmate of hospital for insane, that inmate's conduct in hospital was orderly, was not, standing alone, evidence that inmate should be released. *Overholser* v. *De Marcos* (App. D. C. 1945, 149 F. 2d 23, certiorari denied 65 S. Ct. 1579, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 90 L. Ed. 490).

Evidence was insufficient to sustain finding in habeas corpus proceeding that seventeen-year-old boy intelligently waived his constitutional right to counsel in criminal case. *Williams* v. *Huff,* 1945 (146 F. 2d 867, 79 U. S. App. D. C. 326).

In habeas corpus proceeding, record sustained determination that petitioner continued to be of unsound mind and justified judgment recommitting her to custody of authorities at hospital. *Anders* v. *Overholser* (App. D. C. 1948, 168 F. 2d 151).

Trial Proceedings

A petition for writ of "habeas corpus" may properly be used to challenge the jurisdiction of a court, but it cannot be used to review inconsistencies or even errors of law committed by a court of competent jurisdiction which are proper matters for review on appeal, but not on appeal from an order dismissing a petition for writ of habeas corpus. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

Where petitioner, seeking writ of habeas corpus, had been adjudged guilty of contempt for failure to comply with order requiring him to turn over assets of deceased's estate, inconsistency, if any, between the turnover order which assumed that petitioner had possession of assets,

and verdict of jury that petitioner had disposed of assets other than to the use of deceased, was not proper subject for review on habeas corpus. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

Where petitioner, seeking writ of habeas corpus, had been adjudged guilty of contempt for failure to comply with order requiring him to turn over assets of deceased's estate, alleged inconsistency between contempt decree and the turnover order, based on alternative nature of the turnover order, and the theory that a remedy at law was elected by entering judgment, with execution as at law, on the verdict evaluating the eloigned assets was not a proper subject for review on habeas corpus. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

Writ of habeas corpus cannot be used to inquire into official misconduct occurring prior to indictment and having no bearing on procedure of trial or upon jurisdiction of trial court. *Eury* v. *Huff,* 1944 (146 F. 2d 17, 79 U. S. App. D. C. 289).

The use of writ of habeas corpus on ground that, during trial, defendant's constitutional rights were so far denied that court lost jurisdiction, is not justifiable unless circumstances are so exceptional that it is the only means of preserving those rights. *Fowler* v. *Gill* (App. D. C. 1946, 156 F. 2d 565, 81 U. S. App. D. C. 167, certiorari denied 67 S. Ct. 352, 329 U. S. 791, 91 L. Ed. 677 rehearing denied 67 S. Ct. 488, 329 U. S. 832, 91 L. Ed. 705).

TRIAL PROCEDURE

Where petitioner founded his habeas corpus petition on U. S. Const. Amend. 6, charging that he was not confronted with witnesses against him, in that police deliberately withheld certain persons from testifying, but it appeared that petitioner was present at trial when government witnesses were called and that his counsel cross-examined those witnesses, petitioner's real charge was not denial of the right of confrontation as such, but suppression or concealment of evidence or favorable witnesses, which the reviewing court could assume would have been a denial of "due process of law" in violation of U. S. C. Const. Amend. 5. *Curtis* v. *Rives,* 1942 (123 F. 2d 936, 75 U. S. App. D. C. 66, affirming 36 F. Supp. 408).

Evidence, including uncontradicted showing that names of certain witnesses were not only known to accused's counsel at time of criminal trial, but also that "police incidental" on which those names were written was in possession of his counsel at that time, refuted accused's charges, made the basis of a petition for habeas corpus, that accused was not confronted with witnesses against him, in that police deliberately withheld certain persons from testifying, and that jurisdiction to convict and sentence accused was lost through denial of a constitutional right under U. S. C. Const. Amend. 5. *Curtis* v. *Rives,* 1942 (123 F. 2d 936, 75 U. S. App. D. C. 66, affirming 36 F. Supp. 408).

In habeas corpus proceeding, evidence was insufficient to show that subpoenas issued to witnesses in accused's behalf were not served and that thereby accused was denied compulsory process for obtaining witnesses in his own behalf. *Curtis* v. *Rives,* 1942 (123 F. 2d 936, 75 U. S. App. D. C. 66, affirming 36 F. Supp. 408).

An accused could not properly through his counsel argue to the jury in a criminal case that the testimony of named witnesses not called by the government must have been unfavorable to the government and contend in habeas corpus proceeding that he did not know of those witnesses. *Curtis* v. *Rives,* 1942 (123 F. 2d 936, 75 U. S. App. D. C. 66, affirming 36 F. Supp. 408).

Where substance of petitioner's allegation was that he pleaded guilty on advice of his counsel and received a longer sentence than both hoped would be imposed, the petition was not sufficient to show that petitioner did not intelligently consent to waiver of jury trial and summary denial of petition for writ of habeas corpus was not improper. *Monroe* v. *Huff,* 1944 (145 F. 2d 249, 79 U. S. App. D. C. 246).

Failure of counsel to file appeal, not discovered by accused until after time for appeal had elapsed, was not alone ground for discharge on habeas corpus. *Council* v. *Clemmer* (App. D. C. 1948, 165 F. 2d 249).

WAIVER OF COUNSEL

In habeas corpus proceeding presenting issue whether 17 year old boy competently and intelligently waived right to counsel in criminal case, the District Court should have taken evidence and determined whether, in light of his age, education and information, and all other pertinent facts, he sustained burden of proving that his waiver was not competently and intelligently made. *Williams* v. *Huff* (App. D. C. 1944, 142 F. 2d 91, 79 U. S. App. D. C. 31).

Where record in prosecution for assault with dangerous weapon showed that accused was informed of his right to counsel and undertook to waive the right, but did not show that the waiver was competently and intelligently made, that issue was required to be determined in habeas corpus proceeding. *Williams* v. *Huff,* 1944 (142 F. 2d 91, 79 U. S. App. D. C. 31).

Record of previous conviction which showed that accused was advised of his constitutional right to counsel which he expressly waived could not be attacked by oral testimony in habeas corpus proceeding. *Williams* v. *Huff,* 1945 (146 F. 2d 867, 79 U. S. App. D. C. 326).

Where petitioner seeking writ of habeas corpus was seventeen years old at time of his plea of guilty, it created an inference of fact that his waiver of constitutional right to counsel was not intelligent, and corroborated testimony that he entered plea on advice of other prisoners who informed him that such a plea would give him a better chance for probation. *Williams* v *Huff,* 1945 (146 F. 2d 867, 79 U. S. App. D. C. 326).

Evidence of extreme nervousness and depression failed to establish, as ground for setting aside sentence on habeas corpus, incompetency of accused to waive indictment, trial by jury, and representation by counsel, and plead guilty to informations charging housebreaking and grand and petit larceny. *Solis* v. *Clemmer* (App. D. C. 1948, 168 F. 2d 155, certiorari denied 68 S. Ct. 1519, 334 U. S. 860, 92 L. Ed. 1781).

§ 16–807 [24: 207]. Traversing return.

Any person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention, and the court or justice may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause depending in court, if the court or justice shall be satisfied of the materiality of the testimony proposed to be adduced. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1149.)

NOTES TO DECISIONS

DECREE OF STATE COURT

In habeas corpus proceeding in the District for the custody of a minor child, a decree, in a state court having jurisdiction, awarding divorce and the custody of the child, is conclusive. *Burrowes* v. *Burrowes* (64 App. D. C. 392, 78 Fed. (2d) 742).

§ 16–808 [24: 208]. Right of parent, guardian, committee, or husband to writ.

Any person entitled to the custody of another person, unlawfully confined or detained by a third person, as a parent, guardian, committee, or husband, entitled to the custody of a minor child, ward, lunatic, or wife, upon application to the court or a justice as aforesaid, and showing just cause therefor, under oath, shall be entitled to a writ of habeas corpus, directed to the person confining or detaining as aforesaid, requiring him forthwith to appear and produce before the court or justice the person so detained, and the same proceedings shall be had in

relation thereto as hereinabove authorized, and the court or justice, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of said person to the party legally entitled thereto. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1150.)

CROSS REFERENCE

As to custody of children in divorce cases, see § 16–410.

NOTES TO DECISIONS

CHILD'S WELFARE, DETERMINATION OF

Where only action taken because of mother's violation of order awarding custody to grandfather was to cut off meager sum of $5 a week alimony and $15 a week for support of children, neither the violation of the order nor the retaliation could be given weight in determining question of children's present welfare, in habeas corpus proceeding instituted by grandfather after the children had become accustomed to home their mother had established and to schools of city in which the mother resided. *Cook* v. *Cook,* 1943 (135 F. 2d 945, 77 U. S. App. D. C. 388).

In habeas corpus proceeding by parent to obtain custody of child, what is best for the child, rather than the natural right of the parent, is the controlling factor. *Holtsclaw* v. *Mercer,* 1944 (145 F. 2d 388, 79 U. S. App. D. C. 252).

The rights of parent to child are secondary to welfare of child and the child's well-being is the paramount consideration. *Holtsclaw* v. *Mercer,* 1944 (145 F. 2d 388, 79 U. S. App. D. C. 252).

When jurisdiction of court is invoked to determine custody of a minor child, the court acts, not as an arbiter between contesting parents determining adversary rights in human chattels, but as parens patriae, protecting the child whose custody is in dispute and making its award solely according to the interest and welfare of the child, regardless of the settled or transient character of the parents' residence, or even of a child abandoned by its parents. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

In proceeding involving custody of children, where the pleadings and evidence reveal a situation which required action, court must act on behalf of the children and for their protection, regardless of anything previously said or done by any court, and the function of the Court of Appeals is only to review the question whether the trial court properly exercised its discretion with a view to the present welfare of the children. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

In determining custody of children, the question for the court is the welfare of the children which overrides all other considerations, even where the proceeding is in habeas corpus, and the rights of the parents must yield to the interests and welfare of the children. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

EVIDENCE

Evidence justified trial court in awarding custody of a minor child to its father as against the claims of the divorced mother who had been awarded the child's custody by decree in another state. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

EXAMINATION OF PARENTS' QUALIFICATIONS

In proceeding involving custody of children, the decision should not be based upon the adversary rights of the parents, but courts should require that the interest of the children be brought fully before it, and for this purpose the court should call to its aid experienced and disinterested persons, such as its probation officers or social workers in the Board of Public Welfare to make an unbiased examination of the qualifications of the parents and the circumstances which surround the children. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

FOREIGN DECREE

An order of the Maryland court awarding custody of a child to divorced mother, did not preclude a court of equity from assuming concurrent jurisdiction and passing subsequent orders relating to the custody of the child as its present welfare and happiness might warrant. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

A West Virginia order awarding custody of a minor to paternal grandmother, and adjudging the minor's mother in contempt for taking the child to the District of Columbia, was not binding on District of Columbia court in habeas corpus proceeding, although entitled to due weight, since ultimate question was the child's present and future welfare. *Kirk* v. *Kirk* (App. D. C. 1945, 150 F. 2d 589, 80 U. S. App. D. C. 183).

Where order of West Virginia court awarding custody of minor to paternal grandmother was grounded on circumstance that the child could best recover from illness in the grandmother's home, but child had recovered from illness and was residing with the mother in the District of Columbia, the West Virginia order was not binding on the District of Columbia court which should determine, with the aid of whatever information might be obtainable from disinterested and experienced observers, what custody would best promote the child's welfare. *Kirk* v. *Kirk* (App. D. C. 1945, 150 F. 2d 589, 80 U. S. App. D. C. 183).

FULL FAITH AND CREDIT

A California decree determining custody of a child as between divorced parents, which decree was subject to modification at any time during minority of the child, was not entitled to full faith and credit in the District of Columbia in subsequent proceedings in which the paramount consideration was the child's welfare. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

Even in a case in which the full faith and credit clause is fully applicable to a judgment of another state, the judgment is entitled to credit only as to issues considered and judicially determined, and in a custody case, such a judgment is entitled only to qualified consideration in another state where there are changes in circumstances. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

JURISDICTION

Where grandfather to whom New York court had awarded custody of minor children, instituted habeas corpus proceeding to obtain custody from their mother who had established home for them in District of Columbia, court had jurisdiction and owed to the children who were in District of Columbia duty to protect them and do things which appeared to be best for them without regard to anything any other court had previously done. *Cook* v. *Cook,* 1943 (135 F. 2d 945, 77 U. S. App. D. C. 388).

In habeas corpus proceeding for custody of a minor child, where the father had been for some time a government employee stationed in Washington, D. C., and the child had been living with him just over the district line in Maryland for a year and a half, they were in a real sense members of the District of Columbia community and district court had jurisdiction to determine question of custody notwithstanding that the father had taken possession of the child in violation of decree of another state. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

If the court of the jurisdiction in which a child is found concludes that its custodian is unfit, the child may be taken from him and given to another. *Langan* v. *Langan* (App. D. C. 1945, 150 F. 2d 979).

Children in the District of Columbia are subject to the jurisdiction of its courts as to matters of custody. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

LUNATIC

The writ of habeas corpus in respect of lunacy is one of relief rather than of original adjudication. *Barry* v. *Hall* (68 App. D. C. 350, 98 Fed. (2d) 222).

PRESUMPTIONS

The presumption that small children are better off with their mother is entitled to weight in determining their custody. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

RES JUDICATA

In habeas corpus proceeding by grandfather to obtain custody of three minor children from their mother, prior order of New York court awarding custody to the grandfather was not "res judicata" on question of present wel-

fare of the children where the mother had provided an adequate home for them and they had become accustomed to schools of city in which mother resided. *Cook* v. *Cook,* 1943 (135 F. 2d 945, 77 U. S. App. D. C. 388).

An order regarding custody of minor children is conclusive regarding all matters prior to its promulgation, but doctrine of "res judicata" cannot settle question of children's welfare for all time to come, and it cannot prevent a court at a subsequent time from determining what is best for the children at that time. *Cook* v. *Cook,* 1943 (135 F. 2d 945, 77 U. S. App. D. C. 388).

Judgments adverse to the father, both in North Carolina and in the District of Columbia, which he had failed to obey, were not res judicata of subsequent action brought by the children by their next friend to determine their custody so as to deprive the District Court of jurisdiction. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

A custody award is subject to change, upon a proper showing, so long as the court has control of the child, and when the child comes under the control of another jurisdiction, its courts have equal power, and only to the extent that issues presented in the earlier case were judicially determined does the doctrine of res judicata and the full faith and credit clause apply. *Boone* v. *Boone* (App. D. C. 1945, 150 F. 2d 153).

Father's removal, after Pennsylvania habeas corpus decree awarding him custody of child, from apartment in which he was living with sister and brother-in-law to another apartment in which he lived alone with 7-year-old child who was without supervision during the day while father was engaged with his employment was such a substantial change in conditions surrounding child that Pennsylvania decree was not res judicata, and custody of child would be awarded to mother who was fit and proper person to care for child and who lived with parents in good residential district of Washington. *Matthews* v. *Matthews* (D. C., D. C. 1948, 80 F. Supp. 560).

"Unlawfully Confined or Detained"

Habeas corpus not the proper remedy where the child was not unlawfully confined or detained. *Church* v. *Church* (50 App. D. C. 237, 270 Fed. 359); *Burrowes* v. *Burrowes* (64 App. D. C. 392, 78 Fed. (2d) 742.)

Where father residing in Pennsylvania was awarded custody of child during school year by Pennsylvania decree, and mother residing in District of Columbia was awarded custody of child during Christmas and summer holidays, and mother refused to deliver child to father at end of summer holiday, habeas corpus in United States District Court for District of Columbia was the father's proper remedy. *Matthews* v. *Matthews* (D. C., D. C. 1948, 80 F. Supp. 560).

Chapter 9.—JOINT CONTRACTS

Sec.
16–901. Joint and several—Contracts—Definition.
16–902. Death of joint contractor.
16–903. Merger.
16–904. Death after suit brought—Legal representatives.
16–905. Proof of joint liability not necessary—Judgment.
16–906. Separate compromise.

§ 16–901 [24: 261]. Joint and several — Contracts — Definition.

Every contract and obligation entered into by two or more persons, whether partners or merely joint contractors, whether under seal or not, and whether written or verbal, and whether expressed to be joint and several or not, shall for the purposes of suit thereupon be deemed joint and several. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1205.)

NOTES TO DECISIONS

Decisions Under Prior Law

In the case of a joint and several contract, an unsatisfied judgment against one of the promisees is no bar to a subsequent action against the other; and the statute places a joint contract for the payment of money on the same footing as a several contract, with respect to the right of suit thereon. *Harris* v. *Leonhardt* (2 App. D. C. 318).

A creditor should not be allowed to sue jointly and separately at the same time, nor prosecute more than one suit, if all the parties bound by the contract can be proceeded against together in a single action. *Harris* v. *Leonhardt* (2 App. D. C. 318).

If the contract be joint or joint and several, and the parties be sued jointly, the recovery must be general against the parties, but as to the married woman defendant, the award of execution must be against her sole and separate estate acquired and held under the statute, at the date of the judgment if real estate, or at time of delivery of execution to the marshal, if personal. *Magruder* v. *Belt* (7 App. D. C. 303).

Issues having been joined a nonsuit may be entered as to the minors, and the suit proceeded against the remaining adult defendants. *Rhees* v. *Morris* (52 App. D. C. 27, 280 Fed. 1001).

Executor of Joint Obligor

Executor of a deceased joint obligor may be sued at law with his coobligor. *White* v. *Connecticut General Life Ins. Co.* (34 App. D. C. 460. Writ of error dism. 218 U. S. 684, 54 L. Ed. 1208, 31 Sup. Ct. 219).

Nonsuit as to Minors

In a suit against the owners of property, some of whom are minors, to recover a brokerage commission, it is proper, under this section and § 1209 (§ 16–905), after issue joined to enter a nonsuit as to the minors and proceed against the remaining defendants. *Rhees* v. *Morris* (52 App. D. C. 27, 280 Fed. 1001).

Remedial in Effect

This section "merely affects the remedy. It relates wholly to procedure. It does not convert a joint instrument into a joint and several instrument, or change a joint obligor into a joint and several obligor. The contract and the relations of the obligations of the contractors remain unchanged." *White* v. *Connecticut General Life Ins. Co.* (34 App. D. C. 460. Writ of error dism. 218 U. S. 684, 54 L. Ed. 1208, 31 Sup. Ct. 219).

§ 16–902 [24: 262]. Death of joint contractor.

If one or more of such persons shall die, his or their executors, administrators, or heirs shall be bound by said contract in the same manner and to the same extent as if the same were expressed to be joint and several. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1206.)

Cross Reference

See notes to § 16–901.

§ 16–903 [24: 263]. Merger.

If an action be brought against all the parties to such contract, but service of process is had against some only of the defendants, or an action is brought against and service had on some only of the parties, a judgment against the parties so served shall not work an extinguishment or merger of the cause of action on which such judgment is founded as respects the parties not so served, but they shall remain liable to be sued separately. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1207.)

§ 16–904 [24: 264]. Death after suit brought—Legal representatives.

If any one of several defendants in an action shall die after the commencement of the action, his legal representatives may be made parties thereto as directed in sections 12–101 to 12–116. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1208.)

§ 16–905 [24: 265]. Proof of joint liability not necessary—Judgment.

In actions ex contractu against alleged joint debtors it shall not be necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action, but he shall be entitled to recover, as in actions ex delicto, against such of the defendants as shall be shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him, and judgment shall be rendered as if the others had not been joined in the suit. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1209.)

CROSS REFERENCE

See notes to § 16–901.

NOTES TO DECISIONS

NONSUIT AS TO MINORS

Issues having been joined, a nonsuit was entered as to the minors, and the suit proceeded against the remaining defendants; this was proper under the Code. *Rhees* v. *Morris* (52 App. D. C. 27, 280 Fed. 1001).

§ 16–906 [24: 266]. Separate compromise.

Any one of several joint debtors, when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect as is provided in the case of parties in sections 41–101 to 41–131, 41–201 to 41–204, on partners. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1210.)

NOTES TO DECISIONS

NO RELEASE OF OTHER JUDGMENT DEBTORS

Compromise with one of several judgment debtors, and an entry of a satisfaction of the judgment as to him, will not operate as a release of the other judgment debtors. *Bunch* v. *United States ex rel. Keppler* (40 App. D. C. 156).

Chapter 10.—MANDAMUS

Sec.

16–1001. Application—Contents—Verification.
16–1002. Defendant to show cause—Service.
16–1003. Defendant's answer—Verification.
16–1004. Pleadings and further proceedings.
16–1005. Time of trial of issue.
16–1006. Trial—By jury—Damages and costs—Granting writ.
16–1007. Judgment for defendant—Costs.
16–1008. Defendant's default—Granting of writ—Costs.
16–1009. Denial of writ on defendant's default—Costs.
16–1010. Appeal—Bond.

§ 16–1001 [24: 211]. Application — Contents — Verification.

All applications for granting writs of mandamus shall be commenced by petition, verified by affidavit of the applicant, setting forth fully the ground of his application. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1273.)

CROSS REFERENCES

Mandamus to obtain office in a corporation, § 16–1610.
Mandamus to require corporation to publish annual report, § 29–214.

RULES OF CIVIL PROCEDURE

Mandamus has been abolished insofar as the District Court of the United States for the District of Columbia is concerned; similar relief may be obtained by appropriate action or motion as may be prescribed by rules of court, see Rule 81 (b).

NOTES TO DECISIONS

CIRCUIT COURTS OF APPEALS

Writs of mandamus may still be issued by Circuit Courts of Appeals. *National Bondholders Corp.* v. *McClintic* ((C. C. A. 4), 99 Fed. (2d) 595); *Armour & Co.* v. *Kloeb* ((C. C. A. 6), 109 Fed. (2d) 72).

MINISTERIAL DUTY

As the Comptroller General was not charged with duties requiring the exercise of judgment or discretion, but was called upon to perform a purely ministerial function, mandamus lies to compel him to certify a voucher for refund of immigration fines which were made through error of government officers. *McCarl* v. *United States ex rel. Societa Ligure di Armamento* (58 App. D. C. 319, 30 Fed. (2d) 561).

Statute being mandatory and clear, the duty of the appellant to admit the appellee to the public schools of the District was purely ministerial. Mandamus is the orthodox remedy to compel the performance of a ministerial duty. *Ballou* v. *Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556).

Mandamus may compel performance of a ministerial duty or compel performance of an act involving discretion, but it cannot direct the discretion. *Thomas* v. *Vinson* (App. D. C. 1946, 153 F. 2d 636).

Where duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command, it is regarded as being so far "ministerial" that its performance may be compelled by mandamus unless there is provision or implication to the contrary. *Thomas* v. *Vinson* (App. D. C. 1946, 153 F. 2d 636, 80 U. S. App. D. C. 346).

OFFICIAL DUTIES

Where the performance of official duties requires an interpretation of the law which governs that performance, the interpretation placed by the officer upon the law will not be interfered with unless it is clearly wrong and the official action arbitrary and capricious. *Hammond* v. *Hull,* 1942 (131 F. 2d 23, 76 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 830, 318 U. S. 777, 87 L. Ed. 1145).

The courts have no general supervisory powers over the executive branches or over their officers which may be invoked by writ of mandamus. *Hammond* v. *Hull,* 1942 (131 F. 2d 23, 76 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 830, 318 U. S. 777, 87 L. Ed. 1145).

STATUTE OF LIMITATIONS

Mandamus, being a remedial process, is not within the statute of limitations, but is within the discretion of the court, and application to compel restoration to government service is barred by laches of twenty months. Laches as a bar. *United States ex rel. Arant* v. *Lane* (249 U. S. 367, 63 L. Ed. 650, 39 Sup. Ct. 293).

USE OF MANDAMUS IN GENERAL

Mandamus is the proper remedy when a case is outside the discretion of the inferior court, and is one of irregularity, or against law, or of flagrant injustice, or without jurisdiction. *Ex parte Bradley* (7 Wall. (74 U. S.) 364, 19 L. Ed. 214).

Where an administrative remedy is available, it must generally be first exhausted before judicial relief may be obtained by writ of mandamus or otherwise. *Hammond* v. *Hull,* 1942 (131 F. 2d 23, 76 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 830, 318 U. S. 777, 87 L. Ed. 1145).

Mandamus should issue only when the duty of the officer to act is clearly established and plainly defined and the obligation to act is peremptory. *Hammond* v. *Hull,* 1942 (131 F. 2d 23, 76 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 830, 318 U. S. 777, 87 L. Ed. 1145).

A petition for mandamus to review action of trial court in treating petitioner's complaint as an application for writ of habeas corpus would be denied, since petitioner's remedy was by appeal, and mandamus may not be used as a substitute for appeal. *In re De Marcos,* 1944 (139 F. 2d 841, 78 U. S. App. D. C. 187).

Mandamus lies to compel the performance of a plain legal duty, not to control the way in which administrative discretion is exercised. *Prince* v. *Klune* (App. D. C. 1945, 148 F. 2d 18).

Writ of mandamus may not be used as a substitute for appeal. *In re Fullam* (App. D. C. 1945, 152 F. 2d 141, 80 U. S. App. D. C. 273).

Mandamus never lies except where there is no other remedy *McMurtrey* v. *Clark* (App. D. C. 1946, 157 F. 2d 703, 81 U. S. App. D. C. 294, certiorari denied 67 S. Ct. 492, 329 U. S. 805, 91 L. Ed. 687).

A writ of mandamus neither creates nor confers power to act, but may be used only to compel exercise of powers already existing. *McMurtrey* v. *Clark* (App. D. C. 1946, 157 F. 2d 703, 81 U. S. App. D. C. 294, certiorari denied 67 S. Ct. 492, 329 U. S. 805, 91 L. Ed. 687).

Where duty is not plainly prescribed but depends on statute or statutes, the construction and application of which is not free from doubt, it is regarded as involving character of judgment or discretion which cannot be controlled by mandamus. *Thomas* v. *Vinson* (App. D. C. 1946, 153 F. 2d 636, 80 U. S. App. D. C. 346).

Mandamus is employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way nor to direct the retraction or reversal of action already taken in the exercise of either. *Edgerton* v. *Kingsland* (App. D. C. 1948, 168 F. 2d 128).

USE OF MANDAMUS IN PARTICULAR CASES

In action by a contractor against the Emergency Fleet Corporation to have a claim submitted to the audit of the Comptroller General, mandamus is the proper remedy. *United States ex rel. Skinner & Eddy Corp.* v. *McCarl* (275 U. S. 1, 72 L. Ed. 131, 48 Sup. Ct. 12).

For use of mandamus in particular cases (since 1910), see *United States ex rel. Thomson* v. *Custis* (35 App. D. C. 247) (to board of medical advisors to compel issuance of license to practice); *United States ex rel. Phillips* v. *Ballinger* (35 App. D. C. 520) (to Secretary of Interior to vacate order disbarring attorney); *Rudolph* v. *Moshewvel* (37 App. D. C. 76) (to Commissioners, District of Columbia, to compel medical board to examine fireman dismissed for physical disability); *United States ex rel. Hammond* v. *Custis* (37 App. D. C. 449) (to board of medical advisors to compel issuance of license to practice); *United States ex rel. Todd* v. *Gongwer* (37 App. D. C. 555) (to Auditor of Treasury to compel consideration of claim for longevity pay); *United States ex rel. Moser* v. *Myer* (38 App. D. C. 13) (to Secretary of Navy to compel placing of relator's name on retired list); *United States ex rel. McKenzie* v. *Fisher* (39 App. D. C. 7) (to Secretary of Interior to compel issuance of land patent); *Kalbfus* v. *Siddons* (42 App. D. C. 310) (to compel restoration to public office); *Prail* v. *Stafford* (42 App. D. C. 383) (to compel justice of District Court, District of Columbia, to enter final decree on mandate of Court of Appeals); *United States ex rel. Newman* v. *City & Suburban Co.* (42 App. D. C. 417) (to compel respondent to condemn land for street extension); *Persing* v. *Daniels* (43 App. D. C. 470) (to compel restoration of employee to service of United States); *United States ex rel. Bowlegs* v. *Lane* (43 App. D. C. 494); *Lane* v. *Duncan Townsite Co.* (44 App. D. C. 63, affd. 245 U. S. 308, 62 L. Ed. 309, 38 Sup. Ct. 99); *Hoglund* v. *Lane* (44 App. D. C. 310, affd. 244 U. S. 174, 61 L. Ed. 1066, 37 Sup. Ct. 558); *United States ex rel. Reynolds* v. *Lane* (45 App. D. C. 50) (to compel Secretary of Interior to approve or disapprove lease); *Ewing* v. *United States ex rel. Fowler Car Co.* (45 App. D. C. 185) (to Commissioner of Patents to compel direction of interference in patent cases), revd. on the ground that the proper remedy was a suit in equity (244 U. S. 1, 61 L. Ed. 955, 37 Sup. Ct. 494); *Blair* v. *United States ex rel. Hellman* (45 App. D. C. 353) (to school board to compel restoration of relator as a teacher); *Handel* v. *Lane* (45 App. D. C. 389); *Richards* v. *Davison* (45 App. D. C. 395) (to assessor, District of Columbia, to compel issuance of license to conduct dance hall). *United States ex rel. Schwerdtfeger* v. *Brownlow* (45 App. D. C. 412) (to commissioners, District of Columbia, to compel placing of relator's name on fireman's pension roll); *Hight* v. *McCoy* (46 App. D. C. 238) (to compel justice, District Court, District of Columbia, to sign bill of exceptions); *United States ex rel. Coal Co.* v. *Lane* (46 App. D. C. 443); *United States ex rel. Ashley* v. *Roper* (48 App. D. C. 69) (to compel Secretary of Treasury to abrogate decision construing act of Congress); *LeCrone* v. *McAdoo* (48 App. D. C. 181, dism. 253 U. S. 217, 64 L. Ed. 869, 40 Sup. Ct. 510) (to compel Secretary of the Treasury to pay over fund to petitioner); *United States ex rel. McDonald* v. *Lane* (49 App. D. C. 234, 263 Fed. 630); *United States ex rel. McDuffie* v. *Hawley* (50 App. D. C. 137, 269 Fed. 479) (to Board of Dental Examiners to compel issuance of license to dentist); *United States ex rel. Anderson* v. *Simon* (50 App. D. C. 199, 269 Fed. 715) (to school board to restore teacher); *United States ex rel. Russell* v. *District of Columbia* (50 App. D. C. 296, 271 Fed. 370); *Weeks* v. *United States ex rel. Creary* (51 App. D. C. 195, 277 Fed. 594) (to Secretary of War to vacate discharge and restore to rank in Army); *United States ex rel. Norris* v. *Forbes* (51 App. D. C. 248, 278 Fed. 331) (to Director of Bureau of War Risk Insurance to compel payment of insurance); *Robertson* v. *United States ex rel. Baff* (52 App. D. C. 177, 285 Fed. 911) (to review proceedings disbarring attorney from Patent Office and compel restoration).

Where trial judge had rejected affidavits of bias and prejudice because they failed to comply with statutory requirements both as to time of filing and as to manner of certification and had refused to disqualify himself and trial was in progress, federal appellate court would not issue writ of mandamus or prohibition. *Dilling* v. *U. S.*, 1944 (142 F. 2d 473, 79 U. S. App. D. C. 47).

Where district court had ruled on petitioner's motion in forma pauperis for transcript of record, indictment and judgment containing sentence and order of commitment for use in preparing a motion to vacate judgment, mandamus would not lie to review determination of district court. *In re Fullam* (App. D. C. 1945, 152 F. 2d 141, 80 U. S. App. D. C. 273).

Mandamus to compel payment of widow's allowance by Paymaster General of Navy was inappropriate remedy in view of fact that act to be performed was not purely ministerial, but widow was entitled under Federal Rule of Civil Procedure 54c, 28 U. S. C., to whatever judgment evidence warranted, irrespective of whether it was precise relief prayed for in complaint, and hence, under provision of Administrative Procedure Act, 5 U. S. C. § 1009, that any applicable form of relief might be granted, judgment in favor of widow would be given form of a mandatory injunction directing necessary payment, though complaint prayed for relief in nature of mandamus. *Snyder* v. *Buck* (D. C., D. C. 1948, 75 F. Supp. 902, reversed 179 F. 2d 466, 85 U. S. App. D. C. 428, certiorari granted 70 S. Ct. 837, 339 U. S. 951, 94 L. Ed. 723).

§ 16–1002 [24: 212]. Defendant to show cause—Service.

Upon the filing of such petition the court may lay a rule requiring the defendant therein named to show cause, within such time as the court may deem proper, why a writ of mandamus should not issue as prayed, a copy of which rule shall be served upon such defendant by a day to be therein limited. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1274.)

§ 16–1003 [24: 213]. Defendant's answer—Verification.

The defendant, by the day named in such order, unless for cause shown the court shall extend the time, shall file an answer to such petition, fully setting forth all the defenses upon which he intends to rely in resisting such application, which shall be verified by his affidavit. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1275.)

§ 16–1004 [24: 214]. Pleadings and further proceedings.

The petitioner may plead to or traverse all or any of the material averments set forth in said answer, and the defendant shall take issue or demur to said plea or traverse within five days thereafter unless for cause shown, the court shall extend the time; and such further proceedings shall thereupon be had in the premises for the determination thereof as

if the petitioner had brought an action for a false return. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1276; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "thereafter" the words "unless for cause shown, the court shall extend the time."

§ 16–1005 [24: 215]. Time of trial of issue.

If issue shall be joined on such proceedings, the same shall stand for trial at as early a day as the court shall appoint. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1277.)

§ 16–1006 [24: 216]. Trial — By jury — Damages and costs—Granting writ.

Such issues shall be tried by a jury if both parties in writing require it, otherwise they shall be heard and determined by the court; and in case a verdict shall be found for the petitioner, or if the court upon hearing determine for the petitioner, or judgment be given for him upon demurrer or for want of a plea, such petitioner shall thereupon recover his damages and costs as he might have done in an action for a false return, to be levied by execution, and a peremptory writ of mandamus shall be granted thereon without delay against the defendant. (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1278.)

NOTES TO DECISIONS

PERSONAL LIABILITY OF GOVERNMENTAL OFFICER

The fact that this section allows the petitioner to recover damages in the same proceeding does not justify the retention of the petition to charge the secretary personally, since damages are only incident to the allowance of the writ. *Le Crone* v. *McAdoo* (253 U. S. 217, 64 L. Ed. 869, 40 Sup. Ct. 510).

§ 16–1007 [24: 217]. Judgment for defendant—Costs.

If judgment shall be given for the defendant he shall recover his costs of suit, to be levied in the manner aforesaid. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1279).

§ 16–1008 [24: 218]. Defendant's default—Granting of writ—Costs.

If the defendant shall neglect to file his answer to the petition by the day named in the order of the court, after being served with notice thereof, the said court shall thereupon proceed to hear the said petition ex parte, within five days thereafter, and if it shall be of opinion that the facts and law of the case authorize the granting of a mandamus as prayed, it shall thereupon without delay order a peremptory mandamus to issue, and shall also adjudge to the petitioner his costs of suit. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1280.)

§ 16–1009 [24: 219]. Denial of writ on defendant's default—Costs.

If the court shall, upon such ex parte hearing, be of opinion that the facts and law of the case do not authorize the granting of a mandamus, it shall dismiss such petition with costs. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1281.)

§ 16–1010 [24: 220]. Appeal—Bond.

In case of an appeal by the defendant the court shall fix the penalty of the appeal bond necessary to be given to stay the execution or enforcement of the order appealed from. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1282.)

Chapter 11.—CHANGE OF NAME

Sec.
16–1101. Proceeding for change of name—By petition.
16–1102. Notice—Contents.
16–1103. Decree.

§ 16–1101 [24: 351]. Proceeding for change of name—By petition.

Any person, being a resident of the District, desiring a change of name may file a petition in the District Court of the United States for the District of Columbia holding an equity term setting forth the reasons therefor and also the name desired to be assumed. In case the applicant is an infant, such petition shall be filed by the parent, guardian, or next friend to said infant. The court shall have power, in its discretion, to grant the prayer of such petition. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1298; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment changed the section to read as above. The 1901 act read as follows: "Any person of full age, being a resident of the District and desirous to have his name changed, may file a petition in the supreme court setting forth the reasons therefor and also the name desired to be assumed."

CROSS REFERENCE

Change of name upon adoption, § 16–205.

NOTES TO DECISIONS

NOT APPLICABLE TO CORPORATIONS

Sections 16–1101 to 16–1103 do not apply to corporations. *American Elementary Elec. Co.* v. *Normandy* (46 App. D. C. 329).

§ 16–1102 [24: 352]. Notice—Contents.

Notice of the filing of such petition, containing the substance and prayer thereof, shall be published once a week for three consecutive weeks in some newspaper in general circulation published in the District prior to the hearing of the petition. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1299; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "published," the first time it appears, the words "once a week."

CROSS REFERENCE

See note to §16–1101.

§ 16–1103 [24: 353]. Decree.

The court, or the justice holding an equity term thereof, on proof of such notice and upon such showing as may be deemed satisfactory, may change the name of the applicant according to the prayer of the petition. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1300.)

CROSS REFERENCE

See note to §16–1101.

Chapter 12.—NEGLIGENCE CAUSING DEATH

Sec.
16–1201. Liability.
16–1202. Party plaintiff—Statute of limitations.
16–1203. Distribution of damages.

§ 16–1201 [21: 1]. Liability.

Whenever by an injury done or happening within

the limits of the District of Columbia the death of a person shall be caused by the wrongful act, neglect, or default, of any person or corporation, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured, or if the person injured be a married woman, have entitled her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation which would have been liable if death had not ensued shall be liable to an action for damages for such death, notwithstanding the death of the person injured, even though the death shall have been caused under circumstances which constitute a felony; and such damages shall be assessed with reference to the injury resulting from such act, neglect, or default causing such death, to the spouse and next of kin of such deceased person; and shall also include the reasonable expenses of last illness and burial: *Provided,* That if there be a surviving spouse the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to said spouse and next of kin: *Provided further,* That if in a particular case the verdict is deemed excessive the trial justice or the United States Court of Appeals for the District of Columbia, on appeal of the cause, may order a reduction of the verdict: *And provided further,* That no action shall be maintained under this chapter in any case when the party injured by such wrongful act, neglect, or default has recovered damages therefor during the life of such party. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1301; June 19, 1948, 62 Stat. 487, ch. 507, § 1.)

Amendments

Act, June 19, 1948, substituted the word "spouse" (first appearance) for the word "widow"; deleted all following "deceased person" and supplied the remainder of the section commencing with the words "and shall also include".

The catchline has been amended.

Cross References

Abatement and revivor in general, § 12–101 et seq.

Liability for death of employee under Longshoremen's and Harbor Workers Compensation Act, §§ 36–501, 36–502.

Liability of common carrier for death of employee, Employers' Liability Act, § 44–401 et seq.

NOTES TO DECISIONS

Decisions Under Prior Law

Under act of February 17, 1885 (23 Stat. 307), see *McGraw* v. *District of Columbia* (3 App. D. C. 405, 25 L. R. A. 691).

In action for wrongful death under act of Congress of February 17, 1885 (23 Stat. 307), it was not necessary for the plaintiff to allege special pecuniary loss due to death of the deceased. *District of Columbia* v. *Wilcox* (4 App. D. C. 90).

Under act of Congress of February 17, 1885 (23 Stat. 307), an administrator may sue for killing of his intestate whether the intestate left goods and chattels or not. *Washington Asphalt Block & Tile Co.* v. *Mackey* (15 App. D. C. 410).

In General

Statute is remedial and as such must be liberally construed. *Calvert* v. *Terminal Taxicab Co.* (48 App. D. C. 119), citing *United States ex rel. Stevens* v. *Richards* (33 App. D. C. 410).

There is only one cause of action for wrongful death and it arises under sections 1201–1203 of this title. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

Beneficiaries

Action for wrongful death caused by negligence in Maryland can be maintained in District of Columbia court for the benefit of the persons designated in the statute of Maryland. *Stewart* v. *Baltimore & O. R. Co.* (168 U. S. 445, 42 L. Ed. 537, 18 Sup. Ct. 105, revg. 6 App. D. C. 56).

Fact that the deceased had his domicil in Virginia, and that he had no estate here, at the time of his death are not conclusive against the right to obtain letters of administration in District of Columbia. *Western Union Tel. Co.* v. *Lipscomb* (22 App. D. C. 104).

If the action cannot be maintained by the personal representative of the intestate for the ultimate benefit of the father, who is next of kin, and alone has been shown to have sustained any injury by the death of the son, the judgment ought to be arrested, for the remedy of the statute goes no further. *United States Elec. Lighting Co.* v. *Sullivan* (22 App. D. C. 115).

Action is maintainable for benefit of illegitimate brother of the half blood of the decedent, a woman. *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313, 21 Ann. Cas. 926).

Necessity for declaration to allege existence of beneficiaries within the statute, and right to amend a declaration failing so to allege, see *Neubeck* v. *Lynch* (37 App. D. C. 576, 37 L. R. A. (N. S.) 813).

A husband, as administrator, has a proper action for death of wife, within meaning of the words "next of kin." *Calvert* v. *Terminal Taxicab Co.* (48 App. D. C. 119).

Construction With Other Laws

Action brought in District under wrongful death act of Nebraska is subject to the two-year limitation of that act and not the one-year limitation of the District statute. The law of the state where the death occurred should govern unless the public policy of the forum is clearly opposed. The District Act is confined to deaths within its jurisdiction. *Lewis* v. *Reconstruction Finance Corp.* (C. A., D. C. 1949, 177 F. 2d 654, 85 U. S. App. D. C. 339).

Employers' Liability Act

This section is not repealed by the Employers' Liability Act (34 Stat. 232); but each act applies to cases arising under it and to none other. *Hyde* v. *Southern R. Co.* (31 App. D. C. 466).

Section 501 et seq. of Title 36 creates a right of action against employer on account of death of employee arising out of and in course of employment, but it does not create a cause of action for wrongful death against any other person. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

Measure of Damages

In damage suit for wrongful death, where deceased leaves a widow and four sons, one of whom is a minor, an instruction to the jury is erroneous which includes damages for reasonable expectations of prospective inheritance, prospective support, gifts, guidance, paternal advice and maintenance. *Baltimore & P. R. Co.* v. *Golway* (6 App. D. C. 143).

At common law, the right of a parent to recover for loss of the services of his minor child, like that of the husband for the services of the wife, is limited to the time that may have elapsed, if any, between the time of the injury giving rise to the action, and the resulting death. *United States Elec. Lighting Co.* v. *Sullivan* (22 App. D. C. 115).

Father as administrator is entitled to recover more than nominal damages for death of child between eight and nine years of age. *United States Elec. Lighting Co.* v. *Sullivan* (22 App. D. C. 115); *Smith* v. *Cissel* (22 App. D. C. 318).

"Section 1301, D. C. 1901 (this section), in effect, provides that the measure of damages shall be the injury

resulting to the widow and next of kin. While section 1302 (§ 16–1202) requires the action to be brought in the name of the personal representative, section 1303 (§ 16–1203) in terms sets aside the damages recovered for the benefit of the family of the decedent. It will thus be seen that the duty of the administrator is simply to bring the suit allowed by the statute, and, in the event of a recovery, distribute the damages according to the provisions of the statute of distributions in force in this District." *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313, 21 Ann. Cas. 926).

In action for death of sister, the amount of pecuniary loss is for the jury. *Ramsey* v. *Ross* (66 App. D. C. 186, 85 Fed. (2d) 685).

The only damages recoverable in an action for wrongful death are those which constitute pecuniary loss to widow and next of kin for whose benefit action by administrator is brought. *Tate* v. *Nelson* (App. D. C. 1947, 71 F. Supp. 465).

The pecuniary loss to widow and next of kin for whose benefit action for wrongful death is brought by administrator is not dependent upon any legal liability of deceased to beneficiaries, but there must appear some reasonable expectation of pecuniary assistance or support of which they have been deprived. *Tate* v. *Nelson* (App. D. C. 1947, 71 F. Supp. 465).

Parties Defendant

Action may be maintained in this District against a druggist whose negligent filling of a prescription in the District results in death beyond the District. *Moore* v. *Pywell* (29 App. D. C. 312, 9 L. R. A. (N. S.) 1078).

No right of recovery exists where an officer kills one engaged in the commission of a felony and who draws a gun on the officer. *Harris* v. *Embrey* (70 App. D. C. 232, 105 Fed. (2d) 111).

These sections apply to action for death of seaman on board a vessel owned by the Fleet Corporation occurring on the coast of Africa; and they also apply to the operator of the vessel joined as a defendant with the owner. *United States Shipping Bd.* v. *Greenwald* ((C. C. A. 2), 16 Fed. (2d) 948).

Workmen's Compensation Act

Where widow has elected to receive compensation under Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 et seq., but widow is not the only person for whose benefit an action for wrongful death may be maintained, any moneys paid or to be paid as compensation to the widow may not be shown in the action for wrongful death in extinguishment or reduction of her pecuniary loss. *Tate* v. *Nelson* (App. D. C. 1947, 71 F. Supp. 465).

§ 16–1202 [21: 2]. Party plaintiff—Statute of limitations.

Every such action shall be brought by and in the name of the personal representative of such deceased person, and within one year after the death of the party injured. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1302; June 30, 1902, 32 Stat. 543, ch. 1329.)

Amendment

The 1902 amendment inserted the word "such" after the word "every."

Cross Reference

See notes to § 16–1201.

NOTES TO DECISIONS

In General

Action for wrongful death must fail if not brought by personal representative. *Harris* v. *Embrey* (70 App. D. C. 232, 105 Fed. (2d) 111).

Actions Against United States

An action against the United States for death by wrongful act or negligence in the District was not barred by the one-year statute of limitations under the District Code, but was governed by the Federal Court of Claims Act. The attention and precision devoted by Congress to the question of limitations require that effect be given to the period which it prescribes notwithstanding the fact that the cause of action against the United States may not, in a local jurisdiction, be the same in duration as therein authorized against a private individual. *Young* v. *United States* (C. A. D. C. 1950, 184 F. 2d 587).

Aliens, Action by

That decedent's daughter was a national of Greece and an alleged alien enemy did not toll this section for bringing wrongful death action where such daughter was a resident of Michigan at time of accident, and it was upon her petition that administrator of the estate of decedent was appointed, and there was no reason why daughter could not have instituted such suit within the year following death of decedent. *Summar* v. *Besser Mfg. Co.* (1945, 17 N. W. 2d 209, 310 Mich. 347).

This section was not tolled because decedent's widow, daughter, and son were nationals and residents of Greece, and allegedly alien enemies because of German occupation of Greece, since suit might have been prosecuted in their behalf notwithstanding the Trading With the Enemy Act, 50 U. S. C. § 1 et seq. *Summar* v. *Besser Mfg. Co.* (1945, 17 N. W. 2d 209, 310 Mich. 347).

Construction With Other Laws

Section 501 et seq. of Title 36 does not alter the period of limitations in this section. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

Where defendant caused death of employee of another under such circumstances that, if death had not ensued, the employee would have been entitled to maintain action against defendant or to recover compensation under section 501 et seq. of Title 36, death action instituted under this section within one year after appointment of guardian for employee's infant son but more than one year after death was barred by limitation of this section, notwithstanding employees' compensation act provision that one year limitation on right to compensation for death should not be applicable to infants until appointment of guardian. *Webster* v. *Clodfelter,* 1942 (130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, affirming 39 F. Supp. 62, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

This section was not inapplicable to action for death caused by automobile in the District on ground that application of such limitation would contravene the Michigan statute, Comp. Laws 1929, providing for suspending of running of limitations when any person is disabled to prosecute an action, where it was not shown that decedent's administrator might not have brought the action in Michigan within one year following death. *Summar* v. *Besser Mfg. Co.* (1945, 17 N. W. 2d 209, 310 Mich. 347).

Action brought in District under wrongful death act of Nebraska is subject to the two-year limitation of that act, and not the one-year limitation of the District statute. The law of the state where the death occurred should govern unless the public policy of the forum is clearly opposed. The District Act is confined to deaths within its jurisdiction. *Lewis* v. *Reconstruction Finance Corp.* (C. A. D. C. 1949, 177 F. 2d 654; 85 US App. D. C. 339).

An action brought by the State of Maryland where the death occurred in accordance with a Maryland statute is entitled to be maintained within the District as one for wrongful death. *State of Maryland* v. *Eastern Airlines* (D. C. D. C. 1948, 81 F. Supp. 345).

Diligence of Plaintiff

Where action was brought within statutory period against nonresident of District of Columbia for death caused by automobile, and over three years after the death and two years and one month after action had been filed service was made on the nonresident in compliance with the Financial Responsibility Act, § 401 et seq., but during the intervening period five summonses had been issued at less than six-month intervals for personal service on the nonresident, there was a sufficient showing of "diligence," so that ruling that there had been a "discontinuance" of

the action because of undue delay was improper. *Seymour* v. *Hawkins,* 1942 (133 F. 2d 15, 76 U. S. App. D. C. 376).

EXECUTOR OR ADMINISTRATOR

This section requiring that suit shall be brought by and in the name of the personal representative of such deceased person, has been held to mean either the executor or administrator of the deceased. *Ferguson* v. *Washington & R. G. Co.* (6 App. D. C. 525); *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313, 21 Ann. Cas. 926).

Words "personal representative" have been held to refer either to the executor or administrator, and hence, as the right of the action is statutory, no person other than those upon whom authority is expressly conferred may maintain action. *Fleming* v. *Capital Trac. Co.* (40 App. D. C. 489).

RESIDENCY

The District of Columbia one-year limitation statute was not inapplicable to action for death caused by automobile in the District because some of decedent's heirs did not reside in the District during the year following the death, where two of the heirs resided in the District, and under District of Columbia statute, by operating a motor vehicle in the District, nonresident owner and his agent subject themselves to jurisdiction of the courts of the District of Columbia. *Summar* v. *Besser Mfg. Co.* (1945, 17 N. W. 2d 209, 310 Mich. 347).

WORKMEN'S COMPENSATION ACT—SUBROGATION

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation, may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co.* v. *Moses* (287 U. S. 530, 77 L. Ed. 477, 53 Sup. Ct. 231, 88 A. L. R. 647, revg. 61 App. D. C. 74, 57 Fed. (2d) 440).

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under the wrongful death statute, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the employee having the right to demand that such action be brought and that he share in the recovery. *Doleman* v. *Levine* (295 U. S. 221, 79 L. Ed. 1402, 55 Sup. Ct. 741, revg. 64 App. D. C. 25, 73 Fed. (2d) 842).

§ 16–1203 [21: 3]. Distribution of damages.

The damages recovered in such action, except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial, shall not be appropriated to the payment of the debts or liabilities of such deceased person, but shall inure to the benefit of his or her family and be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of such allocation, according to the provisions of the statute of distribution in force in said District of Columbia. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1303; June 19, 1948, 62 Stat. 487, ch. 507, § 2.)

AMENDMENTS

Act, June 19, 1948, cited to text, inserted between the words "action" and "shall" the phrase: "except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial", and between the words "distributed" and "according" the phrase: "to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of such allocation,".

CROSS REFERENCES

Hospital lien on proceeds, § 38–301.
See notes to § 16–1201.

NOTES TO DECISIONS

DUTY OF ADMINISTRATOR

Recovery not liable for debts of deceased, but, nevertheless, it is the duty of administrator to institute suit, if facts warrant it. *Fleming* v. *Capital Trac. Co.* (40 App. D. C. 489).

Chapter 13.—PARTITION AND ASSIGNMENT OF DOWER

Sec.
16–1301. Partition—When granted—Parties—Accounting by tenant in common.
16–1302. Assignment of dower—Appointment of commissioners—Cases of partition.
16–1303. Assignment of dower of widow of tenant in common.
16–1304. Parties to proceeding.
16–1305. Sale of land encumbered by dower—Lack of consent—Consent in writing—Her portion.
16–1306. Sale of indivisible property—Discharge from dower.

§ 16–1301 [25: 381]. Partition — When granted — Parties—Accounting by tenant in common.

The equity court may decree a partition of any lands, tenements, or hereditaments on the bill or petition of any tenant in common, claiming by descent or purchase, or of any joint tenant or coparcener; or if it appear that said lands, tenements, or hereditaments can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from such sale among the parties, according to their respective rights; and this section shall apply to cases where all the parties are of full age, to cases where all the parties are infants, to cases where some of the parties are of full age and some infants, to cases where some or all of the parties are non compos mentis, and to cases where all or any of the parties are non-residents; and any party, whether of full age, infant, or non compos mentis, may file a bill under this section, an infant by his guardian or prochein ami and a person non compos mentis by his committee: *Provided,* That in every case of partition any tenant in common who may have received the rents and profits of the property to his own use may be required to account to his cotenants for their respective shares of said rents and profits, and any amounts found to be due on said accounting may be charged against the share of the party owning the same in the property, or its proceeds in case of sale. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 93; June 30, 1902, 32 Stat. 523, ch. 1329.)

COMPILER'S NOTE

This section and § 21–213 were originally § 93 of the code of 1901 and probably should be read together.

AMENDMENT

The 1902 amendment deleted the words "who was such at the date of this code" which followed the word "coparcener" in the first clause, and struck out the proviso of the 1901 Act and inserted in lieu thereof the words following the word "provided." The proviso of the 1901 Act read as follows: "Provided, That if the parties entitled as heirs at law to the real estate of an intestate can not agree upon a partition thereof, or any of said parties be a minor, or the courts shall be of opinion that said estate can not be divided without loss or injury to the parties interested, before any sale shall be made thereof, the oldest son, child, or person entitled, if of age, shall have the election to take the whole estate and pay to the others their just proportions of the value in

money; and if the oldest child or person entitled refuses to take the estate and pay to the others money for their proportions, then the next oldest child or person entitled, being of age, shall have the same election, and so on to the youngest child or person entitled; and if all refuse, then the property shall be sold as aforesaid; and in every case of partition any tenant in common who may have received the rents and profits of the property to his own use or may have had the exclusive possession and enjoyment of the property may be required to account to his cotenants for their respective shares of said rents and profits, or, as the case may be, for the value of the use and occupation of their undivided shares of the property; and any amounts found due on said accounting may be charged against the share of the party owing the same in the property or its proceeds in case of sale."

Cross References

Dower and curtesy, § 18–201 et seq.
Estates in coparcenary abolished, see § 45–817.

NOTES TO DECISIONS

Historical

For history of partition of District of Columbia among original proprietors, see *Bursey* v. *Lyon* (30 App. D. C. 597).

Accounting

Statute creates equitable lien against the interest of a cotenant to the amount found to be due from him on accounting permitted by statute. *Loving* v. *Moore* (37 App. D. C. 214).

Quaere: Whether common-law action of account lies by one tenant in common against the other who has secured more than his just share, in view of provisions of this section. *Lyon* v. *Bursey* (42 App. D. C. 519).

When one of tenants in common occupied property without payment of rent, an accounting under this section would not be allowable inasmuch as this section presupposes a subletting. *Allen* v. *Jones* (56 App. D. C. 245, 12 Fed. (2d) 186).

Cotenants

Mere acquiescence by one tenant in common in upkeep and improvements by his cotenant, who has complete possession of the common property, is not sufficient to establish partition in pais, without proof of some agreement between the parties to that end. *Addison* v. *Barnes* (45 App. D. C. 284).

A cotenant is not liable to his cotenants for use and occupation, unless there has been an actual or constructive ouster of the cotenants. *Allen* v. *Jones* (56 App. D. C. 245, 12 Fed. (2d) 186).

Where marriage relationship was dissolved at suit of wife by Florida court, full faith and credit being given Florida judgment, the estate of which husband and wife were seised as tenants by the entireties on date of that decree became a "tenancy in common," and hence complaint for seeking partition of the property would be treated as one between tenants in common. *Scholl* v. *Scholl* (D. C., D. C. 1947, 72 F. Supp. 823).

Counsel Fees

In partition, the fees of plaintiff's attorney cannot be charged against all the parties when in good faith they retain and are represented by other counsel. *Fletcher* v. *Coomes* (52 App. D. C. 159, 285 Fed. 893).

Definitions

The terms "parties" and "rights" mentioned in this section are defined and limited by the provisions of §§ 16–1305 and 16–1306. *Devlin* v. *Esher* (52 App. D. C. 30, 280 Fed. 1004).

Dower

Inchoate dower right of a wife of a tenant in common is not to be set off to the wife on sale of the property for partition, but the husband is entitled to entire distributive share. *Devlin* v. *Esher* (52 App. D. C. 30, 280 Fed. 1004).

Law Governing

To the extent that statutory law does not cover subject of dower completely, the common law still controls. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

Order of Sale

Where the property is susceptible of division in kind, a sale will not be ordered against the will of one of the parties. *Walker* v. *Lyon* (6 App. D. C. 484).

In partition proceeding where widow requests assignment of dower, after assignment is made court has power to proceed to order a sale and division of proceeds. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

Parties

"No one is entitled to maintain partition who has not an estate that entitles him to immediate possession." *Sis* v. *Boarman* (11 App. D. C. 116).

Purpose

This chapter regarding partition and assignment of dower was intended to achieve a comprehensive plan for partition and sale of property held in common subject to right of dower as well as other situations of common and joint ownership. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

Res Judicata

Decisions of courts of Michigan, in which testator resided at time of his death, that share of his residuary estate, devised by will to a remainderman who died before deaths of testator and last surviving life beneficiary, should be divided equally between deceased remainderman's sister and half-brother as deceased's sole legal heirs on date of last surviving life beneficiary's death, were not res judicata in suit for partition of portion of residuary realty in District of Columbia, but courts of District had exclusive jurisdiction to decide what disposition should be made of such share. *Greenwood* v. *Page,* 1944 (138 F. 2d 921, 78 U. S., App. D. C. 166).

Surety

In action on bond of trustee for sale of infant's property, the surety cannot be heard to question validity of the bond. *United States ex rel. Hine* v. *Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg. 29 App. D. C. 433, 31 App. D. C. 433).

Title

A mere averment of title in defendant is not sufficient to make a question of title: "proof is required to show that the claim of title is fair and reasonable, and not a mere sham intended to delay and embarrass the complainant." *Smith* v. *Butler* (15 App. D. C. 345).

While the jurisdiction of a court of equity to decree partition, or sale for partition, is undoubted in cases where there is no serious question of legal title as between the parties, it is equally well settled that the court does not sustain a bill for partition unless the legal title be clear and where the legal title is disputed, the court will retain the bill to give the plaintiff an opportunity to establish his title at law. *Roller* v. *Clarke* (19 App. D. C. 539, mfd. 199 U. S. 641, 50 L. Ed. 300, 26 Sup. Ct. 141).

"A bill of partition can not be made the means of trying a disputed title." *Staub* v. *Staub* (47 App. D. C. 180) citing *Jordan* v. *O'Brien* (33 App. D. C. 189); *Hasler* v. *Williams* (34 App. D. C. 319), distinguishing *Taylor* v. *Leesnitzer* (37 App. D. C. 356) where rights were determined because no motion to dismiss was made. See also *Goodman* v. *Wren* (34 App. D. C. 516) re rights of equitable owners to maintain partition.

Title

Where title to property purchased by husband and wife was taken in their names as tenants by the entireties, and both parties obligated themselves for balance due on a first trust, as of date of divorce decree obtained by wife in Florida, the parties became "tenants in common" and were equally bound by terms of contract of purchase and equally liable on the trust, so that wife was entitled to one-half of net value of the estate as of date of divorce

decree, less any monies that either had paid on the property for benefit of other since date of the last accounting. *Scholl* v. *Scholl* (D. C., D. C. 1947, 72 F. Supp. 823).

§ 16–1302 [25: 382]. Assignment of dower—Appointment of commissioners—Cases of partition.

Whenever any person or persons shall hold real estate, by descent or purchase, in the whole of which a widow is entitled to dower, either the widow or any person entitled to said property or an undivided share therein may apply to said court to have the widow's dower therein assigned; and thereupon the court shall appoint three commissioners to lay off and assign said dower, if practicable, the report of said commissioners to be subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real estate, in the whole of which a widow is entitled to dower, the said dower shall be laid off and assigned, in like manner, before said partition shall be decreed. When an estate of which a woman is dowable is entire, and the dower can not be set off thereout by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof. (Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 86.)

CROSS REFERENCES

Release of dower, § 30–216.
Release of dower of a person non compos mentis, § 21–301.

NOTES TO DECISIONS

ASSIGNMENT, EFFECT OF

After assignment of dower has been made, the widow's estate is in the nature of "tenements and hereditaments" within this chapter authorizing partition and is then subject to partition sale since it is, then, just as divestible a property right as if the division had been by metes and bounds of the land itself. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

After assignment of dower and entry into possession, widow becomes seized for her lifetime of a freehold estate. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

CONDITION PRECEDENT

Assignment of dower is condition precedent to partition. *Hasler* v. *Williams* (34 App. D. C. 319).

RIGHT TO ASSIGNMENT

Upon death of husband, a widow's right to dower is in the nature of a chose in action, including the right to have the dower assigned. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

SPECIFICALLY

Construing the word "specifically" it is said: "The act undoubtedly requires explicitness and certainty; it requires that the owner of the property * * * should have full and accurate notice of the claims of those who deal with the latter upon the faith of the legal liability of the property. For that purpose it requires that 'the amount claimed' should be set forth specifically; but it is the amount claimed, not the items that go to make up that amount, that is required to be so stated." *Emack* v. *Campbell* (14 App. D. C. 186).

§ 16–1303 [25: 383]. Assignment of dower of widow of tenant in common.

Whenever the widow of any tenant in common of real estate shall be entitled to dower in his undivided share of said property, and a partition shall be decreed between his heirs or devisees and the other tenants in common, the said dower shall attach to and may, in like manner, be assigned and laid out in the shares assigned in severalty to the said heirs or devisees, and the shares of the other tenants in common shall be assigned to them, respectively, in severalty, free from such dower. (Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 87.)

§ 16–1304 [25: 384]. Parties to proceeding.

Whenever an application is made to the court to decree a partition of real estate between tenants in common, it shall not be necessary to make the wife of any of such persons a party to the proceedings, but her right of dower shall attach to whatever part of such property may be assigned in severalty to her husband, and the other parts thereof shall be assigned free of said right of dower. (Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 88.)

NOTES TO DECISIONS

IN GENERAL

Under this section and sections 89, 90 and 93, Code of 1901 (§§ 16–1301, 16–1305, 16–306), property may be sold by way of partition, free of a wife's inchoate right of dower, and the husband is entitled to his entire distributive share. *Devlin* v. *Esher* (52 App. D. C. 30, 280 Fed. 1004).

§ 16–1305 [25: 385]. Sale of land encumbered by dower—Lack of consent—Consent in writing—Her portion.

Whenever a decree is rendered for the sale of land, in the whole of which a widow is entitled to dower, if she will not consent to a sale of the same free of her dower, the court may, if it appears advantageous to the parties, cause her dower to be laid off and assigned as aforesaid. If she will consent in writing to the sale of the property free from her dower, the court shall order the same to be sold free of her dower, and shall allow her, in commutation of her dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth, according to the age, health, and condition of the widow. (Mar. 3, 1901, 31 Stat. 1202, ch. 854, § 89.)

CROSS REFERENCE

See note to § 16–1304. *Devlin* v. *Esher* (52 App. D. C. 30, 280 Fed. 1004).

NOTES TO DECISIONS

DUTY OF COURT

Where dower interest of widow is involved in partition proceeding, the court must first determine, in its discretion, whether it appears advantageous to parties including widow to cause her dower to be laid off and assigned, and only after assignment has been made can court proceed with sale without consent of widow. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

FORMULA FOR DIVISION

Where widow refuses to consent to partition sale but requests assignment of dower and court after making assignment proceeds to order sale and division of proceeds, in making division of proceeds it is proper for court to use statutory formula applicable to situation in which widow consents to sale, but it is equally proper for court to apply common law formula. *Magruder* v. *Magruder,* 1944 (141 F. 2d 537, 78 U. S. App. D. C. 378, certiorari denied 65 S. Ct. 37, 323 U. S. 711, 89 L. Ed. 572).

§ 16–1306 [25: 386]. Sale of indivisible property—Discharge from dower.

Whenever real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the said property is incapable of being divided between them in specie, the court may decree a sale of the property free and discharged from any right of dower by the wife of any of the parties in his undivided share. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 90.)

CROSS REFERENCE

See note to § 16–1304. *Devlin* v. *Esher* (52 App. D. C. 30, 280 Fed. 1004).

Chapter 14.—PAYMENT OF MONEY INTO COURT

Sec.

16–1401. Cases in which permitted—Procedure.
16–1402. Right of plaintiff.

§ 16–1401 [24: 361]. Cases in which permitted—Procedure.

In any personal action the defendant may pay into court a sum of money on account of what is claimed by the plaintiff, or by way of compensation or amends, with costs, to the time of such payment, and plead that he is not indebted to the plaintiff (or that the plaintiff has not sustained damages) to a greater amount than said sum. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1529.)

CROSS REFERENCES

Interpleader, § 13–217.
Payment of mortgage money into court, §§ 45–605 to 45–607.
Payments into court in proceedings to enforcement mechanic's lien, § 38–118.
Trust or joint deposits, accounts, and safety-deposit boxes, § 26–201 et seq.
Warehouseman may require adverse claimants to interplead, §§ 28–1910, 28–1911.

§ 16–1402 [24: 362]. Right of plaintiff.

The plaintiff may accept the said sum, either in full satisfaction or in part satisfaction, and reply to the plea generally, and if issue thereon be found for the defendant judgment shall be given for the defendant and he shall recover his costs. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1530.)

COMPILER'S NOTE

Section 9 of chapter 125 of the act of March 3, 1921 (41 Stat. 1312) provides "Sections 1529, 1530 (§§ 16–1401, 16–1402) * * * of said Code of Law (D. C. Code of 1901), authorizing payment of money into court in certain cases, are hereby made applicable to the said Municipal Court."

Chapter 15.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

Sec.

16–1501. Procedure—Sufficiency of bill—Parties—Decree—Recording—Service—Defendants under disabilities—Limitation.

§ 16–1501 [25: 1]. Procedure—Sufficiency of bill—Parties—Decree—Recording—Service—Defendants under disabilities—Limitation.

When title to any real estate in the District of Columbia shall have become vested in any person or persons by adverse possession, the holder thereof may file a bill in the District Court of the United States for the District of Columbia to have such title perfected, in which bill it shall be sufficient to allege that the complainant holds the title to such real estate, and that the same has vested in him, or in himself and in those under whom he claims, by adverse possession; and in such action it shall not be necessary to make any person a party defendant except such persons as may appear to have a claim or title adverse to that of the complainant. Upon the trial of such cause, proof of the facts showing title in the complainant by adverse possession shall entitle him to a decree of the court declaring his title by adverse possession, and a copy of such decree may be entered of record in the office of the recorder of deeds for said District. In any such action if process shall be returned not to be found, notice by publication may be substituted as in case of nonresident defendants. If in any case it shall be unknown whether one who, if living, would be an adverse party is living or dead, or in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with under the provisions of section 13–113: *Provided,* That the rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities: *Provided, however,* That the entire period during which such rights shall be preserved shall not exceed twenty-two years from the time such rights accrued, either in said complainant or in the person or persons under whom he claims. (Mar. 3, 1901, 31 Stat. 1207, ch. 854, § 111; June 30, 1902, 32 Stat. 524, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "plaintiff" and inserted in lieu thereof the word "complainant" where this word now appears; struck out the word "nine" and inserted in lieu thereof the word "ten" before the word "provided," the first time it is used; and struck out the word "claimant" and inserted in lieu thereof the word "complainant" in the last proviso clause.

COMPILER'S NOTE

Title 25, § 2, D. C. Code 1929 Edit. was duplicated by Title 24, § 175 of said Code and appears herein as § 16–515. Said section provides as follows:

"In an action to recover vacant and unimproved lots of ground it shall not be necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been inclosed; but if it appear that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the same and were the only persons who had exercised control over the same for a period of fifteen years before the bringing of the action, such facts shall be the equivalent of possession by actual inclosure."

CROSS REFERENCES

Adverse possession as a defense, § 16–515.
Periods of limitation, § 12–201.

NOTES TO DECISIONS

IN GENERAL

"A great deal of indulgence has always been extended to one in the undisturbed possession of property, in respect of proceedings to quiet or perfect a title that had not been assailed." *Myers* v. *Mayhew* (32 App. D. C. 205).

"A title is good (as distinguished from good of record) if it has been acquired by adverse possession under such circumstances, and for such length of time, as to render

it indefeasible at law or in equity." *Marsh* v. *Kenyon* (37 App. D. C. 574), citing *Block* v. *Ryan* (4 App. D. C. 283).

COTENANT

One cotenant may hold adversely to his co-owner, although ouster or disseisin is not to be presumed from the mere fact of sole possession. *Henderson* v. *Mann* (47 App. D. C. 174).

DURATION OF POSSESSION

Adverse possession held clearly shown by 30 years' possession of lot with clearly defined boundaries which extended beyond the line as surveyed. *Brumbaugh* v. *Gompers* (50 App. D. C. 130, 269 Fed. 472).

EJECTMENT

This section has no application to action in ejectment based upon title by adverse possession. *McMillan* v. *Fuller* (41 App. D. C. 384).

EVIDENCE—SUFFICIENCY

Evidence held sufficient to be submitted to the jury on the question of adverse possession. *Davis* v. *Coblens* (174 U. S. 719, 43 L. Ed. 1147, 19 Sup. Ct. 832, affg. 12 App. D. C. 51).

INCLOSURE

"Actual inclosure is not necessary to prove possession; that while inclosure is the most tangible evidence of possession, a continuous, uninterrupted, open, actual, exclusive, and adverse possession is in law equally as satisfactory." *Howison* v. *Masson* (29 App. D. C. 338), citing *Holtzman* v. *Douglas* (5 App. D. C. 397, affd. 168 U. S. 278, 42 L. Ed. 466, 18 Sup. Ct. 65).

LIMITATION OF ACTIONS

There is an apparent conflict between § 111 (this section) and § 1265 (§ 12–201) of the 1929 edition, as to the extent of the principal limitation of actions, and also as to the extent of the saving to parties under disabilities. But in order to give effect to both sections, the former section being the act of Congress of March 3, 1899, must be read as an exception to the latter more general provision. *Gwin* v. *Brown* (21 App. D. C. 295).

POSSESSION TO BE ADVERSE

Possession, to become adverse, and effectual to defeat a clear pre-existing legal title, must be actual, continuous, and exclusive, attended with such manifest intention of holding and continuing the possession as will make that possession notorious to every one interested in reclaiming the property to the rightful ownership. *Reid* v. *Anderson* (13 App. D. C. 30).

POSSESSION UNDER MISTAKE

Title by adverse possession may be secured although possession was had under mistake (whether the mistake was honest or deliberate). *Rudolph* v. *Peters* (35 App. D. C. 438, Ann. Cas. 1912A, 446), citing *Johnson* v. *Thomas* (23 App. D. C. 141).

REMEDY

A bill in equity is the proper remedy to perfect title by adverse possession, and not ejectment, where defendants have not entered into possession or attempted to oust the plaintiff. *Myers* v. *Mayhew* (32 App. D. C. 205), citing *Peck* v. *Heurich* (6 App. D. C. 273, affd. 167 U. S. 624, 42 L. Ed. 302, 17 Sup. Ct. 927).

SUBSEQUENT ABANDONMENT

Title acquired by adverse possession is not lost by subsequent abandonment of possession. *Myers* v. *Mayhew* (32 App. D. C. 205), citing *Todd* v. *Kauffman* (8 Mackey (19 D. C.) 204).

Chapter 16.—QUO WARRANTO

Sec.
16–1601. Against whom issued—Civil action.
16–1602. Who may institute—Ex rel. proceedings.
16–1603. Attorney General and district attorney refusing to act—Procedure.
16–1604. Relator claiming office—Petition.
16–1605. Notice to defendant.
16–1606. Default—Proceedings.
16–1607. Pleading—Trial by jury.
16–1608. Verdict.
16–1609. Usurping corporate franchise.
16–1610. Proceedings against corporate director or trustee.
16–1611. Action against intruder for damages—Limitation.

§ 16–1601 [24: 231]. Against whom issued—Civil action.

A quo warranto may be issued from the District Court of the United States for the District of Columbia in the name of the United States—

First. Against a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in any domestic corporation.

Second. Against any one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District any corporate rights, privileges, or franchises not granted them by the laws in force in said District.

And said proceedings shall be deemed a civil action. (Mar. 3, 1901; 31 Stat. 1419, ch. 854, § 1538.)

CROSS REFERENCE

Proceedings for a forfeiture of all rights and privileges of institutions of learning, § 29–413.

STATUTORY REFERENCE

This section is in U. S. C., Title 28, § 377a.

RULES OF CIVIL PROCEDURE

Application of rules, see Rule 81 (a) (2).

NOTES TO DECISIONS

COMMON-LAW PRINCIPLES

Sections 16–1601 to 16–1604 of this chapter regarding writ of quo warranto leave the former common-law principles governing the issuance of writs of quo warranto in full force. *U. S. ex rel. Noel* v. *Carmody* (App. D. C. 1945, 148 F. 2d 684).

§ 16–1602 [24: 232]. Who may institute—Ex rel. proceedings.

The Attorney General or the district attorney may institute such proceeding on his own motion, or on the relation of a third person. But such writ shall not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator shall file a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court may prescribe, conditioned for the payment by him of all costs incurred in the prosecution of the writ in case the same shall not be recovered from and paid by the defendant. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1539.)

CROSS REFERENCE

See notes to § 16–1601.

STATUTORY REFERENCE

This section is in U. S. C., Title 28, § 377b.

NOTES TO DECISIONS

CLAIMANT TO OFFICE

A citizen and taxpayer who makes no claim to the office can not make application for quo warranto. *Newman* v. *United States ex rel. Frizzell* (238 U. S. 537, 59 L. Ed. 1446,

35 Sup. Ct. 881). See also *Hayes* v. *Burns* (25 App. D. C. 243, app. dism. 201 U. S. 650, 50 L. Ed. 905, 26 Sup. Ct. 744).

A writ of quo warranto may issue against an officer of a private corporation on complaint of one of its members or stockholders, even though the relator does not himself seek the same office. *U. S. ex rel. Noel* v. *Carmody* (App. D. C. 1945, 148 F. 2d 684).

COMPLAINT, SUFFICIENCY

Where by-law of Bar Association provided for committee on nominations which was directed to nominate at least two and not more than three names for each of offices to be filled, at ensuing election, committee nominated only one individual for office of president because of committee's inability to find another member who was both qualified for office and willing to be considered, another nominee was presented by petition, but the committee's nominee received overwhelming majority of votes, quo warranto complaint to remove committee's nominee from office of president was properly dismissed. *U. S. ex rel. Noel* v. *Carmody* (App. D. C. 1945, 148 F. 2d 684).

NOT AN ADEQUATE REMEDY AT LAW

Quo warranto is not an adequate remedy at law because the right to bring such action is not absolute, but lies within the discretion of the Attorney General or of the district attorney or of the court. *Columbian Cat Fanciers* v. *Koehne* (68 App D. C. 257, 96 Fed. (2d) 529).

"THIRD PERSON"

Congress used the words "third person" in the sense of "any person." *Newman* v. *United States ex rel. Frizzell* (238 U. S. 537, 59 L. Ed. 1446, 35 Sup. Ct. 881).

§ 16–1603 [24: 233]. Attorney General and district attorney refusing to act—Procedure.

If the Attorney General and district attorney shall refuse to institute such proceeding on the request of a person interested, such person may apply to the court by verified petition for leave to have said writ issued; and if in the opinion of the court the reasons set forth in said petition are sufficient in law, the said writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of said interested person, on his compliance with the condition prescribed in section 16–1602 as to security for costs. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1540.)

STATUTORY CROSS REFERENCE

This section is in U. S. C., Title 28, § 377c.

NOTES TO DECISIONS

PERSON INTERESTED

The interest which will justify such a proceeding by a private individual must be more than that of a taxpayer; it must be an interest in the office itself, and must be peculiar to the applicant. *Newman* v. *United States ex rel. Frizzell* (238 U. S. 537, 59 L. Ed. 1446, 35 Sup. Ct. 881).

The action must be brought by a person claiming title to the office in question and out of possession thereof. *Columbian Cat Fanciers* v. *Koehne* (68 App. D. C. 257, 96 Fed. (2d) 529).

§ 16–1604 [24: 234]. Relator claiming office—Petition.

When such proceeding is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1541.)

CROSS REFERENCE

See notes to § 16–1601.

§ 16–1605 [24: 235]. Notice to defendant.

On the issuing of the writ the court may fix a time within which the defendant may appear and answer the same. If the defendant can not be found in the District, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant shall not appear, judgment may be rendered as if he had been personally served. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1542; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "clerk" and inserted in lieu thereof the word "court" in the first sentence.

§ 16–1606 [24: 236]. Default—Proceedings.

If the defendant shall not appear as required by the writ, after being personally served, the court may proceed to hear proof in support of the writ, and render judgment accordingly. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1543.)

§ 16–1607 [24: 237]. Pleading—Trial by jury.

The defendant may demur or plead specially or plead "not guilty" as the general issue, and the United States may reply as in other actions of a civil character; and any issue of fact shall be tried by a jury if either party shall require it, otherwise it shall be determined by the court. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1544.)

§ 16–1608 [24: 238]. Verdict.

Where the defendant is found by the jury to have usurped or intruded into or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1545.)

§ 16–1609 [24: 239]. Usurping corporate franchise.

Where the proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1546.)

§ 16–1610 [24: 240]. Proceedings against corporate director or trustee.

Where the proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if such error be corrected, judgment may be rendered that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and a mandamus may be issued to the proper parties, being officers or members of said corporation, to admit him to said office. The said judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the said office, and obedience

to said judgment may be enforced by attachment. (Mar. 3, 1901, 31 Stat. 1420, ch. 854, § 1547.)

RULES OF CIVIL PROCEDURE

Mandamus in District Court of the United States for the District of Columbia has been abolished; similar relief may be obtained by appropriate action or motion as prescribed by rules of court, see Rule 81 (b).

§ 16–1611 [24: 241]. Action against intruder for damages—Limitation.

At any time within a year after such judgment the said relator may bring an action against the party ousted and recover the damages sustained by him by reason of such usurpation of the office to which he was entitled. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1548.)

Chapter 17.—REFERENCE OF QUESTIONS OF LAW AND FACT

Sec.

16–1701. Reference of law, admiralty and equity causes to referee for trial—Exceptions.
16–1702. Referee—Oath—Time for hearing.
16–1703. Powers of referee.
16–1704. Referee—Additional powers.
16–1705. Award—When filed—Notice—Ending the reference.
16–1706. Form of award.
16–1707. Award—Setting aside—Modification—Causes.
16–1708. Judgment.
16–1709. Appeals in equity causes.
16–1710. Exceptions to rulings of referee.
16–1711. Exceptions to rulings of referee—Reduction to writing—Bill of exceptions.
16–1712. Appeals in common-law cases.
16–1713. Exceptions part of record on appeal.
16–1714. Failure of referee to act—Misconduct.
16–1715. Fees of referee.
16–1716. Several referees.
16–1717. Death of party.
16–1718. Death of referee.
16–1719. Common-law references.

§ 16–1701 [24: 91]. Reference of law, admiralty and equity causes to referee for trial—Exceptions.

By consent of the attorneys or solicitors on both sides, manifested by written stipulation, any common-law or admiralty or equity cause pending in the District Court of the United States for the District of Columbia, except suits for divorce or nullity of marriage, or suits wherein any party to be affected by the result is an infant, idiot, or lunatic, may be referred for trial, upon the issues of law and fact therein involved, by an order of court, to some referee consented to by the parties or their counsel and named in the order. (Mar. 3, 1901, 31 Stat. 1254, ch. 854, § 412; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "the defendant" and inserted in lieu thereof the words "any party."

CROSS REFERENCES

Application of this chapter to proceeding in Small Claims and Conciliation Branch of Municipal Court, § 11–804.

Arbitration of claims against corporation in process of dissolution, § 29–710.

Arbitration of claims against estates, § 11–520.

RULES OF CIVIL PROCEDURE

See Rule 53.

STATUTORY REFERENCE

Arbitration of maritime disputes, see U. S. Code, title 9, §§ 1–15.

NOTES TO DECISIONS

AWARD AS CONDITION PRECEDENT

An award by arbitration is not a condition precedent to be proved before bringing suit. *Fontano* v. *Robbins* (18 App. D. C. 402).

POWERS

United States commissioners have only such powers as to procedure that may be conferred by the State statutes on examining magistrates of the State; United States commissioner can go no further in his procedure than the State examining magistrate could do. *United States* v. *Mace* ((C. C. A. 8), 281 Fed. 635).

SETTING ASIDE ARBITRATOR'S AWARD

If the arbitrator professes to decide upon the law and he mistakes it, the court will set aside the award; also where the arbitrator's reasons did not appear upon the face of the award, but only upon another paper delivered therewith. *Bailey* v. *District of Columbia* (4 App. D. C. 356).

SUBMISSION TO ARBITRATION WITHOUT ORDER OF COURT

As to submission to arbitration without an order of court, see *District of Columbia* v. *Bailey* (171 U. S. 161, 43 L. Ed. 118, 18 Sup. Ct. 868, revg. 9 App. D. C. 360).

§ 16–1702 [24: 92]. Referee—Oath—Time for hearing.

The referee, before proceeding to hear the cause, shall be sworn faithfully and fairly to try the issues and determine the questions referred to him, as the case may require, and to make a just and true award thereof.

He shall thereupon fix a time for the hearing of said cause and notify all parties thereof. (Mar. 3, 1901, 31 Stat. 1254, ch. 854, § 413.)

§ 16–1703 [24: 93]. Powers of referee.

He shall have power to administer oaths, to cause subpœnas and subpœnas duces tecum to be issued to witnesses and to compel their attendance by attachment, and to punish a witness by fine and imprisonment for contempt of court, for nonattendance, or refusal to be sworn, or to testify. He shall have the same power to adjourn from time to time, and to preserve order in the trial or hearing before him, and to punish any violation thereof, as a court in regular session. (Mar. 3, 1901, 31 Stat. 1254, ch. 854, § 414.)

§ 16–1704 [24: 94]. Referee—Additional powers.

In suits in equity the referee shall have power to take depositions in cases where they are taken before an examiner in chancery, and in all suits shall receive and consider all depositions and other evidence in like manner as where the trial or hearing is by the court. He may allow amendments to process or pleadings, pass interlocutory orders, award costs, and hear and determine all questions arising in the cause, with like effect as if done by order of the court. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 415.)

§ 16–1705 [24: 95]. Award—When filed—Notice—Ending the reference.

Within sixty days after the reference is made, unless a longer time is agreed upon by both parties or allowed by the court, the referee shall file with the clerk a written award and give notice thereof to each party interested; otherwise either party may notify the adverse party, or his attorney or solicitor, that he elects to end the reference, and the cause shall

proceed as if no reference had been made. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 416.)

§ 16–1706 [24: 96]. Form of award.

The final award of the referee shall state separately the facts found by him and his conclusions of law, and direct the judgment or decree to be entered thereupon, including a determination as to costs, and in common-law cases the finding as to the facts shall have the effect of a verdict of a jury. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 417.)

§ 16–1707 [24: 97]. Award — Setting aside — Modification—Causes.

On motion filed within twenty days after notice of the filing of the award to the parties or their attorneys, the court may set aside his award because of corruption or misconduct of the referee, or because he exceeded his powers or so imperfectly executed them that a final award was not made, or may modify his award in case of an evident miscalculation of figures, or if it relates to matter not submitted, or is imperfect in form. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 418.)

NOTES TO DECISIONS

SETTING ASIDE ARBITRATORS' AWARD

Arbitrators' corruption or gross mistake, either apparent on face of arbitration award or made out by evidence, warrants court's interference with award, but arbitrators' mere error of judgment does not warrant such interference. *Mancuso* v. *L. Gillarde Co.* (D. C. Mun. App. 1948, 61 A. 2d 677).

§ 16–1708 [24: 98]. Judgment.

Judgment or decree, if no such motion is made, or it is overruled, or the award is only modified as aforesaid, shall thereupon be entered by the clerk as in the award directed, and shall stand as the judgment of the court. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 419.)

§ 16–1709 [24: 99]. Appeals in equity causes.

An appeal may be taken to the United States Court of Appeals for the District of Columbia from such final decree in equity causes in like manner as from decrees rendered by the court. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 420.)

§ 16–1710 [24: 100]. Exceptions to rulings of referee.

Upon the trial of issues of fact in an action at law exceptions may be taken to the rulings of the referee upon the admissibility of evidence or upon questions of law arising during the hearing; and a refusal to make a finding upon a question of fact, upon sufficient evidence in law to sustain it, or making a finding of fact without sufficient evidence in law to sustain it, shall be deemed such a ruling upon a question of law. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 421.)

RULES OF CIVIL PROCEDURE

Formal exceptions unnecessary, see Rule 46.

§ 16–1711 [24: 101]. Exceptions to rulings of referee—Reduction to writing—Bill of exceptions.

Such exceptions must be taken at the time the rulings excepted to are made, and must be reduced to writing by the exceptant, or they may be noted on the minutes of the referee and afterwards stated in a bill of exceptions, which shall be settled in the same manner as where the trial is by a jury, as directed by the rules of court, the referee exercising the same power therein as the trial justice in case of a jury trial. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 422.)

CROSS REFERENCE

See Rules of Civil Procedure, §§ 16–1701, 16–1710.

§ 16–1712 [24: 102]. Appeals in common-law cases.

An appeal may be taken to the United States Court of Appeals for the District of Columbia from a final judgment in a common-law case, entered upon the award of the referee, in the same manner and with like effect as from a judgment rendered by the court on the verdict of a jury. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 423.)

§ 16–1713 [24: 103]. Exceptions part of record on appeal.

The exceptions taken as aforesaid shall constitute a part of the record upon which an appeal from the judgment shall be heard. It shall not be necessary, however, to take exceptions to the conclusions of law appearing upon the face of the referee's award; but any error therein shall be considered on appeal as if presented in a formal bill of exceptions. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 424.)

§ 16–1714 [24: 104]. Failure of referee to act—Misconduct.

In case of the disability of the referee, or his failure or refusal to proceed with the reference, or his misconduct, the court which passed the order of reference may rescind the same. (Mar. 3, 1901, 31 Stat. 1255, ch. 854, § 425.)

§ 16–1715 [24: 105]. Fees of referee.

The fees of the referee may be fixed by rule of court or agreement of the parties, and taxed as part of the costs of the cause. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 426.)

NOTES TO DECISIONS

FEES PART OF COSTS

Fees to special auditor may be taxed as part of the costs of the cause. *Davis* v. *Fidelity & Deposit Co.* (63 App. D. C. 395, 73 Fed. (2d) 118).

§ 16–1716 [24: 106]. Several referees.

The reference may be to more persons than one, provided they be an odd number of persons, in which case all must meet together and hear all the allegations and proofs of the parties; but a majority may determine all questions submitted to or arising before them. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 427.)

§ 16–1717 [24: 107]. Death of party.

If the death of either party shall happen pending the trial or hearing of a cause before a referee, the reference shall be at an end. If such death shall occur after the cause is submitted to the referee for final judgment or decree, the referee shall return his award, and thereupon the representative of such decedent may appear, or be required by the adverse

party to appear, as provided in sections 12–101 to 12–116, and the cause thereupon be proceeded with as if such death had not occurred. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 428.)

RULES OF CIVIL PROCEDURE

Substitution of parties, see Rule 25.

§ 16–1718 [24: 108]. Death of referee.

If any referee shall die before making his award the court shall, upon the consent of the parties or their counsel, appoint a referee, who shall have the same power to act as if originally appointed by mutual consent of the parties. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 429.)

§ 16–1719 [24: 109]. Common-law references.

Nothing herein contained shall prevent the court from referring a cause to an arbitrator, subject to the ratification of his award by the court, according to the course of the common law and the former practice of the court. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 430.)

Chapter 18.—REPLEVIN

Sec.
16–1801. Not necessary to demand possession—Costs.
16–1802. Declaration—Form.
16–1803. Affidavit—Content.
16–1804. Undertaking to abide judgment of the court.
16–1805. Failure of officer to obtain possession—Procedure.
16–1806. Publication against defendant.
16–1807. Default.
16–1808. Pleading.
16–1809. Motion for return of property—Procedure—Objection to sufficiency of surety—Section applicable in Municipal Court.
16–1810. Motion for return of property—Notice—Duty of officer.
16–1811. Measure of plaintiff's damages.
16–1812. Judgment for defendant.
16–1813. Verdict when goods are eloigned.
16–1814. Judgment for plaintiff.

§ 16–1801 [24: 391]. Not necessary to demand possession—Costs.

In any action of replevin brought to recover any personal property to which the plaintiff is entitled, which may have been wrongfully taken by or may be in the possession of and wrongfully detained by the defendant, it shall not be necessary to demand possession of said property before bringing the action therefor; but in such cases the costs of the action shall be awarded as the court may order. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1549.)

CROSS REFERENCES

Replevin in attachment suits, § 16–321.
Replevin in municipal court, §§ 11–725 to 11–732.

NOTES TO DECISIONS

COMMON LAW APPLICABLE

Common-law rules prevail as to powers of officers in executing a writ of replevin. "The rule of the common law * * * seems to be that an officer, in executing a writ of replevin, may not break an outer door or window of a dwelling to gain entrance to seize the property of the occupant or of a person rightfully domiciled therein. He may enter either an open outer door or window, provided it can be accomplished without committing a breach of the peace; he may then, after a request and refusal, break open any inner doors belonging to the defendant, in order to take the goods. We think a further reasonable rule is deducible from the cases, that when an officer, in the execution of a writ, finds an outer door or window slightly ajar, but not sufficiently so to admit him, he may open the door or window, provided he does not find it obstructed, but if it is fastened or obstructed so as to require force to overcome the obstruction, he may not use such force for such an entrance would constitute a breaking." *Palmer* v. *King* (41 App. D. C. 419, L. R. A. 1916 D, 278, Ann. Cas. 1915 C, 1139).

GOODS TAKEN BY POLICE

Replevy of goods taken by police from person accused of crime, see *Mutual Comm. & Stock Co.* v. *Moore* (13 App. D. C. 78).

NATURE OF ACTION

It is fundamental that the gist of the action of replevin is plaintiff's right to immediate possession and defendant's wrongful taking or wrongful or unlawful detention. *Daime* v. *Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

PROMISSORY NOTES

Replevin action is proper against a bank to recover possession of overdue promissory notes received by it from a private bank to secure a payment of an overdraft, when it is apparent the notes evidenced a debt secured by deed of trust on property that was owned by plaintiff and her sister, that the debt was paid on maturity of the notes and they were left with banking firm for safekeeping but the bank used them to pay overdraft without plaintiff's authority. *District Nat. Bank* v. *Trimble* (46 App. D. C. 319).

SUFFICIENCY OF BILL IN EQUITY

Equity will not require a specific delivery of art collection when the bill does not disclose what, if any, disposition of the art collection was made or attempted to be made in the will. *Dante* v. *Hutchins* (49 App. D. C. 348, 265 Fed. 988).

WHEN PURCHASE WAS FRAUDULENT

When vendor replevies goods on ground that the purchase was fraudulent and it appears that the value of the goods was in excess of balance due the vendor, it is proper to tender the excess to the defendant and upon his refusal to receive tender, pay the amount into court. *Samaha* v. *Mason* (27 App. D. C. 470).

§ 16–1802 [24: 392]. Declaration—Form.

The declaration in replevin shall be in the following or equivalent form: "The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) his, said plaintiff's, goods and chattels, to wit: (describe them) of the value of ——— dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloigned, that he may have judgment of their said value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1550.)

§ 16–1803 [24: 393]. Affidavit—Content.

At the time of filing the declaration in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating—

First. That, according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proposed to be replevied, being the same described in the declaration.

Second. That the defendant has seized and detained or detains the same.

Third. That said chattels were not subject to such seizure or detention and were not taken upon any

writ of replevin between the parties. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1551; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The 1902 amendment added the words "between the parties" at the end of this section.

§ 16–1804 [24: 394]. Undertaking to abide judgment of the court.

The plaintiff shall at the same time enter into an undertaking by himself or his agent with surety, approved by the clerk, to abide by and perform the judgment of the court in the premises. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1552; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the words "by himself or his agent."

CROSS REFERENCE

General provision concerning bonds, § 28–2401 et seq.

§ 16–1805 [24: 395]. Failure of officer to obtain possession—Procedure.

If the officer's return of the writ of replevin be that he has served the defendant with copies of the declaration, notice to plead, and summons, but that he could not get possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the same and damages for detention, or he may renew the writ in order to get possession of the goods and chattels themselves. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1553.)

CROSS REFERENCE

Replevin in attachment and garnishment proceedings, § 16–321.

NOTES TO DECISIONS

DAMAGES FOR VALUE AND DETENTION

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ by prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D. C. Mun. App. 1947, 50 A. 2d 815).

§ 16–1806 [24: 396]. Publication against defendant.

If the officer's return be that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court, subject to the provisions of section 13–111 as to mailing notice, may order that the defendant appear to the action by some fixed day; and of this order the plaintiff shall cause notice to be given by publication in some newspaper of the District at least three times, the first of which shall be at least twenty days before the day fixed for the defendant's appearance. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1554; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "court" the words "subject to the provisions of section one hundred and eight hereof as to mailing notice" which section of the 1901 Code appears herein as § 13–111.

§ 16–1807 [24: 397]. Default.

If the defendant fails to appear, the court may proceed as in case of default after personal service. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1555.)

§ 16–1808 [24: 398]. Pleading.

If the defendant appear he may plead not guilty, in which case all special matters of defense may be given in evidence, or he may plead specially. (Mar. 3, 1901, 31 Stat. 1421, ch. 854, § 1556.)

NOTES TO DECISIONS

BURDEN OF PROOF

In replevin to recover household goods which plaintiff claimed defendant had bought for plaintiff with his money and which defendant claimed to have bought with her own money, burden of proof upon such issue was upon plaintiff, and, if no evidence were produced on either side, plaintiff would have been out of court. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309).

In replevin to recover household goods which defendant claimed as a gift from plaintiff and which, it was not disputed, had originally been plaintiff's property, defendant had burden of establishing a gift of such goods. *Imhoff* v. *Walker* (D. C. Mun. App. 1947, 51 A. 2d 309).

SET-OFF

Damages for breach of warranty of chattel sold on conditional sale, proper set-off in replevin. *Marks* v. *Frigidaire Sales Corp.* (60 App. D. C. 359, 54 Fed. (2d) 974, cert. den. 285 U. S. 544, 76 L. Ed. 936. 52 Sup. Ct. 394).

§ 16–1809 [24: 399]. Motion for return of property—Procedure—Objection to sufficiency of surety—Section applicable in Municipal Court.

On the taking possession of the goods and chattels by the marshal or coroner by virtue of the writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession; and the court may thereupon inquire into the circumstances and manner of the defendant's obtaining possession of such property, and if it shall seem just may order the property to be returned to the possession of the defendant, to abide the final judgment in the action, and may, in its discretion, require the defendant to enter into an undertaking, with surety or sureties, similar to that required of the plaintiff upon the commencement of the action, and in such case a judgment for the plaintiff shall be rendered against the surety or sureties, as well as against the defendant. If it shall appear that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken. This section is applicable also to the Municipal Court. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1557; June 30, 1902, 32 Stat. 544, ch. 1329; Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 9.)

AMENDMENTS

The 1902 amendment inserted the words "or coroner" after the word "marshal" in the first phrase of the first sentence.

The 1921 act made this section applicable to the Municipal Court.

CROSS REFERENCE

Application to proceedings in municipal court, § 11–730.

§ 16–1810 [24: 400]. Motion for return of property—Notice—Duty of officer.

If the defendant shall notify the officer taking possession of the property, in writing, of his intention to make either of the motions aforesaid, it shall be the duty of the officer to retain possession of the property until said motion shall be disposed of, provided that the same shall be filed and notice given, as aforesaid, to the plaintiff, or his attorney, within two days thereafter. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1558.)

§ 16–1811 [24: 401]. Measure of plaintiff's damages.

Whether the defendant plead and the issue thereon joined is found against him, or his plea is held bad on demurrer, or he makes default after personal service or after publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where there is no issue of fact, and the damages shall be the full value of the goods, if eloigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention, and judgment shall pass for the plaintiff accordingly. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1559.)

NOTES TO DECISIONS

EVIDENCE

Testimony of witness that, when he took check drawn by defendant's husband, now deceased, to order of cash to bank and had it cashed for him, defendant's husband stated that he intended to use the money to buy furniture from third party was inadmissible as part of "res gestae". *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

INSTRUCTIONS

Defendant's instruction that question for jury to determine was whether plaintiff had shown by a fair preponderance of evidence that on date she brought replevin suit she was entitled as against all the world to immediate and exclusive possession of the furniture which was subject of the suit was properly modified by substituting for the words "all the world" the words "the defendant." *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

RIGHT TO POSSESSION

Testimony as to statements made by defendant's deceased husband that he bought the property in controversy in replevin suit from certain person was not admissible as part of the "res gestae". *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

In replevin suits it is not necessarily the title which is in issue but merely the right to possession as between the parties. *Jackson* v. *Goode* (D. C. Mun. App. 1946, 49 A. 2d 913).

SUBSEQUENT ACTION

A buyer who brings replevin for the possession of an automobile repossessed by the seller, with nominal damages for detention, is not thereby barred from subsequent action for illegal and malicious seizure. *Wardman-Justice Motors* v. *Petrie* (59 App. D. C. 262, 39 Fed. (2d) 512, 69 A. L. R. 648).

§ 16–1812 [24: 402]. Judgment for defendant.

If the issue be found for the defendant, or the plaintiff dismiss or fail to prosecute his suit, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages, or, on failure, that the defendant recover against the plaintiff and his surety the damages by him sustained, to be assessed by the jury trying the issue; or, where the plaintiff dismisses or fails to prosecute his suit, by the jury of inquest. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1560.)

§ 16–1813 [24: 403]. Verdict when goods are eloigned.

If the defendant has eloigned the things sued for the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1561.)

§ 16–1814 [24: 404]. Judgment for plaintiff.

The judgment in such cases shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1562.)

NOTES TO DECISIONS

WHERE GOODS NOT RECOVERED

If the goods are not recovered in the replevin proceeding, or returned within ten days after judgment, the plaintiff shall be entitled to judgment for the value of the goods as damages, and also damages for the detention. *Wardman-Justice Motors* v. *Petrie* (59 App. D. C. 262, 39 Fed. (2d) 512, 69 A. L. R. 648).

Chapter 19.—SET-OFF

Sec.

16–1901. What can be set off.
16–1902. Form of plea.
16–1903. Set-off deemed an action by defendant—Plaintiff may not dismiss—Procedure—Jurisdiction—Municipal Court.
16–1904. Effect of assignment.
16–1905. Set-off as to part.
16–1906. Action against principal and sureties.
16–1907. Action by trustee.
16–1908. Action by or against executor or administrator
16–1909. Setting off judgments.

§ 16–1901 [24: 411]. What can be set off.

Mutual debts and claims under contract between the parties to a common-law action, or between any of the several defendants and the plaintiff, or between one party and the testator or intestate of the other, or between the testators or intestates of both parties, may be set off against each other by plea in bar, whether said debts or claims be of the same or a different nature or degree, and whether the claims be for liquidated debts or unliquidated damages for breach of contract; and if either debt be in the form of the penalty of a bond the exact sum to be set off shall be stated in the plea. (Mar. 3, 1901, 31 Stat. 1422, ch. 854, § 1563; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

The 1902 amendment added the words "or between any of the several defendants and the plaintiff" after the word "action."

RULES OF CIVIL PROCEDURE

This chapter is largely superseded by Rules of Civil Procedure, Rules 2, 7–25, 54 (b), 55 (a), (d), 56, 67.

CITED

Boss v. *Hardee* (68 App. D. C. 75, 93 Fed. (2d) 234).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Durant v. *Murdock* (3 App. D. C. 114) (plea of set-off barred on its face by statute of limitations cannot be pleaded to prevent a summary judgment under 73d rule); *United States* v. *West* (8 App. D. C. 59) (when a plea of set-off only is filed, it is equivalent to a plea of confession and avoidance and transfers burden of proof to defendants); *Samaha* v. *Samaha* (18 App. D. C. 76) (right of plaintiff to dismiss action after plea filed).

Even if defendant had entered a plea of recoupment, coupled with non assumpsit, it would not amount to an admission of the existence of a cause of action, for the plea of non assumpsit is a denial of liability. *Hornblower* v. *George Washington University* (31 App. D. C. 64, 14 Ann. Cas. 696).

DAMAGES FROM WRONGFUL INJUNCTION

Where District Court dismissed wife's suit for divorce and taxed husband with her counsel fees, if court should find that wife's attorney knowingly participated in wrongful suing out of injunction by wife to tie up husband's funds, husband would be allowed to set off his damage from the injunction against the claim for counsel fees. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

Where judgment dismissing wife's suit for divorce and taxing husband with wife's counsel fees determined neither the facts nor the law with regard to husband's right to set off, against claim for counsel fees, damages sustained by wife's suing out of an injunction tying up husband's funds, husband would be allowed to set off such damage against the claimed fees if wife's attorney knowingly participated in wrongful issuance of injunction, notwithstanding allowance of fees had become final. *Shima* v. *Shima,* 1944 (139 F. 2d 533, 78 U. S. App. D. C. 265, 150 A. L. R. 1179).

DISTINGUISHED FROM COMMON LAW

Set-off did not exist at common law and is entirely founded upon statutory regulation and it is carefully to be distinguished from recoupment, which is a right existing at common law, and which arises when there are counterclaims accruing upon the same general contract. *Durant* v. *Murdock* (3 App. D. C. 114).

IN EQUITY

In equity suit against a contractor to enforce mechanics' lien for materials furnished, a recoupment or set-off will not be allowed against claim of complainant, of penalty by reason of failure to finish building on time, as complainant was not privy to the contract. *Carver* v. *Hall* (3 App. D. C. 170).

A creditor, having unliquidated demands against another not reduced to judgment, may set them off in equity against a judgment recovered against him by that other person, if there has been no opportunity to set them off in the suit which led to the judgment, and if the person who holds the judgment is insolvent. *Fedarwisch* v. *Alsop* (18 App. D. C. 318).

Cross-demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced by way of set-off whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice. *Fitzgerald* v. *Wiley* (22 App. D. C. 329).

Damages, to be recouped in equity proceeding, by a cross-bill, as to foreclose of mortgage on patents to be granted against person interested in mortgage debt, as result of negligence on the part of such person, a patent attorney, in not notifying mortgagor whereby patent lapsed and sale was prevented, must be limited to interest person has in original bill. *Fitzgerald* v. *Wiley* (22 App. D. C. 329).

PLEADING

Plea of set-off "must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were the plaintiff in the prosecution of a suit therefor. And while the technical formality and accuracy of a declaration may not be required, the plea must, nevertheless, inform the plaintiff, with reasonable certainty, of the particulars of the demand which he is called upon to defend." *McGuire* v. *Gerstley* (26 App. D. C. 193, affd. 204 U. S. 489, 51 L. Ed. 581, 27 Sup. Ct. 332).

Set-off must be specially pleaded. *Simmons* v. *Jaselli* (38 App. D. C. 242). See also *Knight* v. *W. T. Walker Brick Co.* (23 App. D. C. 519).

REPLEVIN

In replevin action, after default on conditional sales contract, the right of defaulting buyer for breach of contract may be set off. *Marks* v. *Frigidaire Sales Corp.* (60 App. D. C. 359, 54 Fed. (2d) 974).

§ 16–1902 [24: 412]. Form of plea.

The plea of set-off may be as follows: That the plaintiff, at the commencement of the suit, was, and still is, indebted to the defendant in the sum of ——— dollars, for that, and so forth, as appears by the particulars of said indebtedness hereunto annexed; and defendant is willing that the same may be set off against the plaintiff's demand. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1564.)

§ 16–1903 [24: 413]. Set-off deemed an action by defendant—Plaintiff may not dismiss—Procedure—Jurisdiction—Municipal Court.

A defendant who files a plea of set-off, founded on a claim against the plaintiff, shall be deemed to have brought an action at the time of filing such plea against the plaintiff for the matters mentioned in the plea; but it shall not be necessary that the amount of the claim so sought to be set off shall be such that the court would have jurisdiction of an original action to recover the same; and the plaintiff shall not thereafter be allowed to dismiss his suit without the consent of the defendant, but the defendant shall be entitled to a trial of and judgment upon his claim, but the same shall be open to the same defenses to which it would be open in an action brought by him thereon; and on the trial of an issue on said plea of set-off judgment shall be rendered for the balance found due, whether to the plaintiff or to the defendant, with costs: *Provided,* That nothing herein contained shall be construed to enlarge the jurisdiction of the municipal court so as to authorize any judgment by such court in excess of one thousand dollars exclusive of interest and costs. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1565; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

AMENDMENT

The 1921 act changed the jurisdiction from the "justice of the peace" court to the municipal court.

CROSS REFERENCE

See notes to § 16–1901.

NOTES TO DECISIONS

GENERALLY

Where defendant has sought affirmative relief by set-off or counterclaim, plaintiff may not discontinue action without defendant's consent, and, even though plaintiff fails to prosecute his claim, defendant is entitled to trial of and judgment upon his claim. *Tendler* v. *L. E. Massey, Inc.* (D. C. 1943, 33 A. 2d. 626).

JURISDICTION

In landlord's proceeding in municipal court for possession and rent, where tenant elected to plead its claim against landlord for $2,859.05 for negligent injury, allegedly

caused by leakage of rain to chattels in leased premises, the issue was within the jurisdiction of the municipal court. *Geracy, Inc.* v. *Hoover,* 1942 (133 F. 2d 25, 77 U. S. App. D. C. 55, 147 A. L. R. 185).

PLEADING

Where plaintiff filed in municipal court of District of Columbia particulars of demand in which she set up cause of action for $109.80, to which defendants responded with affidavit of defense and counterclaim accompanied by bill of particulars admitting they owed $100, and claiming $420 in counterclaim and demanding judgment for $320, plaintiff was not required to file an affidavit of defense in response to affidavit of merit which accompanied counterclaim, since rule 16 of such court must be so interpreted as to produce a result consistent with clearly expressed purpose of rule 2, providing that no formal pleadings shall be required, even for initiation of Class B cases. *Shields* v. *Hawkins,* 1942 (125 F. 2d 204, 75 U. S. App. D. C. 172).

RES JUDICATA

Where tenant claimed $2,859.05 from landlord for negligent injury to chattels in leased premises, if tenant chose to reduce its claim to the dimensions of municipal court jurisdiction and submit to the adjudication of municipal court, in which the landlord had instituted proceeding for restitution of premises, the tenant was privileged to do so, but, if it did so, it forfeited the privilege of having the same issue adjudicated in the district court. *Geracy, Inc.* v. *Hoover,* 1942 (133 F. 2d 25, 77 U. S. App. D. C. 55, 147, A. L. R. 185).

Where tenant pleaded its claim for $2,859.05 against landlord for negligent injury to chattels in leased premises as a defense to landlord's action in municipal court for possession of premises and for rent, the determination of the issue adversely to the tenant became "res judicata" thereof, and precluded tenant from recovering on such claim in action instituted in district court. *Geracy, Inc.* v. *Hoover,* 1942 (133 F. 2d 25, 77 U. S. App. D. C. 55, 147 A. L. R. 185).

Voluntary nonsuit taken by plaintiff without objection by defendant or expression of any desire to proceed with hearing on defendant's cross-claim was not "res judicata" of plaintiff's right to maintain a subsequent action against defendant on same cause of action. *Tendler* v. *L. E. Massey, Inc.* (D. C. 1943, 33 A. 2d 626).

§ 16–1904 [24: 414]. Effect of assignment.

When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim or set-off could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of any nonnegotiable debt the defendant may set off any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1566.)

NOTES TO DECISIONS

NO APPLICATION TO NEGOTIABLE INSTRUMENTS

"Taking this section as a whole, it is resolved into the statement that in an action by the assignee of any nonnegotiable debt, the defendant may set off any indebtedness to him of the assignor. The terms used are wholly inapplicable to negotiable instruments. According to accurate legal terminology, the person who transfers a promissory note is not called an assignor, but an indorser; the person to whom it is transferred is not designated the assignee, but the indorsee; and the use of the words 'nonnegotiable debt,' as meaning a negotiable promissory note would be a startling neologism." *Lincoln* v. *Grant* (47 App. D. C. 475).

§ 16–1905 [24: 415]. Set-off as to part.

If the defendant's plea of set-off covers or applies to only part of the plaintiff's demand judgment may be forthwith rendered for the part not controverted and the costs accrued until the filing of the plea, and the case shall be proceeded with for the residue as if the part for which judgment was rendered had not been included therein. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1567.)

§ 16–1906 [24: 416]. Action against principal and sureties.

In an action against principal and sureties an indebtedness of the plaintiff to the principal may be set off as if he were the sole defendant, and in such case, if the indebtedness so set off shall exceed the plaintiff's demand, the judgment for the excess shall be in favor of the defendant, who is sued as principal. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1568.)

NOTES TO DECISIONS

SUFFICIENCY OF FACTS

Plea that plaintiffs attempted to destroy defendants' business by persuading one partner to dissolve the partnership held not to set up facts sufficient to constitute a valid set-off, recoupment, or cause of action. *McGuire* v. *Gerstley* (204 U. S. 489, 51 L. Ed. 581, 27 Sup. Ct. 332, affg. 26 App. D. C. 193).

§ 16–1907 [24: 417]. Action by trustee.

If the plaintiff is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff shall not be pleaded by way of set-off, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1569.)

§ 16–1908 [24: 418]. Action by or against executor or administrator.

In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of set-off, a demand belonging to the decedent where he would have been entitled to rely upon the same in an action against him, and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of set-off, as if the action had been brought by the decedent in his lifetime. (Mar. 3, 1901, 31 Stat. 1423, ch. 854, § 1570.)

§ 16–1909 [24: 419]. Setting off judgments.

Where reciprocal claims between different parties have passed into judgments the court may, on motion, in its discretion, order that the judgments shall be set off against each other and satisfaction of both be entered to the amount of the smaller claim. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1571.)

NOTES TO DECISIONS

AUTHORITY DISCRETIONARY

Where attorney was to be paid out of a judgment, his interest is in the nature of an equitable lien and the court ought not to exercise its discretionary authority and allow another judgment to be set off against it when the effect would be to absorb the fund out of which appellees are entitled to be paid. *Continental Casualty Co.* v. *Kelly* (70 App. D. C. 320, 106 Fed. (2d) 841).

Chapter 20.—SURETIES

Sec.
16–2001. Counter security—Removal of fiduciary from office.
16–2002. Judgment or decree entered to use of surety or indorser satisfying judgment—Execution may issue against other sureties.
16–2003. Pledges of debtor not distrained if principal debtor sufficient.
16–2004. Pledges shall answer if principal does not or will not pay.
16–2005. Sureties to have lands and rents of debtor until satisfied—Exception.

§ 16–2001 [24: 431]. Counter security — Removal of fiduciary from office.

When the surety, or his personal representatives, of any officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond shall apprehend himself to be in danger of suffering from the suretyship and shall petition the court to be relieved from the suretyship, or that the court shall require said officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him, and on his failure so to do by a day named may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete the duties of his office or trust, and may thereupon order him to deliver over to his successor all the trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with said order by attachment. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1572.)

Cross References

Bonds generally, § 28–2401 et seq.
Counter security by executors and administrators, § 20–109.
Counter security by guardians, § 21–122.

§ 16–2002 [24: 432]. Judgment or decree entered to use of surety or indorser satisfying judgment—Execution may issue against other sureties.

Where any person shall recover a judgment or money decree against the principal debtor and a surety or indorser, and the judgment shall be satisfied by the surety or indorser, the latter shall be entitled to have the judgment or money decree entered by the clerk to his use and to have execution in his own name against the principal, and where any judgment or money decree shall be rendered against several sureties and one of them shall satisfy the whole debt, the said surety shall be entitled to have the judgment or decree entered to his use, as aforesaid, and to have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him; and on the motion of said surety so paying the entire debt and notice to the other sureties the court may determine for what amount execution shall issue against each of the other sureties. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1573.)

NOTES TO DECISIONS

Foreign Judgments

In action by surety, which had given New York cost bond, against principal to recover loss sustained by surety because of payment of judgment for costs against principal, where New York court had jurisdiction of subject matter and of parties, final judgment awarding costs was required to be given complete effect under the "full faith and credit" clause of U. S. Const. Art. 4, § 1. *Lloyd* v. *U. S. Fidelity & Guaranty Co.* (D. C. 1943, 31 A. 2d. 669, certiorari denied 64 S. Ct. 88, 320 U. S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U. S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U. S. 770, 88 L. Ed. 1595).

In action by surety, which had given New York cost bond, to recover loss sustained because of payment of judgment against principal for costs, trial court did not err in receiving in evidence certified copy of New York judgment for costs and canceled check evidencing payment of judgment by surety. *Lloyd* v. *U. S. Fidelity & Guaranty Co.* (D. C. 1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U. S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U. S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U. S. 770, 88 L. Ed. 1595).

In action by surety, which had given New York cost bond, against principal to recover loss sustained because of payment of judgment for costs against principal, record did not sustain defense of fraud and collusion in obtaining the judgment for costs. *Lloyd* v. *U. S. Fidelity & Guaranty Co.* (D. C. 1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U. S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U. S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U. S. 770, 88 L. Ed. 1595).

Cross Reference

Set-off, § 16–1906.

§ 16–2003 [24: 433]. Pledges of debtor not distrained if principal debtor sufficient.

The pledges of the debtor shall not be distrained, as long as the principal debtor is sufficient for the payment of the debt. (9 Hen. 3, ch. 8, § 2, 1225; Kilty's Rept., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D. C., p. 223, § 4.)

Cross Reference

See note to § 13–201.

§ 16–2004 [24: 434]. Pledges shall answer if principal does not or will not pay.

If the principal debtor fail in payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt. (9 Hen. 3, ch. 8, § 3, 1225; Kilty's Rept., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D. C., p. 223, § 4.)

§ 16–2005 [24: 435]. Sureties to have lands and rents of debtor until satisfied—Exception.

If sureties will pay, they shall have the lands and rents of the debtor, until they be satisfied of that what they before paid for him, except that the debtor can shew himself to be acquitted against the said sureties. (9 Hen. 3, ch. 8, § 4, 1225; Kilty's Rept., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D. C., p. 223, § 4.)

TITLE 17.—REVIEW

Chap. Sec.
1. Jurisdiction and method 17–101

Chapter 1.—JURISDICTION AND METHOD

Sec.
17–101. Repealed.
17–102. Court of Appeals—Appeals from interlocutory orders in criminal case prohibited.
17–103. Repealed.
17–104. Repealed.
17–105. Repealed.

§ 17–101 [18: 26]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to appeals from District Court was based on Act Feb. 9, 1893, 27 Stat. 435, ch. 74, § 7; Mar. 3, 1901, 31 Stat. 1225, ch. 854, § 226; Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 12, and is now covered by sections 1291, 1292 of title 28, U. S. C. See also D. C. Code, sections 11–771, 11–772.

NOTES PRIOR TO REPEAL

Compiler's Note

The Code of 1901, which appears in 31 Stat. 1189–1436, ch. 854, §§ 1 to 1642, was the last official code of the District and was original and independent legislation. Consequently, where a section of that code is set out and antecedent statutes are referred to in the history line, they have to do only with origins and the 1901 Code is not in fact amendatory of them and no comment concerning them will ordinarily be found in the notes concerning amendments.

Amendment

The act of 1921 deleted the words "including any final order or judgment in any case heard on appeal from a justice of the peace," following the words, "or any justice thereof."

Statutory Reference

Post office authorities requiring transmission of publication by freight.—Whenever the owner of any publication required by an order of the Post Office Department to be transmitted by freight believes that he is unfairly discriminated against, he may apply to the Post Office Department for an opportunity to be heard; that upon such application being duly filed in writing, the owner of such publication shall have opportunity for a full and fair hearing before said department, and pending final determination no change shall be made in the method of transportation of such publication as ordered by the Department. The testimony in any such hearing or proceedings shall be reduced to writing and filed in the Post Office Department prior to entering an order upon such hearing. That upon such hearing if the Post Office Department decides adversely to the contention of the publisher, such publisher shall have the right, within the period of twenty days after the date of the order of the Post Office Department made upon such hearing, to appeal to the United States Court of Appeals for the District of Columbia, for a review of such order by said court of appeals, by filing in the court a written petition praying that the order of the Post Office Department be set aside. A copy of such petition shall be forthwith served upon the Post Office Department and thereupon the said Department forthwith shall certify and file in the court a transcript of the record and testimony. Upon the filing of such transcript the court shall have jurisdiction to affirm, set aside, or modify the order of the Department.

The jurisdiction of the United States Court of Appeals for the District of Columbia to affirm, set aside, or modify such orders of the Post Office Department shall be exclusive.

Such proceedings in the United States Court of Appeals for the District of Columbia shall be given precedence over other cases pending therein and shall be in every way expedited. (July 28, 1916, 39 Stat. 424, ch. 261, § 2.)

Cross References

Appeal from decision of commissioners in revoking or suspending veterinary's license, § 2–810.

Appeal from finding of Commissioners revoking architects registration or certificate, § 2–1028.

Appeal from judgment condemning land for alleys and minor streets, § 7–323.

Appeal from judgment condemning land for streets outside Washington and Georgetown, § 7–214.

Appeals from judgment fixing rights of dissenting stockholders in sale of corporate assets, § 29–240.

Appeal from judgment reviewing action of commission in refusing physician's license, § 2–129.

Appeal from judgment reviewing action of nurses' examining board in refusing registration or reregistration, § 2–406.

Appeal from judgment reviewing decision of barber board refusing to issue or revoking a license, § 2–1110.

Appeal from judgment revoking or suspending dentist's license, § 2–312.

Appeal from judgment revoking or suspending nurse's registration, § 2–407.

Appeal from judgment revoking or suspending physician's license, § 2–123.

Appeal from judgment suspending or revoking license of podiatrist, § 2–708.

Appeal in proceedings to condemn land for United States, § 16–638.

Appeals by persons acquitted of criminal offense on grounds of insanity, § 24–301.

Appeals in cases referred to referee or master, §§ 16–1709, 16–1712.

Appeals in criminal cases, § 23–105.

Determining whether criminal prosecution shall be conducted by corporation counsel or the district attorney, § 23–102.

Motor vehicle operator's license, revocation or suspension, review, see motor vehicles, § 40–302.

No supersedeas bond required from Board of Education, § 31–101.

Power to make rules for conduct of court, § 11–205.

Private employment agency, revocation of license, review, § 47–2101.

Review of action of Board of Pharmacy in refusing to renew license or permit to sell poisons, § 2–606.

United States Court of Appeals for the District of Columbia constituted, § 11–201 et seq.

Writs in aid of appellate jurisdiction, § 11–208.

Rules of Civil Procedure

See Rules 73–76.

Cited

Federal Trade Comm. v. *Klesner* (274 U. S. 145, 71 L. Ed. 972, 47 Sup. Ct. 557), revg. (56 App. D. C. 3, 6 Fed. (2d) 701); *Case* v. *Helwig* (62 App. D. C. 98, 65 Fed. (2d) 186).

NOTES TO DECISIONS

In General

Since this act, Supreme Court of United States could not review judgments and decrees of the Supreme Court of the District of Columbia. *In re Massachusetts* (197 U. S. 482, 49 L. Ed. 845, 25 Sup. Ct. 512).

It was too late to assert a new and additional ground when case in ejectment came before the District Court and consequently it cannot then be alleged that a forfeiture resulted by reason of the tenant's allowing the attachment to be issued and levied. *Davis* v. *Taylor* (51 App. D. C. 97, 276 Fed. 619).

Jurisdiction is appellate and not original. *Hartman* v. *Masters* (57 App. D. C. 196, 19 Fed. (2d) 670).

An appeal does not lie from an order denying a motion for new trial, for rehearing, or to vacate a judgment, and the appeal should be taken from the judgment itself. *Gersing* v. *Chafitz,* 1942 (133 F. 2d 384, 77 U. S. App. D. C. 38).

Where appeal to Supreme Court from District Court for District of Columbia was unauthorized, cause was remanded in order that a new judgment might be entered from which an appeal could be perfected to Court of Appeals for District of Columbia. *U. S.* v. *Belt,* 1943 (63 S. Ct. 1278, 319 U. S. 521, 87 L. Ed. 1559, vacating 47 F. Supp. 239).

Adoption Proceedings

The aggrieved party may appeal from a final order of the District Court in an adoption proceeding. *Barnes* v. *Paanakker* (72 App. D. C. 39, 111 Fed. (2d) 193).

Amendment of Pleadings

The grant or refusal of leave to amend a pleading is a power intrusted to the trial courts that injustice and hardship may be prevented and the merits of the case fairly tried, and whether in the particular instance the leave should be granted or refused is not reviewable in the appellate court. *Plummer* v. *Johnson* (D. C. Mun. App. 1944, 35 A. 2d 647).

Antitrust Act

When the Supreme Court of the United States had settled that by reason of the Expediting Act the Court of Appeals was without jurisdiction of an appeal in a suit in equity under the Antitrust Act and that a consent decree was valid, the Court of Appeals, in refusing to vacate its judgment and mandate departed from the limits of admissible discretion. *United States* v. *California Co-op. Canneries* (279 U. S. 553, 73 L. Ed. 838, 49 Sup. Ct. 423).

Appealable Interest

"It is a condition precedent to the right of appeal that the appellant must show that he is directly aggrieved by the order appealed from." *Barksdale* v. *Morgan* (34 App. D. C. 549).

Executor cannot appeal from an order made in equity cause sustaining an exception to auditor's report allowing claim of an attorney for professional fee in acting for executor, under probate court order authorizing the executor to employ counsel, for such executor has no interest in the claim. *Barksdale* v. *Morgan* (34 App. D. C. 549).

Appellate Court will not review a case where the appellants are not aggrieved by the order made in their favor. *Dieterich* v. *Dieterich* (48 App. D. C. 356).

Appeal From Justices of the Peace

The controversy in respect of appeals to the Court of Appeals in the Supreme Court of the District in cases appealed from justices of the peace, raised under 1901 Code, §§ 82 and 226 (§ 17–101), was not only disposed of by the Court of Appeals in *Groff* v. *Miller* (30 W. L. R. 434), but determined by the repeal of § 82 by the act of June 30, 1902. *In re Key* (189 U. S. 84, 47 L. Ed. 720, 23 Sup. Ct. 624).

Appeal in Forma Pauperis

Practice of the courts of appellate jurisdiction in allowing appeals or writs of error to be brought by defendants in criminal cases in forma pauperis, upon proof of inability to pay costs and fees, furnishes no authority or precedent for allowing the privilege to a plaintiff in a civil action. *Ex parte Harlow* (3 App. D. C. 203); but see U. S. Code, title 28, § 832).

Wife who prosecuted in forma pauperis an appeal from a decree granting husband a divorce a vinculo and moves to have him pay alimony pending appeal, such motion was denied for the application was made to the court after rendition of the decree appealed from, and the transcript having been filed the lower court lost jurisdiction. *McLarren* v. *McLarren* (44 App. D. C. 555).

Appointment of Receiver

After appointment of receiver an order directing that certain property covered by original order shall be delivered to him is supplemental only and not appealable. *Mcarns* v. *Sullivan* (49 App. D. C. 179, 262 Fed. 633).

Appeal from order of Supreme Court of District appointing receiver, was one of right and not dependent upon an order of allowance by court of appeals. *Vernon* v. *Provident Relief Assn.* (57 App. D. C. 236, 19 Fed. (2d) 710).

On appeal under this section, interlocutory decree of District Court, appointing receiver for a grocery business was reversed, evidence failing to sustain plaintiff's claim of a partnership interest therein. *Chaparas* v. *Kountakis* (59 App. D. C. 367, 42 Fed. (2d) 351).

In suit for an accounting and discovery and for appointment of receiver, where verified complaint alleged that defendant was resident of District of Columbia, but summons was served on defendant in Virginia and the return, verified by a Virginia sheriff, alleged that defendant "is a nonresident of the District of Columbia", denial of defendant's motion, made on special appearance, to quash service of process was error. *Contella* v. *Clayton,* 1944 (140 F. 2d 469, 78 U. S. App. D. C. 291).

Bankruptcy Cases

No appellate jurisdiction over the District Court of the District sitting as a Court of Bankruptcy. *Sullivan* v. *Goldman* (38 App. D. C. 319, cert. den. 225 U. S. 701, 56 L. Ed. 1264, 32 Sup. Ct. 835).

The remedy of a person aggrieved in a bankruptcy proceeding in the District Court is by an appeal of right under the terms of the Bankruptcy Act, 11 U. S. C. § 47, rather than by a special appeal. *In re Leigh,* 1944 (139 F. 2d 386, 78 U. S. App. D. C. 261, 55 Am. Bankrup. Rep. N. S. 274).

Where bankrupt misconceived form of his appeal and erroneously petitioned for a special appeal instead of bringing an appeal of right, but no substantial rights of appellee were affected, and it would not have been in interest of justice to dismiss special appeal by reason of expiration of time for bringing an appeal of right, appellate court took jurisdiction of the case as an appeal of right. *In re Leigh,* 1944 (139 F. 2d 386, 78 U. S. App. D. C. 261, 55 Am. Bankrup. Rep. N. S. 274).

A bankrupt who seeks a review of an order on a motion is entitled as a substantial right to have court consider the motion papers and all exhibits as they were presented to referee, and an order denying completion of record to bring before the court such motion papers and exhibits is appealable of right under the Bankruptcy Act, 11 U. S. C. § 47, and is not a proper subject for special appeal. *In re Leigh,* 1944 (139 F. 2d 386, 78 U. S. App. D. C. 261, 55 Am. Bankrup. Rep. N. S. 274).

Bill of Exceptions

"There is no power in this court, by certiorari or otherwise, to correct the imperfections or misstatements that are alleged to exist in the bill of exceptions taken and certified to this court." *Kelly* v. *Moore* (22 App. D. C. 1).

Bill of Review

The purpose of a "bill of review" is to obtain a reversal or modification of a final decree and a bill may be maintained on the grounds of error of law apparent on the face of the record without further examination of matters of fact, new facts discovered since the decree which should materially affect the decree and probably induce a different result, and fraud in procuring the decree. *Fraser* v. *Doing,* 1942 (130 F. 2d 617, 76 U. S. App. D. C. 111).

The purpose of a "bill of review" or of a "complaint in the nature of bill of review" is to permit the same court to examine its earlier record and to answer the challenge made to its accuracy. *Fraser* v. *Doing,* 1942 (130 F. 2d 617, 76 U. S. App. D. C. 111).

Where disputed record in equity cause was not included in record on appeal from judgment dismissing complaint in the nature of a bill of review impeaching decrees entered in equity cause, every reasonable assumption was required to be indulged in favor of district court's judg-

ment dismissing complaint and in support of that court's exercise of discretion. *Fraser* v. *Doing,* 1942 (130 F. 2d 617, 76 U. S. App. D. C. 111).

Where answer to complaint in the nature of a bill of review impeaching decrees entered in equity cause alleged that plaintiff had made a general appearance in equity cause, nothing to the contrary was alleged or proved, plaintiff stipulated at pre-trial that there were no issues of fact raised by the pleadings except so far as records in equity cause might indicate, action was submitted on complaint and answer and record in equity cause was not before reviewing court on appeal from judgment dismissing complaint, reviewing court concluded that plaintiff did make a general appearance in equity cause and subjected himself to jurisdiction of court for all purposes and hence he could not sustain his contention that court lacked jurisdiction to enter its decrees and defendant was entitled to judgment as a matter of law. *Fraser* v. *Doing,* 1942 (130 F. 2d 617, 76 U. S. App. D. C. 111).

A complaint in the nature of a bill of review filed less than 10 days after final decree in equity sought to be impeached was entered was premature, since under Rule 59 following section 723c of 28 U. S. C. decree was still open to correction in the same proceeding by a motion for a new trial. *Fraser* v. *Doing,* 1942 (130 F. 2d 617, 76 U. S. App. D. C. 111).

Condemnation Proceedings

Court has jurisdiction to hear appeals in a proceeding to take land by condemnation and determine the compensation to be made for it. *Winslow* v. *Baltimore & O. R. Co.* (28 App. D. C. 126, affd. 208 U. S. 59, 52 L. Ed. 388, 28 Sup. Ct. 190). See also *Seufferle* v. *Macfarland* (28 App. D. C. 94).

Contempt Cases

A punitive sentence appropriate only to a proceeding at law for criminal contempt where the contempt consisted in doing that which had been prohibited by an injunction could not properly be imposed in contempt proceedings which were instituted, entitled, tried, and, up to the moment of sentence, treated as a part of the original cause in equity. *Gompers* v. *Buck's Stove & Range Co.* (221 U. S. 418, 55 L. Ed. 797, 31 Sup. Ct. 492, 34 L. R. A. (N. S.) 874, revg. 33 App. D. C. 516).

An appeal did not lie, nor did a writ of error, but a writ of certiorari was granted from a judgment of the District Court of the District of Columbia in a proceeding for an alleged criminal contempt of an injunction. *Gompers* v. *United States* (233 U. S. 604, 58 L. Ed. 1115, 34 Sup. Ct. 693, revg. 40 App. D. C. 293).

An alleged criminal contempt of an injunction is within the meaning of U. S. C., title 18, § 582, which provides for three-year limitation for criminal prosecution. *Gompers* v. *United States* (233 U. S. 604, 58 L. Ed. 1115, 34 Sup. Ct. 693, revg. 40 App. D. C. 293).

Appeal lies from order finding defendant guilty of criminal contempt. *Pierce* v. *United States* (37 App. D. C. 582, cert. den. 223 U. S. 732, 56 L. Ed. 634, 32 Sup. Ct. 528).

Order adjudging one in contempt for failure to deliver property to receivers was not a final order. *Mearns* v. *Sullivan* (49 App. D. C. 179, 262 Fed. 633).

Where jurisdiction of Federal appellate court in contempt appeal was established insofar as action against members of the court for alleged libel and conspiracy to damage the party adjudged in contempt was concerned, the members of the court could not be held liable for their judicial action in the contempt appeal. *Fletcher* v. *Stephens,* 1941 (133 F. 2d 394, 77 U. S. App. D. C. 98, certiorari denied 63 S. Ct. 1165, 319 U. S. 755, 87 L. Ed. 1708).

Where Federal appellate court's jurisdiction was not attacked in contempt appeal and the court took jurisdiction, the jurisdiction thus established could not be "collaterally attacked", in action against members of the court, which affirmed the contempt judgment, for alleged libel and conspiracy to damage the party adjudged in contempt. *Fletcher* v. *Stephens,* 1942 (133 F. 2d 394, 77 U. S. App. D. C. 98, certiorari denied 63 S. Ct. 1165, 319 U. S. 755, 87 L. Ed. 1708).

Disbarment Proceedings

Where District Court and Court of Claims had jurisdiction in disbarment proceedings, United States Court of Appeals for District of Columbia had jurisdiction of the subject matter on appeal. *Fletcher* v. *Evening Star Newspaper Co.,* 1940 (114 F. 2d 582, 72 App. D. C. 303, certiorari denied 61 S. Ct. 732, 312 U. S. 694, 85 L. Ed. 1130).

Divorce Proceeding

Trial court can grant an order requiring husband to pay attorney fees and costs of printing brief only until the transcript is lodged in the Appellate Court. *Bernsdorff* v. *Bernsdorff* (26 App. D. C. 228).

In action for divorce on ground of adultery, where evidence was in sharp and irreconcilable conflict, judgment for defendants would not be disturbed. *Bacon* v. *Bacon* (C. A., D. C. 1948. 169 F. 2d 679).

Federal Communications Commission

On review of a decision of the Federal Communications Commission, the United States Court of Appeals for the District of Columbia may correct errors of law, and on remand the commission is bound to act on the correction. *Federal Communications Commission* v. *Pottsville Broadcasting Co.,* 1940 (60 S. Ct. 437, 309 U. S. 134, 84 L. Ed. 656, reversing 105 F. 2d 36, 70 App. Div. 157, certiorari granted 60 S. Ct. 107, 308 U. S. 535, 84 L. Ed. 451).

Where modification of license of second class radio station, which had been operating in daytime only, to permit operation for unlimited time with increased power allegedly created electrical interference after sunset in secondary service area of first class station, and thus degraded the status of the first class station from a clear channel station by reclassifying it, although its license was not expressly modified, the first class station was entitled to appeal from the modification order of the Federal Communications Commission under 47 U. S. C. § 402 (b) (2), permitting appeal by a "person aggrieved or whose interests are adversely affected." *National Broadcasting Co.* v. *Federal Communications Commission,* 1942 (132 F. 2d 545, 76 U. S. App. D. C. 238, certiorari denied 63 S. Ct. 526, 317 U. S. 624, 87 L. Ed. 505, affirmed 63 S. Ct. 1035, 319 U. S. 239, 87 L. Ed. 1374).

Federal Trade Commission Orders

Congress, in making its provision for the use of the Circuit Courts of Appeals, in reviewing the Federal Trade Commission's orders, intended to include within that description the Court of Appeals of the District as the appellate tribunal to be charged with the same duty in the District. *Federal Trade Comm.* v. *Klesner* (274 U. S. 145, 71 L. Ed. 972, 47 Sup. Ct. 557).

Final Decree

Final order of dismissal as to one count of a declaration is not appealable, where the disposition of the subject-matter depends upon the issues made by and under the remaining counts. *Commercial Bank* v. *Consumers Brew. Co.* (16 App. D. C. 186).

"An order for the payment of alimony pendente lite, although merely an incident in all these proceedings, is in effect a final order" and therefore appealable as of right. *Lesh* v. *Lesh* (21 App. D. C. 475), citing *Alexander* v. *Alexander* (13 App. D. C. 334). See also *Lynham* v. *Hufty* (44 App. D. C. 589).

Order of justice of peace quashing attachment is not appealable, while the action remains undisposed of. *United States ex rel. Robertson* v. *Barnard* (24 App. D. C. 8).

Order dismissing defendant in criminal case from the indictment without day is final and therefore appealable. *United States* v. *Cadaar* (24 App. D. C. 143, revd. on other grounds 197 U. S. 475, 49 L. Ed. 842, 25 Sup. Ct. 487).

"A decree may be final in the sense that it may be appealed from, though not final in the strict technical sense of the term. If it dispose of all questions within the pleadings, and nothing remains but to adjust an account between the parties in the execution of the decree, it is final. But if the reference is for a judicial purpose, as to state an account between the parties, upon which a further decree is to be entered, it is not final." *King* v. *Harrington* (35 App. D. C. 111), citing *Gilbert* v. *Washing-*

ton Beneficial Endowment Assn. (10 App. D. C. 316), *Metzger* v. *Kelly* (34 App. D. C. 548).

Decree holding certain defendants liable and ordering reference, held not final and appealable. *United States ex rel. Philips* v. *Bailey* (57 App. D. C. 287, 22 Fed. (2d) 715).

Order removing administrator is a final appealable order. *Perry* v. *Wilson* (60 App. D. C. 109, 48 Fed. (2d) 1021).

The district court's final approval of a sale under a deed of trust constitutes a "final order" which may be reviewed by Court of Appeals for District of Columbia. *Ex parte Thomas,* 1940 (114 F. 2d 847, 73 App. D. C. 50).

Trial court's action in overruling demurrer to indictment was final, subject only to appeal. *Blount* v. *Huff,* 1944 (144 F. 2d 21, 79 U. S. App. D. C. 204, certiorari denied 65 S. Ct. 276, 323 U. S. 787, 89 L. Ed. 628).

An order overruling motion of defendant to dismiss original complaint was not an appealable "final order." *Toomey* v. *Toomey* (App. D. C. 1945, 149 F. 2d 19).

"Final orders, judgments and decrees" which are subject to review are those which expressly or by necessary implication determine rights and liabilities of all parties with reference to matter in controversy and leave nothing of a judicial character to be done. *Stewart* v. *Roberts* (App. D. C. 1946, 154 F. 2d 697).

An order denying motion for judgment in accordance with previous motion for directed verdict and, in effect, restoring case to docket for retrial was not an appealable "final order", and appeal was required to be dismissed for lack of jurisdiction. *Stewart* v. *Roberts* (App. D. C. 1946, 154 F. 2d 697).

Under this section authorizing appeal from "final order", an order is not appealable unless it amounts to a final disposition of case on its merits so that court has nothing to do but execute judgment. *Cammack* v. *Howard* (App. D. C. 1946, 154 F. 2d 22, 81 U. S. App. D. C. 22).

Orders of the district court of the United States which revoked the authority of appellant to do business as a bondsman in criminal cases in this jurisdiction were judicial orders and therefore appealable. *In Re Carter* (C. A. D. C. 1949, 177 F. 2d 75, 85 U. S. App. D. C. 229, certiorari denied, 70 S. Ct. 250, 338 U. S. 900, 94 L. Ed. 198).

Function of Court

It is not function of appellate court to assume the powers of trial court. *Schilling* v. *Schwitzer-Cummins Co.,* 1944 (142 F. 2d 82, 79 U. S. App. D. C. 20).

Appellate court will not reverse a ruling granting or refusing a view by jury unless an abuse of discretion is shown. *Washington Coca Cola Bottling Works* v. *Kelly* (D. C. Mun. App. 1944, 40 A. 2d 85).

Habeas Corpus

Provisions of the United States Code are not required to give this court jurisdiction on appeal in habeas corpus cases. That jurisdiction was conferred by the statute which created Court of Appeals of the District of Columbia. *Costello* v. *Palmer* (20 App. D. C. 210).

An order dismissing petition for a writ of habeas corpus by one in custody of United States marshal under a writ of capias ad satisfaciendum issued in a proceeding under §§ 794 and 795, R. S. D. C., was a final order and appealable to Court of Appeals where the habeas corpus proceeding was an independent suit, growing out of preceding cause, but having no necessary dependence or connection therewith. *Costello* v. *Palmer* (20 App. D. C. 210).

Appeal will lie from order awarding custody of child on habeas corpus. *Nuckols* v. *Nuckols* (38 App. D. C. 441), citing *Goldsmith* v. *Valentine* (35 App. D. C. 299).

Appeal from order dismissing petition for writ of habeas corpus was dismissed as frivolous, where petition contained no allegations of fact supporting claim that petitioner did not have the aid of competent counsel or that he did not have a fair trial. *Griffin* v. *Clemmer* (C. A., D. C. 1948, 169 F. 2d 961; cert. granted, 335 U. S. 866, 69 S. Ct. 136, 336 U. S. 704, 69 S. Ct. 814, 93 L. Ed. 993, rehearing denied, 337 U. S. 921, 69 S. Ct. 1152, 93 L. Ed. 1730; see also 183 Fed. (2d) 990.

Harmless Error

When law action was tried by consent without a jury, except for the paper required to consent to waive jury and as the defect is not jurisdictional and is not assigned for error or otherwise complained of, it may be disregarded. *Equitable Trust Co.* v. *Denver & R. G. R. Co.* ((C. C. A. 2), 250 Fed. 327, cert. den. 246 U. S. 672, 62 L. Ed. 932, 38 Sup. Ct. 423).

A reversal because of erroneous exclusion of evidence is proper only if it is shown that the exclusion was harmful. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

Although United States Attorney filed in appellate court a written confession of error and motion to remand, appellate court had duty to examine record and determine for itself whether there was prejudicial error. *Upshaw* v. *U. S.* (App. D. C. 1948, 168 F. 2d 167, certiorari granted 68 S. Ct. 1505, 334 U. S. 842, 92 L. Ed. 1767, reversed 69 S. Ct. 170, 335 U. S. 410, 93 L. Ed. 100).

Injunctions

Only such interlocutory orders granting injunctions "as affirmatively changed or affected possession of property" are appealable as matter of right. *McCaul Co.* v. *Harr* (51 App. D. C. 111, 276 Fed. 633), citing *United States Elec. Lighting Co.* v. *Metropolitan Club* (6 App. D. C. 536); *Macfarland* v. *Washington, A. & Mt. V. R. Co.* (18 App. D. C. 456); and *Hayes* v. *Conger* (36 App. D. C. 202); *Trans-Atlantic Trust Co.* v. *Pagenstecher* (53 App. D. C. 42, 287 Fed. 1019).

Appeal from decree of District Court granting a temporary injunction was premature. *Mellon* v. *Mertz* (58 App. D. C. 302, 30 Fed. (2d) 311).

Preliminary injunction restraining picketing is not appealable. *New Negro Alliance* v. *Harry Kaufman* (64 App. D. C. 362, 78 Fed. (2d) 415).

Interlocutory Decrees

Court of Appeals may review interlocutory orders of the District Court, as well as final judgments; but it is unnecessary to say that if the judgment reviewed was interlocutory, so is the judgment affirming it. *Hartranft* v. *Mullowny* (247 U. S. 295, 62 L. Ed. 1123, 38 Sup. Ct. 518).

Neither an order overruling motion to vacate order of publication nor a decree pro confesso is appealable. *Chappell* v. *O'Brien* (22 App. D. C. 190).

Special appeal from interlocutory order allowed when it appeared that the trial of the issues framed would result in vexatious delay and costs to no purpose, should it be afterwards determined that trial court was without jurisdiction. *Healey* v. *Maroney* (34 App. D. C. 99).

This section requires a final order, or such an interlocutory order as is contemplated by the statute conferring general appellate jurisdiction. *Mearns* v. *Sullivan* (49 App. D. C. 179, 262 Fed. 633).

When order is interlocutory merely, no appeal lies as a matter of right, but may be filed by special leave of court. *Church* v. *Church* (50 App. D. C. 239, 270 Fed. 361, 14 A. L. R. 769); *Sykes* v. *Jenny Wren Co.* (64 App. D. C. 379, 78 Fed. (2d) 729, 104 A. L. R. 864).

Appeal from interlocutory decree not changing possession of property is premature. *Mellon* v. *Mertz* (58 App. D. C. 302, 30 Fed. (2d) 311).

Decree referring sale of goods under chattel mortgage to auditor for final accounting, interlocutory order and not appealable. *Fidelity Storage Co.* v. *Jaques* (61 App. D. C. 337, 62 Fed. (2d) 876, cert. den. 289 U. S. 733, 77 L. Ed. 1481, 53 Sup. Ct. 594).

An interlocutory order that adjudicates no legal rights, but preserves the status quo is not appealable. *Dunning* v. *Harrah* (65 App. D. C. 92, 80 Fed. (2d) 535).

United States Court of Appeals may allow appeals from interlocutory orders of the District Court, but not from interlocutory orders of the Municipal Court. *Serkowich* v. *Wardell* (69 App. D. C. 389, 102 Fed. (2d) 253).

An order denying a motion to postpone distribution of personal estate of deceased provided legatee should furnish a bond was not a "final order," but was an "interlocutory order" from which an appeal could not be taken, since its operation was dependent on whether or not bond was furnished. *Hengesbach* v. *Hengesbach,* 1942 (130 F. 2d 838, 76 U. S. App. D. C. 209).

Order sustaining motion of plaintiffs to dismiss compulsory counterclaim was not an appealable "final order" but was an "interlocutory order". *Toomey* v. *Toomey* (App. D. C. 1945, 149 F. 2d 19).

Where testamentary trustee sued to have District Court take jurisdiction of trust and court entered order taking supervision of administration of estate but refused stay of proceedings, under Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App., § 521, only concerning consideration of question as to whether court should receive accountings and supervise administration and left way open for renewal of motion to stay, should that become appropriate when account had been presented, the orders were "interlocutory" and appeal, taken as a general appeal as though orders complained of were final, would be dismissed. *Cammack* v. *Howard* (App. D. C. 1946, 154 F. 2d 22, 81 U. S. App. D. C. 22).

Mandamus

Use of mandamus to compelling entry of judgment according to mandate of Court of Appeals. *Ex parte Mansfield* (11 App. D. C. 558). See also *Hartman* v. *Masters* (46 App. D. C. 271).

Moot Questions

Where husband had been improperly imprisoned for contempt for noncompliance with order awarding maintenance pendente lite and suit money, in wife's suit for maintenance, the fact that he had been released from custody on giving bond for satisfaction of contempt judgment did not require dismissal of appeal from order denying writ of habeas corpus as "moot", since husband was in custody of law and was restrained of his liberty. *Bates* v. *Bates,* 1944 (141 F. 2d 723, 79 U. S. App. D. C. 14).

Where motion to dismiss, filed after decision was rendered, disclosed that parties had settled case, judgment would be vacated and appeal dismissed, and cause remanded with directions to dismiss case as moot. *Mueller Brass Co.* v. *Alexander Milburn Co.* (App. D. C. 1945, 152 F. 2d 142).

Ne Exeat

An order refusing to quash a writ of ne exeat issued on divorced wife's complaint to prevent former husband from leaving the jurisdiction of the court and directing that the writ continue in force was a "final order" and was appealable. *Jacobsen* v. *Jacobsen,* 1942 (126 F. 2d 13, 75 U. S. App. D. C. 223).

New Trial Orders

An order overruling motion for reconsideration of a denial of a motion for new trial does not extend time for appealing. *Gersing* v. *Chafitz,* 1942 (133 F. 2d 384, 77 U. S. App. D. C. 38).

Where motion for new trial was not filed within ten days after entry of judgment, as required by rule 59 of Federal Rules of Civil Procedure, following § 723c of 28 U. S. C., the time for taking appeal was not suspended beyond the date of the overruling of the motion, and therefore notice of appeal which was filed more than 30 days thereafter did not give Federal appellate court jurisdiction. *Gersing* v. *Chafitz,* 1942 (133 F. 2d 384, 77 U. S. App. D. C. 38).

An order granting a new trial on judge's own initiative more than ten days after entry of judgment is reviewable. *Freid* v. *McGrath,* 1943 (133 F. 2d 350, 76 U. S. App. D. C. 388, mandate recalled on other grounds 135 F. 2d 833, 77 U. S. App. D. C. 385).

Court of Appeals for District of Columbia cannot review trial court's decision to grant or deny new trial on ground that verdict was excessive or inadequate. *Feltman* v. *Sammond* (App. D. C. 1948, 166 F. 2d 213).

Parties

Where action was commenced by Price Administrator for injunctive relief and treble damages under former Emergency Price Control Act, 50 U. S. C. App., § 925 (e), and Price Administrator resigned and more than a year passed and no action was proposed or taken to substitute another party plaintiff or to continue or maintain the action or to show that there was need for so continuing or maintaining the action which was dismissed on defendant's motion, the United States, which filed a notice of appeal without seeking to be substituted as a party, was not entitled to appeal and appeal would be dismissed. *U. S.* v. *Seigel* (App. D. C. 1948, 168 F. 2d 143).

Possession of Property

Possession obtained by writ of restitution under municipal court judgment before reversal of district court judgment dismissing complaint, in suit to enjoin enforcement of municipal court judgment, was "rightful possession" as against contention that because dismissal of injunction suit was erroneous, possession was wrongful and could not be recognized in determining whether subsequent interlocutory orders were appealable on theory that possession of property was changed or affected thereby. *Laughlin* v. *Berens,* 1942 (128 F. 2d 23, 75 App. D. C. 409).

Where defendant obtained possession by writ of restitution under municipal court judgment before reversal of district court's judgment dismissing complaint, in suit to enjoin enforcement of municipal court judgment, district court order vacating an unexecuted order of restitution obtained by plaintiffs and district court order denying plaintiffs' motion for preliminary injunction to restore the status quo were not appealable under provisions of this section permitting appeal from "interlocutory order whereby possession of property is changed or affected." *Laughlin* v. *Berens,* 1942 (128 F. 2d 23, 75 U. S. App. D. C. 409).

Under provision of this section permitting appeals from interlocutory orders whereby possession of property is changed or affected, Congress intended to permit appeals only from interlocutory orders which if carried into effect would change or affect the actual possession of the property as it existed immediately before the order. *Laughlin* v. *Berens,* 1942 (128 F. 2d 23, 75 U. S. App. D. C. 409).

Probate Court

Order of Probate Court directing that a petition shall stand as a caveat is not appealable. *Craighead* v. *Alexander* (38 App. D. C. 229).

Appeal will not lie from order of Probate Court framing issues on caveat to will. *Hutchins* v. *Hutchins* (40 App. D. C. 180), distinguishing *National Safe Deposit, Sav. & Trust Co.* v. *Sweeny* (3 App. D. C. 401); *Dugan* v. *Northcutt* (7 App. D. C. 351); *National Safe Deposit, Sav. & Trust Co.* v. *Heiberger* (19 App. D. C. 506).

Questions Not Raised Below

Where record did not reveal that contention concerning unilateral nature of contract was presented to trial court as ground for motion for directed verdict or otherwise, appellant was not entitled to present such contention on appeal. *Friedman* v. *Decatur Corporation,* 1943 (135 F. 2d 812, 77 U. S. App. D. C. 326, affirming 39 F. Supp. 692).

Ordinarily, issues on appeal should be confined to those which were duly presented at trial. *Schaff* v. *R. W. Claxton, Inc.,* 1944 (144 F. 2d 532, 79 U. S. App. D. C. 207, certiorari denied 69 S. Ct. 168, 335 U. S. 871, 93 L. Ed. 415; see also 169 F. 2d 303, 83 U. S. App. D. C. 271).

Where accused's witness was asked on cross-examination when he had first met accused, and witness' answer that he had met accused in federal prison was not called to court's attention in any way by trial counsel of accused, it was too late to urge on appeal that the answer was sufficient ground to set aside conviction. *Sykes* v. *U. S.,* 1944 (143 F. 2d 140, 79 U. S. App. D. C. 97).

Where defendant did not move before trial to suppress evidence allegedly obtained by means of illegal search and seizure, or explain his failure to do so, no complaint could be made on appeal of admission of such evidence. *Cromer* v. *U. S.,* 1944 (142 F. 2d 697, 78 U. S. App. D. C. 400, certiorari denied 64 S. Ct. 1274, 322 U. S. 760, 88 L. Ed. 1588).

Question whether the filing of an unqualified motion to dismiss by nonresident who had not been served personally constituted a general appearance was waived by failure to present it either to trial court or on appeal. *Rone* v. *Rone,* 1944 (141 F. 2d 23, 78 U. S. App. D. C. 369).

Where no motion for binding instructions is made, review may not ordinarily be had, but in serious criminal cases practice has been to notice error vitally affecting the issue regardless of failure to conform with rules. *Williams* v. *U. S.,* 1944 (140 F. 2d 351, 78 U. S. App. D. C. 322).

Having failed to present the plea of unconstitutionality of a statute on its face to the district court, the appellant cannot urge it in appellate court since the rule is if the question is not raised in the trial court, it will not be considered on appeal. *Keyes* v. *Madsen* (C. A. D. C. 1949, 179 F. 2d 40, 86 U. S. App. D. C. 24, certiorari denied, 70 S. Ct. 628, 339 U. S. 928, 94 L. Ed. 546).

RECORD

The circumstances showing the essential justice of sentence are not a necessary part of record on appeal and appellate court could not consider question of possible abuse of discretion in imposing sentence. *Gaston* v. *U. S.*, 1944 (143 F. 2d 10, 79 U. S. App. D. C. 37, certiorari denied 64 S. Ct. 1286, 322 U. S. 764, 88 L. Ed. 1591).

REEXAMINATION OF RULINGS

Where appellate court affirmed conviction in reliance on decision which had been affirmed by Supreme Court, but thereafter Supreme Court vacated its earlier judgment and rendered contrary decision, the judgment would be vacated and cause remanded to enable the appellate court to reexamine its ruling in the light of subsequent decision of Supreme Court. *Busey* v. *District of Columbia,* 1943 (63 S. Ct. 1277, 319 U. S. 579, 87 L. Ed. 1598, vacating 129 F. 2d 24, 75 U. S. App. D. C. 352, certiorari granted 63 S. Ct. 1154, 319 U. S. 735, 87 L. Ed. 1695, mandate conformed to 138 F. 2d 592, 78 U. S. App. D. C. 189).

RIGHT TO APPEAL

As a general rule, an executor is not aggrieved and therefore cannot appeal until either the estate as a whole, or his individual interests are affected, as by an order refusing probate, etc. He cannot appeal for the protection of interests of particular devisees or legatees who are able to protect themselves by taking an appeal of their own. *Spriggs* v. *Stones* (C. A. D. C. 1949, 174 F. 2d 671, 85 U. S. App. D. C. 95).

SCOPE OF REVIEW

Ordinarily the scope of review of the decree of the District Court would be limited to the assignments of error but as the decree was entered under a mandate of the Supreme Court, the Supreme Court would have jurisdiction to consider on its own motion whether its mandate has been complied with. *Continental Ins. Co.* v. *Reading Co.* (259 U. S. 156, 66 L. Ed. 871, 42 Sup. Ct. 540).

On appeal, a case should be disposed of under the law as determined by later decisions. *Schaff* v. *R. W. Claxton, Inc.,* 1944 (144 F. 2d 532, 79 U. S. App. D. C. 207).

Federal appellate court has power not only to correct errors in judgment under review, but to make such disposition of case as justice requires and in determining what justice requires court must consider any change, either in fact or in law, which has supervened since judgment was entered. *Schaff* v. *R. W. Claxton, Inc.,* 1944 (144 F. 2d 532, 79 U. S. App. D. C. 207, certiorari denied 69 S. Ct. 168, 335 U. S. 871, 93 L. Ed. 415; see also 169 F. 2d 303, 83 U. S. App. D. C. 271).

Even if it were an improper practice for trial court to direct counsel to prepare findings, such fact would not authorize the appellate court to review evidence de novo, but proper procedure would be to remand case to trial court and direct that new findings be made. *Schilling* v. *Schwitzer-Cummins Co.,* 1944 (142 F. 2d 82, 79 U. S. App. D. C. 20).

In order to sustain a conviction, the appellate court must be able to find that the evidence is more consistent with guilt than innocence. *Williams* v. *U. S.,* 1944 (140 F. 2d 351, 78 U. S. App. D. C. 322).

On appeal from judgment for contestants in will contest, the question is whether there was sufficient evidence to support the verdict, giving to it every legitimate and permissible inference. *Duckett* v. *Duckett* (App. D. C. 1945, 150 F. 2d 985).

On matters of law, unmixed, reviewing courts are free to substitute their own judgment for that of administrative agency, although great weight must be given to administrative judgment. *Agnew* v. *Board of Governors of Federal Reserve System* (App. D. C. 1946, 153 F. 2d 785, 80 U. S. App. D. C. 377, certiorari granted 66 S. Ct. 979, 328 U. S. 125, 90 L. Ed. 1604 reversed 67 S. Ct. 411, 329 U. S. 441, 91 L. Ed. 408).

Where jury reached verdict on conflicting evidence, appellate court must affirm judgment based on verdict, in absence of error of law. *Gardner* v. *Capital Transit Co.* (App. D. C. 1946, 152 F. 2d 288).

By virtue of the assignment, appellant bank transferred its interest in the judgment out of which the action sprung and, as a consequence, it was not a party aggrieved within the purview of the statute and had no legal or equitable right upon which to predicate its suit below. *Mount Vernon Savings Bank* v. *Wardman* (C. A., D. C. 1949, 173 A. 2d 648, 84 U. S. App. D. C. 343).

TRADE-MARKS

Both the applicant for cancelation of trade-mark and the registrant opposing it are given the right of appeal to the Court of Appeals for the District. *United States ex rel. Baldwin* v. *Robertson* (265 U. S. 168, 68 L. Ed. 962, 44 Sup. Ct. 508).

TRADING WITH THE ENEMY ACT

Alien property custodian and treasurer could appeal from a judgment of the District Court in an action under § 9 of the Trading With the Enemy Act. *United States* v. *Securities Corp. General* (55 App. D. C. 256, 4 Fed. (2d) 619).

WRITS OF PROHIBITION

When exercise of power is unlawful and there is no other adequate remedy, the Appellate Court will order the writ of prohibition to issue to prohibit further proceedings in the court below. *In re Macfarland* (30 App. D. C. 365), app. dism. (215 U. S. 614, 54 L. Ed. 349, 50 Sup. Ct. 402).

A writ of prohibition will not lie to prohibit collection of judgment of Municipal Court on an undertaking to stay execution, although such judgment was for more than $1,000. *Bailey* v. *Walker* (55 App. D. C. 74, 2 Fed. (2d) 123).

§ 17–102 [18: 27]. Court of Appeals—Appeals from interlocutory orders in criminal case prohibited.

Nothing contained in any Act of Congress shall be construed to empower the United States Court of Appeals for the District of Columbia to allow an appeal from any interlocutory order entered in any criminal action or proceeding or to entertain any such appeal heretofore or hereafter allowed or taken. (July 3, 1926, 44 Stat. 831, ch. 755; June 7, 1934, 48 Stat. 926, ch. 426.)

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 683.

CROSS REFERENCE

Appeal by the United States from a decision or judgment quashing, setting aside or sustaining motion to dismiss indictment or information or count thereof or arresting judgment of conviction in cases not applicable to the Supreme Court, see 18 U. S. C. § 682.

NOTES TO DECISIONS

APPEALS FROM MUNICIPAL COURT

United States Court of Appeals for the District may allow appeals from interlocutory orders of the District, but not from interlocutory orders of the Municipal Court. *Serkowich* v. *Wardells* (69 App. D. C. 389, 102 Fed. (2d) 253).

§ 17–103 [18: 28]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to appeals from police court was based on Act Mar. 2, 1897, 29 Stat. 607, ch. 360; Mar. 3, 1901, 31 Stat. 1225, ch. 854, § 227, and is now obsolete. Appeals are now to the Municipal Court of Appeals for the District of Columbia. See D. C. Code § 11–771.

NOTES PRIOR TO REPEAL

CROSS REFERENCES

Discretionary writs of error, see Architects, Board of Examiners, § 2–1028; Pharmacy board, § 2–606; Veterinarians, Board of Examiners, § 2–810.

NOTES TO DECISIONS

In General

Appellate Court ought not to entertain affidavits contradicting or explaining the recitals in the record certified from the police court. "The certified record imports verity." *Talty* v. *District of Columbia* (20 App. D. C. 489).

Upon the perfecting of an appeal the court below was ousted of its jurisdiction. *Prioleau* v. *Superintendent of Washington Asylum & Jail* (55 App. D. C. 99, 2 Fed. (2d) 317).

Certiorari

Court of Appeals refused to issue certiorari to review a refusal of a justice of the Court of Appeals of the District of Columbia to allow a writ of error to the police court of the District, as, under U. S. C., title 28, § 347, it had no jurisdiction. *Ferguson* v. *District of Columbia* (270 U. S. 633, 70 L. Ed. 771, 46 Sup. Ct. 355).

All the power that the Appellate Court can exercise over convictions in the police court is strictly of an appellate character, by writ of error, when questions arising in the course of the trial are regularly presented and reserved by bill of exceptions and not by original common-law writ of certiorari. *Sullivan* v. *District of Columbia* (19 App. D. C. 210).

Final Order

Order of police court denying return of liquor seized under a warrant which was later dismissed was a final order. *Dickhart* v. *United States* (57 App. D. C. 5, 16 Fed. (2d) 345).

Intervener

Party permitted to intervene in original proceedings in police court became a party to the proceeding and was entitled to carry appeal to court of appeals. *Automobile Brokerage Corp.* v. *United States* (59 App. D. C. 243, 39 Fed. (2d) 288).

Notice of Writs of Error

"The proper time to give notice of intention to apply to this court for a writ of error in these cases tried in the police court is when the first exception is taken. * * * But it will not be necessary to repeat the notice with every exception that is taken." *Tubins* v. *District of Columbia* (21 App. D. C. 267).

Payment of Fine Precluding Appeal

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without attempting to stay judgment and without making protest or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 189).

Right of Appeal

At common law there was no review of criminal cases as of right. *District of Columbia* v. *Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660), affg. (66 App. D. C. 11, 84 Fed. (2d) 265).

Due process does not comprehend the right of appeal. *District of Columbia* v. *Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, affg. 66 App. D. C. 11, 84 Fed. (2d) 265).

Fact that party is not entitled to an appeal as matter of right is not to be considered in determining whether one charged with a petty offense is entitled to a trial by jury. *District of Columbia* v. *Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, affg. 66 App. D. C. 11, 84 Fed. (2d) 265).

Writs of Error

Writ of error will not lie to review order denying motion to quash an information. *Capital Trac. Co.* v. *United States* (34 App. D. C. 591).

Writs of error to the police court are not granted to review formal defects in pleading merely. *Jefferson* v. *District of Columbia* (40 App. D. C. 381).

§ 17–104 [18: 29]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to appeals from Municipal Court was based on Act Mar. 3, 1921, 41 Stat. 1312, ch. 125, § 12 and is now obsolete. See D. C. Code, sections 11–771, 11–772.

NOTES PRIOR TO REPEAL

NOTES TO DECISIONS

In General

Findings may not be challenged on appeal, evidence having been introduced after motion for favorable findings. *Breuninger* v. *Lightbown* (60 App. D. C. 297, 53 Fed. (2d) 551).

By the 1921 act, appeals from the Municipal Court to the Supreme Court were abolished, the authority to issue the statutory writ of certiorari denied, and review by the Court of Appeals through writ of error provided. *United States ex rel. Eure* v. *Borden* (65 App. D. C. 84, 80 Fed. (2d) 527).

Cost Bond

Cost bond should not be required for writ of error to municipal court. *George* v. *Capital Trac. Co.* (54 App. D. C. 144, 295 Fed. 965).

Moot Questions

The question of refusal to require the posting of a supersedeas bond pending appeal has become moot because even if a supersedeas bond had been posted, it would have expired by its own terms upon the reversal of the judgment which the bond superseded. *Daime* v. *Price* (D. C. Mun. App. 1950, 71 A. 2d 611).

Party Aggrieved

Administrator may appeal as a "party aggrieved." *Webb* v. *Lohnes* (68 App. D. C. 310, 96 Fed. (2d) 582).

Power of District Court

Whether interrogatories served on a garnishee are proper or the answers thereto sufficient are questions which in their determination call for the exercise of judicial discretion, and the exercise of that discretion can be reviewed in the manner provided by law, but the District Court is not empowered to require the judges of the municipal court to decide either question, one way or the other. *Security Savings & Commercial Bank* v. *Aukam,* 1941 (120 F. 2d 722, 74 App. D. C. 155).

Scope of Review

The error now asserted is not plain and was not brought to court's attention until after court had considered and decided the case. Fairness both to appellees and to court's obligation to other litigants requires that court should not permit this appeal, after it has been presented and lost on one basis, to be presented again on an opposite basis. *Schooler* v. *Schooler* (C. A., D. C. 1948, 173 A. 2d 299, 84 U. S. App. D. C. 147).

§ 17–105 [18: 30]. Repealed. May 24, 1949, 63 Stat. 110, ch. 139, § 142.

Section relating to appeals from Juvenile Court was based on Act Mar. 19, 1906, 34 Stat. 77, ch. 960, § 22 and is now obsolete. See D. C. Code, sections 11–771, 11–772.

NOTE PRIOR TO REPEAL

Cross Reference

Appeals from order or judgment of juvenile court, § 11–934.

PART III

PROBATE LAW AND PROCEDURE

TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

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Chapter 1.—LAW OF DESCENTS

Sec.

18–101. Course of descents generally.

18–102. Trust estates.

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18–110. Descent through alien ancestor no bar.

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§ 18–101 [25: 231]. Course of descents generally.

On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred in the following order, namely:

First. To his child or children and their descendants, if any, equally.

Second. If there be no child or descendant of a child, then equally to the father and mother of the intestate, or the whole to the sole surviving parent.

Third. If there be no father or mother, then to the brothers and sisters of the intestate, and their descendants equally.

Fourth. If there be no brother or sister, or descendant from a brother or sister, then the whole shall go to the widow or widower of the intestate.

Fifth. If none such, then one moiety of the estate shall go to the paternal, the other to the maternal kindred of the intestate in the following order:

Sixth. First to the grandfather and grandmother equally, but if one be dead the entire moiety to the sole surviving grandparent.

Seventh. If none, then to the uncles and aunts of the intestate, and their descendants equally.

Eighth. If none such, then to the great-grandfathers and great-grandmothers, in the same manner prescribed for grandfather and grandmother in subdivision 6.

Ninth. If none, then to the brothers and sisters of the grandfathers and grandmothers, and their descendants equally.

Tenth. And so on in other cases, without end, passing to the nearest lineal ancestors and the descendants of such ancestors.

Eleventh. If there be no paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the kindred of the husband or wife of the intestate in the like course as if such husband or wife had died entitled to the estate; and if the intestate has had more husbands or wives than one, and all have died before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally. (Mar. 3, 1901, 31 Stat. 1342, ch. 854, § 940; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 3 (A).)

COMPILER'S NOTE

Section 3 B of the 1935 act repealed §§ 941–951 of the 1901 act (D. C. Code, 1929 ed., title 25, §§ 232–242).

AMENDMENT

Section 3 (A) of the 1935 act amended § 940 of the 1901 act to read as set out above.

CROSS REFERENCES

Distribution of death benefits of fraternal benefit associations, § 35–901.

Distribution of personal property, §§ 18–701 to 18–723.

Distribution of proceeds of action for wrongful death, § 16–1203.

Inheritance by adopted children, § 16–205.

Posthumous children, § 18–103 and notes.

NOTES TO DECISIONS

AGREEMENTS BETWEEN KIN

Where deceased's cousins entered into agreement admitting that other claimants were deceased's uncle and aunt and providing for distribution of deceased's estate but in plenary proceedings to determine heirship cousins refused to execute answer admitting such relationship, and instead filed answer which denied such relationship and stated that the cousins were deceased's sole heirs, after which the alleged uncle and aunt filed answer claiming to be deceased's sole heirs, in cousin's action for declaratory relief, evidence sustained finding that the cousins had not repudiated the agreement and justified determination

that the agreement was enforceable. *Wueger* v. *Braun*, 1942 (132 F. 2d 25, 77 U. S. App. D. C. 50).

ANCESTRAL PROPERTY

Real estate devised to testatrix by her grandmother was ancestral property, and would have descended to her surviving brother as her sole heir at law in the absence of a will under the prior law. *Thomas* v. *Young* (57 App. D. C. 282, 22 Fed. (2d) 588).

CONSTRUCTION OF WILLS

Where will devised the residue consisting of personal property to heirs at law and next of kin in accordance with existing laws of tht District, the surviving next of kin, who were first cousins, are entitled to take all the personalty as against second cousins who would have been heirs had realty been devised. *Binford* v. *Diller* (C. A., D. C. 1949, 177 F. 2d 731; 85 U. S. App. D. C. 365).

EVIDENCE

To establish pedigree there must be some competent evidence of relationship between himself and declarants. *Welch* v. *Lynch* (30 App. D. C. 122).

PER STIRPES OR PER CAPITA

Where property descends to descendants of the maternal grandfather, the distribution is per stirpes of the grandfather and not per capita. *McManus* v. *Lynch* (28 App. D. C. 381).

§ 18–102 [25: 243]. Trust estates.

Whenever a trustee is seized of the naked legal estate in any lands, tenements, or hereditaments in fee simple, and shall die intestate thereof, the said legal estate shall be deemed to have descended to such person or persons as would inherit the beneficial estate if the same were vested in him according to the provisions aforesaid. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 952.)

§ 18–103 [25: 244]. Heirs, other than children of intestate and their descendants, must be such at time of death of ancestor.

No right in the inheritance shall accrue to or vest in any person other than the children of the intestate and their descendants, unless such person is in being and capable in law to take as heir at the time of the intestate's death; but any child or descendant of the intestate born after the death of the intestate shall have the same right of inheritance as if born before his death. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 953.)

CROSS REFERENCE

Heirship and distribution to posthumous children, §§ 18–714, 45–204.

NOTES TO DECISIONS

CONSTRUCTION

The term "in being" must be construed to refer to a child born prior to the death of the intestate and is distinguished from "not in being" referring to an unborn child. The applicability of this statute is further negated by the provision of § 18–101 to the facts of this case. *Blethyn* v. *Bidder* (D. C., D. C. 1948, 80 F. Supp. 962).

§ 18–104 [25: 245]. Whole- and half-blood take equally.

In no case shall there be any distinction between the kindred of the whole and the half-blood. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 954; Mar. 6. 1935, 49 Stat. 40, ch. 28, § 4.)

AMENDMENT

The superseded 1901 act read as follows: "There shall be no distinction between brothers and sisters of the whole- or the half-blood, all being descendants of the same father, where the estate descended on the part of the father, nor between brothers and sisters of the whole- or the half-blood, all being descendants of the same mother, where the estate descended on the part of the mother."

NOTES TO DECISIONS

CONSTRUCTION

The court construed this section, providing that in "no case shall there be any distinction between kindred of the whole and half blood" as meaning exactly what it says. Consequently, the parties were held to have the same legal status in the distribution of the estate. *Blethyn* v. *Bidder* (D. C. D. C. 1948, 80 F. Supp. 962).

§ 18–105 [25: 246]. Representation.

Whenever those entitled to share in the estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, of an intestate, are all in the same degree of kindred to the intestate, they shall take per capita or by persons; and, where a part of them are dead and a part living, the issue of those dead shall take per stirpes or by stocks the shares of their deceased parents. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 955; Mar. 6, 1935, 49 Stat. 40, ch. 28, § 5.)

AMENDMENT

The superseded section of the 1901 act read as follows: "If in the descending or collateral line any father or mother be dead, leaving a child or children, such child or children shall, by representation, be considered in the same degree as the father or mother would have been if living, and shall have the same share of the estate as the father or mother if living would have been entitled to, and no more; and in such case, when there are more children than one, the share aforesaid shall be equally divided among such children."

CROSS REFERENCE

See notes to § 18–101.

NOTES TO DECISIONS

TIME OF DETERMINATION

Where, at time will was made, testatrix's heirs at law consisted of one brother and nine nieces and nephews, and will gave realty to testatrix's brother for life and after death of brother "to such persons as may at the time of the death of my said brother be my heirs at law", the testatrix's heirs were to be determined as of date of death of her brother rather than at the time of death of testatrix. *Costello* v. *Costello* (App. D. C. 1945, 149 F. 2d 379, certiorari denied 66 S. Ct. 41, 326 U. S. 733, 90 L. Ed. 436).

Where testator bequeathed residuary estate to widow for life with remainder to his son and with direction that, if son should die without leaving lawful issue, the whole of estate after death of widow should pass to testator's heirs at law, and the son predeceased the widow, the heirs of testator were to be ascertained as of date of death of life tenant, and therefore method of distribution among the heirs was to be determined by this section in effect at that time rather than by Code of Laws 1901, § 955 in effect at time of testator's death. *Central Dispensary and Emergency Hospital* v. *Saunders* (165 F. 2d 626, 83 U. S. App. D. C. 52).

§ 18–106 [25: 247]. Antenuptial children.

If any man shall have a child or children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment, be legitimated and capable in law of inheriting and transmitting heritable property as if born in wedlock. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 957.)

NOTES TO DECISIONS

CHILDREN BORN OUT OF WEDLOCK

Child born out of wedlock legitimated under this section. *Thomas* v. *Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

There was no evidence introduced before the court that the father had married either of the women and acknowledged the children as his own, both of which acts, marriage and acknowledgment, are necessary to legitimatize children in this jurisdiction under the Code. *Blethyn* v. *Bidder* (D. C. D. C. 1948, 80 F. Supp. 962).

§ 18–107 [25: 248]. Illegitimate children.

The illegitimate child or children of any female and the issue of such illegitimate child or children shall be capable in law of taking real estate by inheritance from their mother, or from each other, or from the descendants of each other, as the case may be: *Provided,* That such illegitimate child or children, or the issue of such illegitimate child or children, shall not take by descent any interest in the real estate of the mother when such mother is mentally incapacitated from making a will, and shall remain so mentally incapacitated until her death; and where such illegitimate child or children shall die leaving no descendants or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children, if living, shall be entitled as heir to the real estate of such illegitimate child or children, and if the mother be dead, the heirs of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 958; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment added the proviso from the beginning and ending with the words "until her death."

CROSS REFERENCE

Inheritance of issue of colored persons, slave marriages, §§ 30–116, 30–117.

NOTES TO DECISIONS

CONSTRUCTION

The Code materially liberalized the status of bastards to inherit and other pertinent sections of the Code must be interpreted in the light of the obvious Congressional intent to liberalize the common law status of illegitimate children. *Blethyn* v. *Bidder* (D. C. D. C. 1948, 80 F. Supp. 962).

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson* v. *Charlent* (D. C. D. C. 1949, 81 F. Supp. 690).

§ 18–108 [25: 249]. Advancements.

Any child or children of an intestate, or their issue, who may have received from the intestate any real estate by way of advancement may elect to come into partition with his other heirs on bringing such advancement, or the value thereof at the time such advancement was received, into hotchpot with the estate descended; but such child or children, or their issue, shall not be entitled to claim a share by descent without bringing such advancement, or the value thereof as aforesaid, into the common stock or hotchpot, if there be another child or children not equally provided for: *Provided,* That if any child or children or descendant shall have been advanced by the intestate by settlement or portion of personalty, which shall not be equalized under the provisions of section 18–707, such advance shall be treated as real estate for the purposes of this section. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 959; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "unprovided" and inserted in lieu thereof the words "not equally provided."

CROSS REFERENCE

Legacy as satisfaction of advancement, §§ 18–707, 19–109.

§ 18–109 [25: 250]. Party committing murder or manslaughter takes no interest in estate of deceased—Descent of affected property—Bona fide purchasers.

No person who shall be convicted of the felonious homicide of another, either by way of murder or manslaughter, shall take any estate or interest of any kind whatsoever in any kind of property whatsoever from that other by way of inheritance, distribution, devise, or bequest, or shall take any remainder, reversion, or executory interest dependent upon the death of that other; and the estate or interest or property to which the person so convicted would have succeeded or would have taken in any way from or after the death of the person so killed by him shall go as if the person so convicted had died before the person whom he shall be convicted of killing. And every policy of insurance procured, directly or indirectly, by the person so convicted for his own benefit or payable to him upon the life of the person so killed shall be void. This section shall not affect the rights of bona fide purchasers of any such property for value without notice. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 961.)

§ 18–110 [25: 11]. Descent through alien ancestor no bar.

In making title by descent it shall be no bar to a party claiming as heir that any ancestor, whether living or dead, through whom he derives his descent from the intestate is or has been an alien. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 960.)

CROSS REFERENCE

As to ownership of real property in the District of Columbia by aliens, see § 45–1501 et seq. See also U. S. C., title 8, § 71 et seq.

§ 18–111 [25: 251]. When lands escheat.

Any lands in the District of Columbia of which any person shall die seized in fee simple intestate, without any heir capable of inheriting, shall escheat to the United States. (Comp. Stat. D. C., p. 497, § 38; Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 962; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The superseded 1901 act read as follows: "Any lands within the District of Columbia of which any person has died or shall hereafter die seized in fee simple, without any heir of the whole-blood who could have inherited if he had been a citizen of the United States, or without leaving any relation of the half-blood within two degrees,

that is, first cousins as the same are reckoned by the common law, shall escheat to the United States."

Chapter 2.—DOWER AND CURTESY RIGHTS

Sec.

18–201. Dower—Right of quarantine—"Dower" defined.
18–202. Dower in equitable titles.
18–203. Forfeiture of dower by desertion and adultery of wife.
18–204. Release of dower when wife is insane or has been absent for seven years.
18–205. Jointure after marriage—Election to take dower.
18–206. Legal jointure.
18–207. Dower not to be defeated by default or fraudulent judgment against husband—Fraudulent assignment by guardian of heir.
18–208. Assignment by guardian.
18–209. Restoration to dower upon eviction from jointure.
18–210. Devise in lieu of dower.
18–211. Renunciation of devises and bequests—Form—Limitation—Interest to be taken by widow or widower upon such renunciation.
18–212. Devise of both realty and personalty as bar.
18–213. Devise of either realty or personalty as bar.
18–214. Not barred when nothing passed by the devise.
18–215. Estate by the curtesy.

§ 18–201 [14: 28]. Dower—Right of quarantine—"Dower" defined.

A widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door. (9 Henry 3, ch. 7, § 1, 1225; Kilty's Rept., p. 205; Alex. Brit. Stat., p. 1; Comp. Stat. D. C., p. 36, § 164.)

Compiler's Note

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

Cross References

Assignment of dower in partition proceedings, § 16–1301 et seq.

Release of dower, §§ 21–301, 30–216.

Sale of real estate to pay debts or legacies, assignment of dower, sale subject to dower, § 18–610.

§ 18–202 [14: 29]. Dower in equitable titles.

A widow shall be entitled to dower in lands held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, but such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands or other lien on the same. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1158.)

NOTES TO DECISIONS

Decisions Under Prior Law

Appellant was entitled to a decree declaring a deed of trust to be without legal effect or operation to bar her of her right to dower in the premises therein mentioned and described; and her right and title to dower should, in all respects, be and remain as if said appellant had never joined in said deed; and she was entitled to an assignment of dower, and to an account for rents and profits for the time they have been wrongfully withheld from her. *Follansbee* v. *Follansbee* (1 App. D. C. 326).

When dower was not specifically assigned, the widow of the former owner and mother of the children would not be a proper party. *Baltimore & P. R. Co.* v. *Taylor* (6 App. D. C. 259).

Inchoate right of dower could not be broader than the estate of the husband upon which it depended. *Sis* v. *Boarman* (11 App. D. C. 116).

A widow being in possession of the only piece of property in which her dower could be assigned, her right thereto ought to confer upon her such continuing right of possession as to bar ejectment by the heirs at law, whose duty it was to make the proper assignment. *Wilkes* v. *Wilkes* (18 App. D. C. 90).

Common Law Rule

At common law the wife had no dower in an equity of redemption. *Follansbee* v. *Follansbee* (1 App. D. C. 326).

The common law rule that a widow is not entitled to dower in lands to which the husband has a remainder in fee if the remainderman predecease the life tenant is not modified by 1901 Code, § 1158 (this section). *Talty* v. *Talty* (40 App. D. C. 587).

"Prior to 1896, there was no statute giving a wife dower in the equitable estate of her husband, and she was not entitled to any under the common law." *Waggaman* v. *Dulany* (48 App. D. C. 14).

Equitable Lien

Equitable lien held superior to dower right. *Waggaman* v. *Dulany* (48 App. D. C. 14), distinguishing *Berl* v. *Dulany* (42 App. D. C. 121).

Refusal to Release Dower

Equity would not at instance of vendee decree specific performance of a contract for the sale of land when the wife of the vendor refused to relinquish her right of dower to the vendor. *Barbour* v. *Hickey* (2 App. D. C. 207, 24 L. R. A. 763).

Where wife of vendor is entitled to dower in the lands, conveyance of good title can not be made without her consent, and where she refuses to release her dower, equity will not enforce specific performance of husband's contract to sell. *Reilly* v. *Cullinane* (53 App. D. C. 17, 287 Fed. 994).

§ 18–203 [14: 30]. Forfeiture of dower by desertion and adultery of wife.

If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coertion reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action. (13 Edw. I, ch. 34, § 4, 1285; Kilty's Rept., p. 213; Alex. Brit. Stat., p. 138; Comp. Stat. D. C., p. 36, § 165.)

Cross Reference

See note to § 18–201.

§ 18–204 [14: 31]. Release of dower when wife is insane or has been absent for seven years.

Where any married woman is a lunatic or insane, and has been so found upon inquisition, and the said finding remains in force, or where any married

woman has been absent or unheard of for seven years, the husband of such lunatic or insane or absent person may grant and convey by his separate deed, whether the same be absolute or by way of lease or mortgage, as fully as if he were unmarried, any real estate which he may have acquired since the finding of such inquisition or since the beginning of such absence. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1165.)

CROSS REFERENCES

Release of dower generally, § 30–216.
Release of dower of insane person, § 21–301.

§ 18–205 [14: 32]. Jointure after marriage—Election to take dower.

If any wife have, or hereafter shall have any manors, lands, tenements, or hereditaments unto her given and assured after marriage, for term of her life, or otherwise in jointer, and the said wife after that fortune to overlive her said husband, in whose time the said jointer was made or assured unto her, that then the same wife so overliving shall and may at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed, or assured during the coverture, for term of her life, or otherwise in jointer, and thereupon to have, ask, demand, and take her dower by writ of dower, or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments as her husband was and stood seized of any state of inheritance at any time during the coverture. (27 Henry 8, ch. 10, § 9, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 297; Comp. Stat. D. C., p. 40, § 175.)

CROSS REFERENCE

See Compiler's Note to § 18–201.

§ 18–206 [14: 33]. Legal jointure.

Whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements, and hereditaments unto them and to their wives, and to the heirs of the husband, or to the husband, and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband, and to the wife for term of their lives, or for term of life of the said wife; or where any such estate, or purchase of any lands, tenements, hereditaments, hath been, or hereafter shall be made to any husband, and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointer of the wife; that then in every such case, every woman married, having such jointer made, or hereafter to be made, shall not claim, nor have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husbands, by whom she hath any such jointer, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointer, then she shall be admitted and enabled to pursue, have, and demand her dower by writ of dower, after the due course and order of the common laws. (27 Henry 8, ch. 10, § 6, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 296; Comp. Stat. D. C., p. 39, § 173.)

§ 18–207 [14: 34]. Dower not to be defeated by default or fraudulent judgment against husband—Fraudulent assignment by guardian of heir.

In case where the husband, being impleaded for land, giveth up the land demanded unto his adversary by covin; after the death of the husband, the justices shall award the wife her dower, if it be demanded. In case the husband loseth the land by default, if the wife, after the death of her husband, demandeth her dower, and if it be alledged, that her husband lost the land, by judgment, and it be found that it was by default, the tenant must answer; then it behoveth the tenant to answer further, and to shew that he had right, and hath in the aforesaid land, according to the form of the writ that the tenant before purchased against the husband. And if he can shew that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower; which thing if he can not shew, the wife shall recover her dower. Where it chanceth that a woman not having right to demand dower, the heir being within age, doth purchase a writ of dower against a gardian, and the gardian endoweth the woman by favour, or maketh default, or by collusion defendeth the plea so faintly, whereby the woman is awarded her dower in prejudice of the heir; it is provided, that the heir, when he cometh to full age, shall have an action to demand the seisin of his ancestor against such a woman, like as he should have against any other deforceor; yet so, that the woman shall have her exception saved against the demandant, to shew that she had right to her dower, which if she can shew, she shall go quit and retain her dower, and the heir shall be grievously amerced, according to the discretion of the justices; and if not, the heir shall recover his demand, &c. In like manner the woman shall be aided, if the heir or any other do implead her for her dower, or if she lose her dower by default, in which case the default shall not be so prejudicial to her, but that she shall recover her dower, if she have right thereto. (13 Edw. 1, ch. 4, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 106; Comp. Stat. D. C., p. 37, § 169.)

§ 18–208 [14: 35]. Assignment by guardian.

A writ of admeasurement of dower shall be granted to a gardian; neither shall the heir, when he cometh to full age, be barred by the suit of such a gardian, that sueth against the tenant in dower feignedly, and by collusion, but that he may admeasure the dower after, as it ought to be admeasured by the law. (13 Edw. 1, ch. 7, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 111; Comp. Stat. D. C., p. 38, § 170.)

§ 18–209 [14: 36]. Restoration to dower upon eviction from jointure.

If any woman be lawfully expulsed or evicted from her jointer, or from any part thereof, without any fraud or covin, by lawful entry, action, or by dis-

continuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expulsed shall amount or extend unto. (27 Henry 8, ch. 10, § 7, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 296; Comp. Stat. D. C., p. 39, § 173.)

§ 18–210 [14: 37]. Devise in lieu of dower.

Every devise of land or of any estate therein, or bequest of personal estate to the wife of the testator, shall be construed to be intended in bar of her dower in lands or share of the personal estate, respectively, unless it be otherwise expressed in the will. (Mar. 3, 1901. 31 Stat. 1376, ch. 854, § 1172.)

NOTES TO DECISIONS

COMMON LAW

Under common law existing in Maryland prior to creation of District of Columbia, a husband was not permitted to deprive his wife of her reasonable share of his estate, either directly or indirectly, and a bequest to wife was not considered in lieu of her legal interest, but instead she took both. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

CONSTRUCTION

The statutory provision for widows in District of Columbia constitutes a recognition and, in part, a restatement of her rights at common law, and it is not to be regarded as an abrogation of common law, but instead, to extent that § 18–210 fails to cover the entire subject, the common law is to be looked to for amplification and definition. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322)

PURPOSE

This section and § 18–211 requiring widow to elect between husband's will and her legal interests were enacted to avoid result reached by early cases permitting widow to take both under the will and her legal interest, but it was not their purpose to deprive a widow of her common-law rights. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

§ 18–211 [14: 38]. Renunciation of devises and bequests—Form—Limitation—Interest to be taken by widow or widower upon such renunciation.

A widow shall be barred of her right of dower in the land and share in the personal estate by any such devise or bequest unless within six months after administration may be granted on her husband's estate she shall file in the probate court a written renunciation to the following effect: "I, A. B., widow of ———, late of ———, deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband exhibited and proved according to law; and I elect to take in lieu thereof my dower and legal share of the estate of my said husband." If, during said period of six months, a suit should be instituted to construe the will of her husband, the period of six months for the filing of such renunciation shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise.

By renouncing all claim to any and all devises and bequests, made to her by the will of her husband, she shall be entitled, in addition to her dower, to the distributive share of his personal property, which she would have taken had he died intestate, and, except in cases of valid antenuptial or postnuptial agreements, this provision for the wife shall apply with the effect (without formal renunciation) to cases where the husband has made no devise or bequest to his wife.

By renouncing, within the period above prescribed, all claim to any and all devises or bequests, made to him by the will of his wife, the husband shall be entitled to the distributive share in her personal property which he would have taken had she died intestate, and, except in cases of valid antenuptial or postnuptial agreements, this provision for the husband shall apply with like effect (without formal renunciation) to cases where the wife has made no devise or bequest to her husband. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1173; Apr. 19, 1920, 41 Stat. 567, ch. 153.)

AMENDMENT

The 1920 amendment added the last sentence in the first paragraph, deleted, after the words "shall be entitled" in the second paragraph, the words "To one third part of the personal estate of her husband which shall remain after payment of his just debts and claims against him, and no more," and added, after the words "shall be entitled" aforesaid, the rest of the section.

CROSS REFERENCE

See § 18–214 and notes.

NOTES TO DECISIONS

ACCEPTANCE OF TERMS OF WILL

When widow was aware of her rights within the six-months' period, and did not so renounce them, for the reason that she accepted an annuity instead of her right of dower, she could not make an election later for the purpose of getting refund of income tax. *Semmes* v. *United States* ((Ct. Cls.), 6 Fed. Supp. 119).

A widow may not defeat the general purpose of the will by a sale of the property and a division of its proceeds four years after she has elected, by acquiescence and by conduct, to take the provision the will makes for her. *Evans* v. *Evans* (60 App. D. C. 371, 55 Fed. (2d) 533).

COMMON LAW

Under common law existing in Maryland prior to creation of District of Columbia, a husband was not permitted to deprive his wife of her reasonable share of his estate, either directly or indirectly, and a bequest to wife was not considered in lieu of her legal interest, but instead she took both. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

COMMON-LAW RIGHTS

The common-law rights of widow, as restated and recognized in this section barring widow's common-law rights in husband's estate unless within time specified she files written renunciation of bequests contained in her husband's will, remain intact until a valid election has been made by her, or in her behalf, against those interests. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

CONSTRUCTION

The statutory requirement of an election by widow between her husband's will and her common-law rights is not a "privilege" bestowed by this section but is a "limitation" upon the common-law rights of the widow and must be so construed. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

This section barring widow's common-law rights in husband's estate unless within specified time she files written renunciation of bequest contained in her husband's will is not a "statute of limitations". *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

The statutory provision for widows in District of Columbia constitutes a recognition and, in part, a restate-

ment of her rights at common law, and it is not to be regarded as an abrogation of common law, but instead, to extent that sections 18–210 et seq. fail to cover the entire subject, the common law is to be looked to for amplification and definition. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Defective Bequest

If husband's bequest in favor of widow is defective, there is no requirement that widow make an election. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Defective Gift

Addition of name of depositor's brother to bank account under circumstances not amounting to a gift and for purpose of permitting brother to obtain money in event of depositor's death was ineffective as amounting to an attempted testamentary disposition without compliance with testamentary requirements and as evading this section permitting widow to claim distributive share of personal estate of husband when will makes no devise in her favor. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

Deprivation of Rights

The common-law rights of dower in land and of "thirds" in personal property depended, not alone on the welfare of the widow, but of her children as well, and therefore to interpret a statutory limitation on the common-law rights in such manner as to cut them off arbitrarily, upon death of an incompetent widow, would be to disregard one of the two primary purposes of this section. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Election by Court

Upon request, an equity court can act on behalf of, and in interest of, an insane widow in making election between widow's common-law rights and bequest in her husband's will. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

An incompetent widow cannot, personally, make an election to renounce husband's will, but court of competent jurisdiction can exercise the power, in her behalf, during statutory period or thereafter, prior to her death. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Where widow's privilege of renouncing bequest contained in husband's will is not exercised on behalf of incompetent widow during her lifetime and matter is brought to attention of equity court, it is court's duty to make election, weighing, in doing so, the various considerations including provision which was made for care and comfort of widow, prior to her death, and the court's determination should be made as of time when widow was living, in light of circumstances then existing. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Insane or Incompetent Widow

Where widow was incompetent and unable to exercise privilege of renouncing bequest contained in her husband's will, if determination was not made of rights of the widow and of her estate, the husband's will would be inoperative as to her and his estate would be distributed, as to her, in the same manner as if he had died intestate. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Where widow is incompetent, the welfare of widow is not sole consideration in determining whether bequest contained in her husband's will should be renounced on behalf of widow, but welfare of her heirs or other dependents may be considered. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

The policy of District of Columbia in regard to application to insane widow of this section barring widow of common-law rights in husband's estate unless within time specified she files a renunciation of bequest in husband's will is clearly manifested in section 12–201 governing limitation of actions, which contains a blanket exemption in favor of infants and insane persons. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Where widow's privilege of renouncing bequest contained in husband's will was not exercised on behalf of incompetent widow during her lifetime, complaint of administratrix of widow's estate to recover widow's share of husband's estate and to recover widow's property and damages from trustee of the incompetent widow stated a cause of action. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Laches

Where trustee of insane widow was also beneficiary and representative of the husband's estate, trustee's "laches" in protecting interests of widow could not deprive equity court of power to act in widow's interest in making an election between widow's common-law rights and bequest contained in her husband's will. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Where an equity court acts in interest of an insane widow in determining whether bequest in husband's will should be renounced, bad faith or laches of heirs or representatives may become proper considerations, along with others, to guide court, but such considerations provide no basis for concluding that an equity court has no power to act in interest of an insane widow or that inaction of her trustee constitutes an election solely by reason of lapse of time. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Petition, Right to

If heirs or representatives of insane widow delay in petitioning equity court to act on behalf of insane widow in making an election between widow's common-law rights and bequest in husband's will, those interested in the husband's estate can petition the court to act. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Presumptions

The fact that money was expended under husband's will for care and comfort of his insane widow did not authorize a presumption that the widow had elected to abide by the provisions of her husband's will. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Purpose

The purpose of this section barring widow's common-law rights in husband's estate unless within time specified she files written renunciation of bequest contained in husband's will is that renunciation shall constitute an "election to reject", and a failure to renounce shall constitute an "election to accept" the offer. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

The widow's privilege of renouncing bequest contained in her husband's will and electing to enjoy her dower or statutory rights is intended to permit her to decide whether her interests will be better served by another arrangement. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

This section and § 18–210 requiring widow to elect between husband's will and her legal interests were enacted to avoid result reached by early cases permitting widow to take both under the will and her legal interest, but it was not their purpose to deprive a widow of her common-law rights. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Renunciation Required

A widow must file a renunciation of her rights under the will in order to take under the law; inadequate provisions under the will do not relieve her of this duty. *Cahill* v. *Eberly* (59 App. D. C. 228, 38 Fed. (2d) 539).

Mere oral declarations privately made by the widow can not take the place of a written renunciation. *Cahill* v. *Eberly* (59 App. D. C. 228, 38 Fed. (2d) 539).

Representative of Widow

A widow's representative cannot act in her behalf to make renunciation of husband's will, except with per-

mission of court, or unless a statute confers the power. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Where guardian ad litem of incompetent widow made no suggestion concerning an election in widow's behalf to renounce bequest in husband's will, it was duty of trustee to request promptly a determination by equity court of the widow's interest and where trustee had failed to act it became the duty of the widow's representative to request proper action. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

Where widow was incompetent, guardian ad litem made no suggestion concerning an election in widow's behalf to renounce bequest contained in her husband's will and widow's trustee who was also beneficiary and representative of the husband's estate failed to act for protection of interests of widow, court of equity could exercise power of renunciation after expiration of statutory period and after widow's death. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

§ 18–212 [14: 39]. Devise of both realty and personalty as bar.

If the will of the husband devise and bequeath a part of both real and personal estate to the wife, she shall renounce the whole or be otherwise barred of her right to both real and personal estate. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1174.)

CROSS REFERENCE

See § 18–214 and notes.

§ 18–213 [14: 40]. Devise of either realty or personalty as bar.

If the will devise only a part of the real estate or bequeath only a part of the personal estate, the devise or bequest shall bar her of only the real or personal estate, as the case may require: *Provided, nevertheless,* That if the devise of either real or personal estate, or of both, shall be expressly in lieu of her legal share of one or both she shall accordingly be barred, unless she renounce as aforesaid. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1175.)

CROSS REFERENCE

See § 18–214 and notes.

§ 18–214 [14: 41]. Not barred when nothing passed by the devise.

If, in effect, nothing shall pass by such devise she shall not be thereby barred, whether she shall or shall not renounce as aforesaid, it being the intent hereof that a widow accepting or abiding by a devise in lieu of her legal right shall be considered a purchaser with a fair consideration. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1176.)

NOTES TO DECISIONS

CONSTRUCTION OF TERMS

"An examination of section 1176 (this section) and the four sections immediately preceding it shows that devises and bequests were used interchangeably in those sections. * * * Section 1176 (this section) therefore applies equally to devises and bequests." *Jordan* v. *American Security & Trust Co.* (38 App. D. C. 391).

DEFECTIVE BEQUEST

If husband's bequest in favor of widow is defective, there is no requirement that widow make an election. *Mead* v. *Phillips,* 1943 (135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

VALUE OF DEVISE

Where a will, bequeathing $10 to the wife of the testator, falsely states that he has previously satisfactorily provided for her out of his estate, the widow need not file a renunciation of the bequest, and she is entitled to one-half rather than one-third of the personalty. *Jordan* v. *American Security & Trust Co.* (38 App. D. C. 391).

As the statutes require the widow to file a renunciation of her rights under the will, this section does not relieve her of that obligation even though the value does not equal the value of her rights under the law. *Cahill* v. *Eberly* (59 App. D. C. 228, 38 Fed. (2d) 539).

§ 18–215 [14: 42]. Estate by the curtesy.

On the death of any married woman owning real estate in fee simple and intestate thereof, if there has been a child born of the marriage capable of inheriting said property, the husband surviving her shall be entitled to an estate by the curtesy therein, whether the wife's estate be legal or equitable and whether the wife's seizin be in deed or in law only. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1159.)

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Estate by the curtesy is not exempt from liability for the debts of the tenant by the curtesy. *Uhler* v. *Adams* (1 App. D. C. 392).

When married woman, who has had issue by her husband, dies without disposing of her real estate by deed or will, the surviving husband is entitled at common law to his tenancy by curtesy. *Uhler* v. *Adams* (1 App. D. C. 392).

When remainder in fee after a life estate is limited to several as tenants in common, and one of them is a married woman, and the precedent estate terminated during the marriage, the husband's right of curtesy will attach on death of the wife. *Rhodes* v. *Robie* (9 App. D. C. 305).

A feme covert can devise the real estate acquired from her husband, free from any tenancy by curtesy in the husband. *Zeust* v. *Staffan* (16 App. D. C. 141).

ATTACHING OF ESTATE

Upon death of married woman leaving issue, and intestate, the husband's initiate estate as tenant by the curtesy becomes consummate, "which entitled him to claim the possession at her death, and to maintain an action therefor, to the exclusion of her heirs at law during his life." *Welch* v. *Lynch* (30 App. D. C. 122), citing *Frey* v. *Allen* (9 App. D. C. 400).

EFFECT OF DEVISE

A married woman's devise of "all my property" carries the absolute estate freed of any right of the husband as tenant by the curtesy. *Balster* v. *Cadick* (29 App. D. C. 405).

Devise to husband held in lieu of curtesy. *Gibson* v. *Gibson* (53 App. D. C. 380, 292 Fed. 657).

Chapter 3.—ASSETS OF ESTATE

Sec.
18–301. Assets to be included in inventory and administered.
18–302. Discharge or bequest of debt or demand not valid against creditors—Included as asset.
18–303. Claims of testator against executor not discharged — Included as assets — Liability of surety.
18–304. Failure of executor to include claims of testator against executor in inventory—Remedy.
18–305. Debt due by administrator or collector.

§ 18–301 [29: 161]. Assets to be included in inventory and administered.

Leases for years, estates for the life of another person or other persons, and all goods, wares, merchandise, utensils, furniture, things annexed to the freehold which may be removed without prejudice thereto, the growing crop on the land of the deceased, and every other species of personal property, not

including the clothing of the widow and minor children of the deceased and personal ornaments suitable to their station, and not including the property exempted by section 18–406, shall be included in the inventory, and, together with the proceeds of any real estate sold for the payment of debts, shall be considered assets to be administered by an executor or administrator. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 317; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1902 amendment inserted after the word "station" the words "and not including the property exempted by section 314." The D. C. Code, 1901 Edit., § 314 is compiled herein as § 18–406.

CROSS REFERENCES

Criminal penalty for concealing or converting assets of estate, § 22–1404.

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

Proceeds of group life insurance policies, § 35–718.

NOTES TO DECISIONS

EFFECT OF SOLVENCY

Where it is substantially stated in the bill that decedent's estate will be solvent, plaintiff's remedy may best be sought in the probate court rather than in court of equity. *Street* v. *Stubblefield* (57 App. D. C. 276, 20 Fed. (2d) 1017).

GIFTS CAUSA MORTIS

Money paid defendant by his brother shortly before the latter's death, at a time when his illness was expected to result in death at any time, was a valid gift causa mortis, where decedent was of sound mind at the time of the gift, the defendant cared for him during his last illness and paid the final expenses, and there was sufficient personalty remaining to satisfy the widow's claim. *Railey* v. *Railey* ((D. C.-D. C.), 30 Fed. Supp. 121).

OPTION TO PURCHASE REAL ESTATE

Ninety-nine-year lease, with option to purchase, is personalty. *Bean* v. *Reynolds* (15 App. D. C. 125).

RENTS

If there is enough personalty to pay debts, the rents accruing after death of testator need not be used. *Brosnan* v. *Fox* (52 App. D. C. 143, 284 Fed. 923).

§ 18–302 [29: 162]. Discharge or bequest of debt or demand not valid against creditors—Included as asset.

The discharge or bequest, in a will, of any debt or demand of a testator against any executor named in a will, or against any other person, shall not be valid as against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory of the effects of the deceased and be assets for the payment of his debts, if necessary for that purpose, and, if not so necessary, shall be paid in the same manner and proportion as other specific legacies. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 318.)

§ 18–303 [29: 163]. Claims of testator against executor not discharged—Included as assets—Liability of surety.

The naming of any person as executor in a will shall not operate as a discharge or bequest of any just claim which the testator had against such executor; but such claim shall be included among the credits and effects of the deceased in the inventory, and the executor shall be liable for the same, as for so much money in his hands, at the time such debt or demand becomes due; and he shall apply and distribute the same, in the payment of debts and legacies and among the next of kin, as part of the personal estate of the deceased: *Provided,* That in such cases the sureties of the executor shall not be liable if the claim against the executor would have been uncollectible if some other person had been executor. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 319; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The act of 1902 added the proviso.

§ 18–304 [29: 164]. Failure of executor to include claims of testator against executor in inventory—Remedy.

On the failure of the executor to give in such claim in the list of debts due the deceased, any person interested in the administration may allege the same by petition to said probate court, and the said court, with consent of the parties, may decide on the same, or it may be referred by the parties, with the court's approval; or at the instance of either party the court may direct an issue to be tried by a jury; and if said claim shall in any of such proceedings be decided to be a just claim of the decedent against the executor, said executor shall be charged with the amount thereof as aforesaid. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 320.)

§ 18–305 [29: 165]. Debt due by administrator or collector.

In like manner it shall be the duty of every administrator and collector to give in a claim against himself, and on his giving it, or failure so to do, there shall be the same proceeding as above described with regard to an executor; and the same rule shall apply to his sureties. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 321; June 30, 1902, 32 Stat. 529, ch. 1329; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENTS

The 1902 amendment added the words "and the same shall apply to his sureties" at the end.

The 1920 amendment added the words "and collector."

Chapter 4.—INVENTORY OF ASSETS

Sec.

18–401. Inventory—When made—Contents—Exceptions.
18–402. Appraisers.
18–403. Appraisers—Refusal to act or death of.
18–404. Appraisement—Notice—Return.
18–405. Contents of inventory.
18–406. Exceptions to inventory.
18–407. Collector's inventory.
18–408. Co-executor or administrator may file inventory if others neglect to do so.

§ 18–401 [29: 171]. Inventory—When made—Contents—Exceptions.

Every executor, administrator, or collector shall, within two months after his appointment, or such longer time as the court may allow, make and return, upon oath, into court a true inventory of all the goods, chattels, moneys, and credits of the deceased which are by law to be administered and

which shall have come to his possession or knowledge; and if the court shall think fit it may also order him to include in the inventory all the real estate of the deceased: *Provided,* That this section shall not apply to the cases provided for in sections 20–203 and 20–303. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 309; June 24, 1949, 63 Stat. 268, ch. 242, § 3.)

AMENDMENTS

The act of June 24, 1949, cited to text, struck out the words "three months" and inserted in lieu thereof the words "two months".

CROSS REFERENCES

Assets of estate, §§ 18–301 to 18–305.
Jurisdiction, pleading, and practice in probate court, §§ 11–501 to 11–520.

§ 18–402 [29: 172]. Appraisers.

On the granting of letters testamentary or of administration or letters of collection, except in the aforesaid excepted cases, a warrant shall issue to two suitable persons not interested in the estate to appraise the estate of the deceased, known to them or shown to them by the executor, administrator, or collector, and they shall severally take and subscribe an oath well and truly, without partiality or prejudice, to value the goods, chattels, and personal estate and real estate (if so directed) of the deceased, as far as the same shall come to their knowledge, to the best of their skill and judgment. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 310; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or collector."

§ 18–403 [29: 173]. Appraisers—Refusal to act or death of.

On the death, refusal, or neglect of any appraiser to act, another person may be appointed in his stead. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 311.)

§ 18–404 [29: 174]. Appraisement—Notice—Return.

It shall be the duty of the executor, administrator, or collector or of the appraisers to give notice to the persons immediately interested in the administration, or at least two of them, if they are numerous, of the time and place of making said appraisement, and thereupon they shall proceed at said time and place to value said property and estate, setting down each article or item separately, with the value thereof, in dollars and cents, and when such appraisement shall have been completed they shall certify the same under their hands and seals, and the same shall be returned with the inventory. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 312; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the word "and" and inserted in lieu thereof the word "or" after the word "collector."

§ 18–405 [29: 175]. Contents of inventory.

The inventory shall contain a particular statement of all bonds, mortgages, notes, and other securities for the payment of moneys belonging to the deceased, and of all other debts and accounts due him, which are known to the executor, administrator, or collector, who shall designate those debts which he considers sperate and those which he considers desperate, and also an account of all moneys belonging to the deceased which shall come to his hands. And whenever, after an inventory has been returned, assets not therein included shall come to the knowledge of the executor, administrator, or collector an additional inventory and appraisement shall be promptly prepared and filed in the manner aforesaid. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 313.)

§ 18–406 [29: 176]. Exceptions to inventory.

There shall be excepted from the inventory the wearing apparel of the deceased, family pictures, the family Bible, and schoolbooks used in the family, and provisions for the support of the family on hand at the time of decedent's death. But if said decedent shall have been at the head of a family, or a householder, the property exempt under sections 15–401 to 15–403, as therein stated, shall so continue exempt from all claims against said decedent, and shall be distributed by the court to such members of the family or household as in the judgment of the court the necessity and exigencies of the particular case may require. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 314.)

CROSS REFERENCE

Damages recovered in action for wrongful death exempted from claims of creditors, § 16–1203.

NOTES TO DECISIONS

FAMILY PORTRAITS

Family portraits "seem to have been recognized as heirlooms at common law, and as such went to the heirs at law, and not to the executor * * *." By custom they are not included in the inventories in the District. *Brown* v. *Easterhazy* (25 W. L. R. 478).

SALE OF EXEMPTED PROPERTY

Exemption follows proceeds of sale. *Howard* v. *Howard* (38 App. D. C. 575).

§ 18–407 [29: 177]. Collector's inventory.

In case an inventory shall be returned by a collector, duly appointed, the executor or administrator thereafter administering shall, within two months after his appointment, either return a new inventory in place of the collector's inventory or an acknowledgment in writing that he has received from the collector the articles contained in the first inventory, and consents to be answerable for the same, as if said inventory had been made out by him as administrator, unless it shall appear that he has been prevented from making such return by the improper detention of the personal estate of the deceased by the collector. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 315; June 24, 1949, 63 Stat. 268, ch. 242, § 4.)

AMENDMENTS

The act of June 24, 1949, cited to text, struck out the words "three months" and inserted in lieu thereof the words "two months".

§ 18–408 [29: 178]. Co-executor or administrator may file inventory if others neglect to do so.

If there be more than one executor or administrator, any one or more of them, on the neglect of

the rest, may, if authorized by the court, return an inventory. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 316.)

Chapter 5.—CLAIMS OF CREDITORS

Sec.
18–501. Creditors' rights against property of nonresident decedent—Limitation.
18–502. No claim to be noticed unless legally authenticated.
18–503. Debts to be proved.
18–504. Judgment or decree—Voucher or proof of.
18–505. Bond, note, check, protested bill of exchange—Original or copy of instrument to constitute voucher.
18–506. Proof by assignee.
18–507. Commercial papers—Proof.
18–508. Claims for rent—Proof.
18–509. Open account—Proof.
18–510. Claims outside of District—How proved.
18–511. Executor or administrator's claim must be under oath.
18–512. Claims of executors and administrators to be passed by probate court.
18–513. Docket of claims.
18–514. Filed claim no evidence of correctness if disputed—Filing as tolling limitations.
18–515. Plea of limitations within discretion of executor or administrator.
18–516. Claims may be rejected and disputed.
18–517. Passing of claims not conclusive.
18–518. Creditors to file suit within nine months from time claim is contested.
18–519. Payment of claims.
18–520. Priorities.
18–521. Meeting of creditors.
18–522. Notice of distribution.
18–523. Retaining for claims.
18–524. Executor or administrator to withhold amount claimed pending litigation.
18–525. Executor or administrator not responsible for claims made after distribution.
18–526. Notice to creditors to file claims.
18–527. Report and proof of notice.
18–528. Report of notice to be prima facie evidence.
18–529. Copy of report of notice as legal evidence.
18–530. Distribution of residue.

§ 18–501 [29: 191]. Creditors' rights against property of nonresident decedent—Limitation.

On the death of any person not domiciled in the District of Columbia at the time of his death so much of his real and personal estate in the District of Columbia as may be necessary for the payment and discharge of just claims against him of creditors and persons domiciled in the District of Columbia shall also be the subject of administration under authority and direction of the probate court, irrespective of the personal estate of such decedent at his place of domicile or elsewhere: *Provided,* The prosecution of such claims is begun in said court within six months after the death of such decedent. (Mar. 3, 1901, 31 Stat. 1231, ch. 854, § 260; June 30, 1902, 32 Stat. 528, ch. 1329; June 24, 1949, 63 Stat. 268, ch. 242, § 1.)

Amendments

The act of June 24, 1949, cited to text, struck out the words "one year" and inserted in lieu thereof the words "six months".

The 1902 amendment inserted the words "and personal" after the word "real," and the words "at his place of domicile or elsewhere" after the word "decedent."

Cross References

Discharge of debt by will construed to be a specific bequest and invalid as to creditors, § 18–302.

Duty to file schedule of personal property for taxation, distraint of property for nonpayment, §§ 47–1203, 47–1301.

Jurisdiction, pleading and practice in probate court, §§11–501 to 11–520.

Liability as stockholder of business corporation, § 29–220.

Liability for income taxes, duty to file return, §§ 47–1523, 47–1524.

Liability of estate for public property held by decedent as officer in the army, §§ 39–505, 39–511.

Priorities, § 18–520.

NOTES TO DECISIONS

Constitutionality

This section properly construed does not give an unconstitutional preference to local creditors over nonresident creditors. *Duehay* v. *Acacia Mut. Life Ins. Co.* (70 App. D. C. 245, 105 Fed. (2d) 768).

Insolvent Estates

The correct rule in the administration of an insolvent estate is to marshal the assets and distribute them ratably among creditors of the same class, irrespective of their source. *Sackett, Chapman, Brown & Cross* v. *Osgood* (App. D. C. 1945, 149 F. 2d 825).

Law Governing Interest

In ancillary administration proceedings in estate of a Maryland resident, question as to rate of interest allowable on claims against estate was to be determined under District of Columbia law. *Hightstown Rug Co.* v. *National Sav. & Trust Co.* (App. D. C. 1947, 162 F. 2d 10, 82 U. S. App. D. C. 204).

Liability for Non-Payment

Fact that voluntary payment by local debtor of local assets to a foreign domiciliary executor or administrator might afford a valid acquittance of the debt under some circumstances does not establish that a debtor who refuses to pay such assets voluntarily to such foreign representative should be held liable in damages. *Cameron* v. *Riggs Nat. Bank of Washington, D. C.* (D. C., D. C. 1944, 53 F. Supp. 56).

A bank which refused to make payment to foreign domiciliary executor of testatrix's funds held by bank in checking and savings accounts until elapse of period of one year within which local debtors could assert their claims against the assets, unless otherwise protected against such claims, was not liable for interest on the funds withheld, as damages. *Cameron* v. *Riggs Nat. Bank of Washington, D. C.* (D. C., D. C. 1944, 53 F. Supp. 56).

Participating Creditors

Where insolvent nonresident died possessed of property in the District of Columbia, ancillary administrator was appointed, but no claims were filed by local creditors, and only two nonresident creditors presented claims, the District Probate Court had discretionary power to require that other creditors, who had filed claims in the domiciliary estate, be given notice and allowed to participate with creditors who had filed claims in ancillary estate. *Sackett, Chapman, Brown & Cross* v. *Osgood* (App. D. C. 1945, 149 F. 2d 825).

Purpose

This section is intended for the protection of local creditors. *Sackett, Chapman, Brown & Cross* v. *Osgood* (App. D. C. 1945, 149 F. 2d 825).

Remedy

Under this section, local creditors are given an opportunity to assert their claims against local assets of a decedent domiciled elsewhere. *Cameron* v. *Riggs Nat. Bank of Washington, D. C.* (D. C., D. C. 1944, 53 F. Supp. 56).

Time for Assertion of Claims

Ordinarily, the period of one year fixed by this section is period that local debtor may reasonably await assertion of claims of local creditors before making payment to a foreign domiciliary executor or administrator, unless otherwise protected against such claims. *Cameron* v. *Riggs Nat. Bank of Washington, D. C.* (D. C., D. C. 1944, 53 F. Supp. 56).

TRANSMISSION OF FUNDS

Where there were no locally domiciled creditors, the probate court might, in its discretion, order the funds in hands of ancillary administrator to be transmitted to the domiciliary administrator, even though some creditors from other states had presented their claims locally. *Sackett, Chapman, Brown & Cross* v. *Osgood* (App. D. C. 1945, 149 F. 2d 825).

§ 18–502 [29: 192]. No claim to be noticed unless legally authenticated.

No executor or administrator shall be bound to discharge any claim against his decedent unless the same shall be exhibited to him, legally authenticated, or unless such claim shall have been passed by the probate court and entered by the register of wills upon his docket. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 357.)

NOTES TO DECISIONS

CONSTRUCTION

The meaning of this section is to be deduced from the language of its heading as well as from the language of the body thereof. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

The phrase "To be noticed" and the words "To discharge" must be read together to determine the meaning of the statute. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–503 [29: 193]. Debts to be proved.

No executor or administrator shall discharge any claim against his decedent (otherwise than at his own risk) unless the same be first passed by the probate court, or unless the said claim shall be proved according to the following rules: (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 330.)

NOTES TO DECISIONS

DISPUTED CLAIMS

"Under section 330 of the code (this section) the approval of a claim properly proved relieves the executor or administrator from liability if he elects to pay it; but, by section 342 (§ 18–516) he may contest it at law, and in such action the approval of the probate court is deprived of even evidentiary value * * *. It is settled in this District that the probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio* v. *Hutchins* (43 App. D. C. 117), citing *Cook* v. *Speare* (13 App. D. C. 446); *Richardson* v. *Daggett* (24 App. D. C. 440).

LIABILITY OF EXECUTOR OR ADMINISTRATOR

This section was designed to relieve the executor or administrator from liability if he should elect to pay claims passed upon by the court, or properly proved. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

SUIT

There is nothing in this section which prevents suit on a claim which has neither been exhibited to the executor legally authenticated nor passed by the probate court. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–504 [29: 194]. Judgment or decree—Voucher or proof of.

The voucher or proof of a judgment or decree shall be a short copy thereof under seal, attested by the clerk of the court where it was obtained, who shall certify that the said judgment or decree hath not been satisfied. There shall likewise be a certificate of some person authorized to administer an oath, indorsed on or annexed to a statement of the debt due on such judgment or decree, that the creditor or his agent since the death of the deceased hath taken before him the following oath, to wit: "That the creditor hath not received any part of the sum for which the judgment or decree was passed except such part (if any) as is credited"; and if the creditor on the judgment or decree be an assignee of the person who obtained it, the oath shall go on and say further, "and that to the best of his knowledge or belief no other person hath received any parcel of the said sum except such part (if any) as is credited," and an assignee shall also produce the assignment under the hand of the assignor; and if there be more than one assignment, each assignment shall be produced under the hand of the party assigning. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 331.)

§ 18–505 [29: 195]. Bond, note, check, protested bill of exchange—Original or copy of instrument to constitute voucher.

In case of a specialty, bond, note, check, or protested bill of exchange, the vouchers shall be the instrument of writing itself, or a proved copy in case it be lost, with a certificate of the oath made as aforesaid since the death and indorsed on or annexed to the instrument, or a statement of the claim "that no part of the money intended to be secured by such instrument hath been received or any security or satisfaction given for the same except what (if any) is credited." (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 332.)

§ 18–506 [29: 196]. Proof by assignee.

If the creditor in such instrument be an assignee, there shall be the same oath of the creditor or agent, according to the best of his knowledge and belief, with respect to any payments prior to the time of the assignment. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 333.)

§ 18–507 [29: 197]. Commercial papers—Proof.

In case of a bill of exchange or other commercial paper, the protest or other things which would be required (if the deceased were alive) shall be necessary to justify an executor or administrator in making payment or distribution. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 334.)

§ 18–508 [29: 198]. Claims for rent—Proof.

If the claim be for rent, there shall be produced the lease itself, or the deposition of some credible witness or witnesses, or an acknowledgment in writing of the deceased, establishing the contract and the time which hath elapsed during which rent was chargeable, and a statement of the sum due for such rent, with an oath of the creditor or agent indorsed thereon "that no part of the sum due for said rent or any security or satisfaction for the same hath been received except what (if any) is credited."

The proof of a claim for rent in arrear, so as to render the same a preferred claim, shall be the proofs and vouchers for rent aforesaid, and proof that the claim is such that an attachment therefor might be levied on said deceased's goods and chattels in the hands of the administrator, but the preference

given for rent is not to impair the landlord's right of attachment if he thinks proper to exercise it. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 335.)

§ 18–509 [29: 199]. Open account—Proof.

The vouchers or proofs of any claim on open account shall be a certificate of an oath taken by the creditor or agent since the death, indorsed on or annexed to the account, that the account as stated is just and true, and that he, the creditor, or any one for him, hath not received any part of the money stated to be due or any security or satisfaction for the same except what (if any) is credited. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 336.)

NOTES TO DECISIONS

STATUTE OF LIMITATIONS

Proof and presentation of claim under this section would operate to suspend the running of the statute of limitations. *Berry & Whitman Co.* v. *Dante* (43 App. D. C. 110).

§ 18–510 [29: 200]. Claims outside of District—How proved.

When an affidavit or deposition to prove claims shall have been taken out of the District, the same shall be good if taken and certified as aforesaid by a notary public, or by some person there authorized to administer an oath, and certified to be such under the seal of the clerk of any court of record, or by any officer having official cognizance of the fact, and the said oath shall be as available as if taken before an officer authorized to administer an oath within this District: *Provided,* That such additional certificate shall not be required as to notaries public within the United States or any place under the jurisdiction thereof when the seal of such notary is attached. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 337; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1902 amendment added the proviso.

§ 18–511 [29: 201]. Executor or administrator's claim must be under oath.

If the creditor be an executor or an administrator the claim shall not be received, although vouched and approved as aforesaid, unless he make oath, to be certified as aforesaid, "that it does not appear from any book or writing of his decedent that any part of the said claim hath been discharged except what (if any) is credited, and that to the best of the dependent's knowledge and belief no part of the said claim hath been discharged and no security or satisfaction given for the same except what (if any) is credited." (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 338.)

§ 18–512 [29: 202]. Claims of executors and administrators to be passed by probate court.

In no case shall an executor or administrator be allowed to retain for his own claim against the decedent, unless the same be passed by the probate court, and every such claim shall stand on an equal footing with other claims of the same nature. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 339.)

NOTES TO DECISIONS

EXAMINATION BY COURT

Administratrix' claims against estate will be critically examined by probate court and will not be allowed unless the court is satisfied that they are good. *Perkins* v. *Berger,* 1944 (145 F. 2d 856, 79 U. S. App. D. C. 286).

§ 18–513 [29: 203]. Docket of claims.

The register of wills shall enter in a suitable book, to be provided by him for that purpose, all claims against a decedent as they are regularly passed by the probate court, giving the date of the passage, the name of the creditor, the character of such claim, whether on note or open account, bond, bill, obligation, judgment, or other evidence of debt, and the amount thereof, and the entry of a claim upon such docket shall be taken as notice to the executor or administrator of its existence. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 354.)

NOTES TO DECISIONS

NOTICE OF CLAIM

The executor is charged with notice of claims only in case they shall be exhibited to him, legally, and then treated, or shall have been passed by the probate court and entered by the register of wills upon his docket. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–514 [29: 204]. Filed claim no evidence of correctness if disputed—Filing as tolling limitations.

The claim thus entered (as provided in section 18–513) shall not afford any evidence as to the justice or correctness of any debt therein entered whenever the same shall be controverted by an executor or administrator in any suit instituted for the recovery of such debt; nor shall the same be construed to take any debt out of the operation of a plea of limitations. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 355.)

CROSS REFERENCES

Provisions in will as tolling statute of limitations, § 12–207.

Statute of limitations, § 18–515.

§ 18–515 [29: 205]. Plea of limitations within discretion of executor or administrator.

It shall not be considered as the duty of an executor or administrator to avail himself of the act of limitations to bar what he supposes to be a just claim, but the same shall be left to his honesty and discretion. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 341.)

CROSS REFERENCE

See notes to § 12–201 et seq.

§ 18–516 [29: 206]. Claims may be rejected and disputed.

No executor or administrator shall be obliged to discharge any claim of which vouchers and proofs shall be exhibited as aforesaid, but may reject and at law dispute the same in case he shall have reason to believe that the deceased never owed the debt, or had discharged the same, or a part thereof, or had a claim in bar. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 342.)

NOTES TO DECISIONS

IN GENERAL

An executor or administrator may contest a claim properly proved at law. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–517 [29: 207]. Passing of claims not conclusive.

In no case shall the order made by the probate court that an account or claim will pass when paid be deemed of validity to establish such claim or account; but in case the executor or administrator thinks fit to contest the same such account or claim shall derive no validity from the order aforesaid, but shall be proved in the same manner as if no such order had been made. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 343.)

NOTES TO DECISIONS

Effect of Passing Claim

An executor or administrator may contest at law a claim properly proved, and, in such action, the approval of the probate court by this section is deprived of even evidentiary effect. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–518 [29: 208]. Creditors to file suit within nine months from time claim is contested.

If a claim be exhibited against an executor or administrator which he shall think it his duty to dispute or reject, he may retain in his hands assets proportioned to the amount of the claim, which assets shall be liable to other claims, or to be delivered up or distributed in case the claim be not established; and if on any claims exhibited and disputed as aforesaid the creditor or claimant shall not, within three months after such dispute or rejection, commence a suit for recovery the creditor shall be forever barred; and the executor or administrator may plead this section in bar, together with the general issue or other plea proper to bring the merits of the cause to trial; and on any dividend to be made three months after such dispute or rejection and failure to bring suit the executor or administrator may proceed to pay or distribute as if he had not knowledge or notice of such claim or as if it did not exist; but if the claim be put in suit within the three months it may be ascertained by verdict or otherwise, and the court shall proceed as herein directed, regard being had to the rules herein laid down as to the notice to be given by the executor or administrator and distribution or payment be made after such notice. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 348; June 24, 1949, 63 Stat. 268, ch. 242, § 5.)

Amendments

The act of June 24, 1949, cited to text, struck out the words "nine months" where they appeared three times in the section and inserted each time in lieu thereof the words "three months".

Cross Reference

See note to § 18–509. *Berry* v. *Dante* (43 App. D. C. 110).

NOTES TO DECISIONS

Decisions Under Prior Law

Prior to enactment of the Code, law of Maryland as to limitations was in force in the District. *Glover* v. *Patten* (165 U. S. 394, 41 L. Ed. 760, 17 Sup. Ct. 411, affg. 1 App. D. C. 466).

Computation of Time

A claim so exhibited and disputed is specifically barred, unless suit for its recovery is commenced within nine months after its rejection. *National Sav. & Trust Co.* v. *Ryan* (49 App. D. C. 159, 262 Fed. 613); *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–519 [29: 209]. Payment of claims.

An executor or administrator shall, within thirteen months from the date of his letters, or within such further time, not exceeding four months longer, as shall be allowed by the probate court on his making oath that he has reason to apprehend that the personal estate and assets which are or shall be in his hands will be insufficient to discharge the just debts of and claims against the deceased, discharge all such claims known to him or pay each claimant his just proportion of the money then in his hands (retaining as herein directed); it shall likewise be his duty once in every term of six months after the first distribution to make a distribution of the money which hath since come to his hands until he shall have fully administered, and on failure his administration bond may be put in suit. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 344.)

Cited

Clawans v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–520 [29: 210]. Priorities.

In paying the debts of a decedent, after the payment of funeral expenses according to the condition and circumstances of the deceased, not exceeding six hundred dollars, an executor or administrator shall observe the following rules: Claims for rent in arrear against deceased persons, for which an attachment might be levied by law, shall have preference. Judgments and decrees of courts in the District of Columbia shall next be wholly discharged. After such claims for rent, judgments, and decrees shall be satisfied, all other just claims shall be on an equal footing without priority or preference. If there be not sufficient to discharge all such judgments and decrees, a proportionate dividend shall be made between the judgment and decree creditors. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 356.)

Cross References

Blind assistance granted under Social Security Act preferred claim, § 46–112.

Old age assistance granted decedent under Social Security Act preferred claim, § 46–212.

Other provisions concerning order of payment, § 20–605.

Priority of taxes, §§ 47–1301, 47–1402, 47–1527.

NOTES TO DECISIONS

Application of Act

The statutes are equally applicable to the administration of all estates in the District, whether domiciliary or ancillary. *Duehay* v. *Acacia Mut. Life Ins. Co.* (70 App. D. C. 245, 105 Fed. (2d) 768).

Funeral Expenses

This section and section 605 of Title 20 limiting the amount for funeral expenses to $600 merely provide for a limitation on the amount which may be given priority over claims of other creditors and beneficiaries, and not an invariable maximum that must always be observed, and therefore claim for funeral expenses in amount of $3,863 was properly ordered to be paid pro rata with other general claims lawfully payable out of deceased's estate. *National Metropolitan Bank of Washington* v. *Joseph Gawler's Sons* (D. C. Mun. App. 1947, 52 A. 2d 280).

Executors were not controlled by limitation of this section and § 20–605 in view of discretionary authority granted them by will empowering executors to pay funeral expenses in such amount as they deemed proper, but they were bound to act in good faith and expend only such

amount as in their discretion they deemed proper. *National Metropolitan Bank of Washington* v. *Joseph Gawler's Sons* (App. D. C. 1948, 168 F. 2d 571).

Executors did not have burden to establish good faith and sound discretionary action under provision of will empowering them to pay funeral expenses in such amount as they deemed proper, and burden was on funeral establishment which attacked their action, to prove the charge. *National Metropolitan Bank of Washington* v. *Joseph Gawler's Sons* (App. D. C. 1948, 168 F. 2d 571).

This section and § 20–605 relating to funeral expenses limit amount allowable for funeral expenses in absence of authority by testator to contrary and even then such sections should control where estate is insolvent. *National Metropolitan Bank of Washington* v. *Joseph Gawler's Sons* (App. D. C. 1948, 168 F. 2d 571).

JUDGMENT NOT DOCKETED

Judgment of municipal court not docketed in Supreme Court is not entitled to preference. *In re Neuland's Estate* (44 W. L. R. 378).

MONUMENT

An allowance to executrix for purchase of monument placed over grave of deceased is proper, where the rights of creditors have not been prejudiced. *Sinnott* v. *Kenaday* (14 App. D. C. 1); revd. on other grounds (179 U. S. 606, 45 L. Ed. 339, 21 Sup. Ct. 233).

§ 18–521 [29: 211]. Meeting of creditors.

Any executor or administrator shall be entitled to appoint a meeting of creditors on some day by the court approved, and passage of claims, payment, or distribution may be there made under the court's direction and control. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 358.)

CITED

Clawans v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–522 [29: 212]. Notice of distribution.

In all cases where an executor or administrator is to make payment or distribution among the creditors of his decedent, he may give notice three successive weeks previously in some convenient newspaper of the time and place for making it; and in case the creditor shall not attend in person or by agent or attorney to receive the amount or proportionable part of his claim, all interest on such claim or proportionable part shall cease from that time: *Provided,* That the executor or administrator shall at any time thereafter on demand pay the said claims, or a proportionable part, to the party, his agent, or attorney duly authorized; and whenever the executor or administrator shall proceed to make an additional payment or dividend he may advertise as aforesaid, and interest shall stop as aforesaid; and if at the time for the making of any additional dividend a just claim, established as hereinbefore directed, shall be exhibited, the creditor shall be entitled to such sum as will place him on an equal footing with those who have already received a dividend. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 345.)

§ 18–523 [29: 213]. Retaining for claims.

It shall be the duty of an executor or administrator to pay all just claims against his decedent exhibited to him, or a just proportionable part thereof, according to the assets; and if any claim be known to him (although the same be not exhibited) he shall retain the same, or a just proportionable part, for the benefit of the creditor: *Provided,* That if any executor or administrator shall have actual knowledge of a claim which has not been exhibited or passed he shall give notice in writing to the creditor, requiring the claim to be either exhibited or passed, as herein provided, within thirty days if such creditor be a resident and within ninety days if he be a nonresident of said District, and after the expiration of such period, and after the expiration of the period for distribution provided by section 18–519 the executor or administrator shall not be required to retain any part of the estate for the benefit of such creditor, unless in the meantime such claim shall have been so exhibited or passed. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 346.)

NOTES TO DECISIONS

FAILURE TO EXHIBIT, EFFECT

This section does not provide that failure to exhibit in response to the notice will bar the claim. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–524 [29: 214]. Executor or administrator to withhold amount claimed pending litigation.

And if any action shall be commenced against an executor or administrator for the recovery of a larger debt or damages than he shall think due, so that the same can not be ascertained before verdict, the executor or administrator shall be allowed to retain such sum to meet the said debt or damages as the probate court shall allow, and if more than enough be allowed, the party shall afterwards account for it, but nothing shall be retained on account of such further debt or damages where the court shall be satisfied that there will be money sufficient coming in after such dividend to meet the said damages, or a just proportion thereof, regard being had to other claims. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 347.)

§ 18–525 [29: 215]. Executor or administrator not responsible for claims made after distribution.

In case all the assets have been paid away, delivered, or distributed as herein directed, and a claim shall afterwards be exhibited of which the executor or administrator hath not knowledge or notice by the exhibition of the claim legally authenticated, as herein required, he shall not be answerable for the same; and if he be sued for any claim and shall make it appear to the court in which suit is brought that he hath so paid away, delivered, or distributed, and the plaintiff can not prove that the defendant had notice as aforesaid before such payment, delivery, or distribution, the court shall not proceed to give judgment (although the amount of the claim against the deceased may be ascertained) until the plaintiff shall be able to show further assets coming into the defendant's hands, but if the plaintiff shall prove notice, as aforesaid, of the said claim against the defendant, judgment may be immediately given for such sum as the plaintiff ought to have received at the dividend, and fieri facias may issue and have effect, and further judgment may be given on coming in of further assets. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 349.)

NOTES TO DECISIONS

IN GENERAL

An executor is exonerated as to any claims as to which he had not legal notice prior to distribution. *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

§ 18–526 [29: 216]. Notice to creditors to file claims.

No executor or administrator who shall, after the lapse of six months after the date of his letters, have paid away assets to the discharge of just claims shall be answerable for any claim of which he had no knowledge or notice by an exhibition of the claim legally authenticated: *Provided,* That at least three months before he shall make distribution he shall have caused to be inserted in so many newspapers as the probate court may direct an advertisement as follows, or fully to the following effect, namely: "This is to give notice that the subscriber, of ———, hath obtained from the probate court of the District of Columbia letters testamentary (or of administration) on the personal estate of ———, late of ———, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the ——— day of ——— next; they may otherwise by law be excluded from all benefit of said estate.

"Given under my hand this ——— day of ———." (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 350; June 24, 1949, 63 Stat. 268, ch. 242, § 6.)

AMENDMENTS

The act of June 24, 1949, cited to text, struck out the words "one year" and inserted in lieu thereof the words "six months" and struck out the words "at least six months" and inserted in lieu thereof the words "at least three months".

NOTES TO DECISIONS

HISTORICAL

This section is similar to the Maryland Act of 1798 as amended (Acts 1828, ch. 131, § 2). *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

NECESSITY OF EXHIBIT

Knowledge or notice of a claim to an executor must be by an exhibition of the claim, legally authenticated. *Parish* v. *Hedges* (34 App. D. C. 21).

§ 18–527 [29: 217]. Report and proof of notice.

The executor or administrator may report to the court, with an affidavit of the proof thereof annexed, the fact of having given such notice, and the court, on being satisfied that its order has been complied with and the said notice has been given, shall indorse on said report its certificate that it has been proven to its satisfaction that said notice hath been given as therein reported, and shall order said report and certificate to be recorded among the records of the court. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 351; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "their" and inserted in lieu thereof the word "its," following the words "satisfied that" and "proven to."

§ 18–528 [29: 218]. Report of notice to be prima facie evidence.

The said report and certificates shall be prima facie evidence, in all cases whatever, of the giving of such notice as therein stated. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 352.)

§ 18–529 [29: 219]. Copy of report of notice as legal evidence.

A copy of said report, certificate, and order, under the seal of the register of wills, shall be legal and competent evidence. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 353.)

§ 18–530 [29: 220]. Distribution of residue.

Whenever it shall appear by the first or other account of an executor or administrator that all the claims against, or debts of, the decedent which have been known by or notified to him have been discharged or allowed for in his account, it shall be his duty to deliver up and distribute the surplus or residue of the personal estate not disposed of by any will, as hereinafter directed: *Provided,* That his power and duty with respect to future assets shall not cease; and after such delivery he shall not be liable for any debts afterwards notified to him, provided he shall have advertised as hereinbefore directed, unless assets shall afterwards come into his hands which shall be answerable for such debts. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 359.)

CITED

Clawans v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

Chapter 6.—SALE OF ASSETS

Sec.
18–601. Sale of personal estate.
18–602. Order for sale.
18–603. Power of sale in will.
18–604. Sale of real estate directed in will—Procedure.
18–605. Power of co-executors to sell under power in will.
18–606. Survivor of several trustees.
18–607. Sale of real estate.
18–608. Bond to prevent sale of real estate.
18–609. Sale of real estate to satisfy debts and legacies.
18–610. Sale of property subject to dower.
18–611. Appointment of trustee to sell real estate—Bond of trustee.
18–612. Proceeding by creditors to have real estate sold.

§ 18–601 [29: 231]. Sale of personal estate.

In case any executor or administrator shall not have money sufficient to discharge the just debts of and claims against the decedent, the probate court shall, on his application, made after the return of an inventory, direct a sale of the personal property therein contained, or of such part as the court may think proper, and in such manner and on such terms as the court may direct. The court shall have power to direct a sale as aforesaid, if deemed by the court advantageous to the persons interested in the administration, on the application of any of the said persons. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 322.)

CROSS REFERENCES

Exempted from operation of Bulk Sales Law, § 28–1704.
Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.
Sale of property to make distribution, §§ 18–718, 18–719.

§ 18–602 [29: 232]. Order for sale.

No executor or administrator shall sell any property of his decedent without an order of the probate court authorizing such sale; and any such sale made without a previous order authorizing it shall be void and pass no title to the purchaser. If any executor or administrator shall sell, pledge, or dispose of any property without such previous order, his letters may

be revoked and an administrator appointed, whose duty it shall be immediately to recover possession of said property, and such removed executor or administrator may be proceeded against by attachment; but where there are two or more executors or administrators, and a sale, pledge, or disposition of property has been made without the consent of all, the revocation shall only extend to the person or persons so offending, and the remaining executors or administrators shall have power to discharge the duties of their office and institute proceedings for the recovery of the property and attachment as aforesaid. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 323.)

NOTES TO DECISIONS

Application of Section

This section should be applied where an administrator not only has become actively a party to an arrangement by which another makes an appropriation of estate assets such as a business before his appointment but during the course of his administration confirms it by refusing to include the property within his inventory, to report, or to account for the profits of the business, and to take steps to secure its recovery or legal disposition after full warning that that might be required. *Burke* v. *Canfield,* 1941 (121 F. 2d 877, 74 App. D. C. 6).

Common Law

"At common law an executor or administrator had absolute power of disposal over all personal property coming into his hands, including choses in action, and such sales protected purchasers, except where fraud appeared." *Phoenix Mut. Life Ins. Co.* v. *Harris* (45 App. D. C. 474).

Construction

"Owing to this rule of the common law, statutes providing for the granting of decrees of court as to sales generally are construed to be for the protection of the administrator and not as a limitation of his power." *Phoenix Mut. Life Ins. Co.* v. *Harris* (45 App. D. C. 474).

"The provisions of section 323 (this section) of our code were intended to apply merely to local executors and administrators dealing with property within this jurisdiction. The section declares, * * *, his letters may be revoked, clearly indicating, we think, that the prohibition was not intended to extend to contracts made by executors and administrators of other jurisdictions. In other words, this statute was addressed to the constituent elements or validity of a local contract by executors and administrators, rather than to the procedure to be followed in establishing all contracts by executors and administrators, wherever made." *Phoenix Mut. Life Ins. Co.* v. *Harris* (45 App. D. C. 474).

§ 18–603 [29: 233]. Power of sale in will.

Section 18–602 shall not be construed to apply to any case where an executor shall be authorized by will of his testator to make sale of any property. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 324.)

§ 18–604 [29: 234]. Sale of real estate directed in will—Procedure.

In all cases in which a testator has directed his real estate to be sold for the payment of his debts or legacies, the executor may sell and convey the same, and shall account for the proceeds thereof to the probate court in the same manner that he is bound to account for the proceeds of personal estate; but such sale shall not be valid unless ratified by said court after notice given by publication according to the practice in equity. In case the executor shall refuse or decline to act, or shall die without executing the power vested in him, it shall be lawful for the court, on the application of any person interested, to appoint an administrator de bonis non with the will annexed to execute such power in the same manner in which the executor appointed by the will might have done. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 325.)

Cross Reference

Provisions of will as tolling statute of limitations, § 12–207.

NOTES TO DECISIONS

Approval of Court

Where executor was empowered by will to sell real estate at his discretion, court's refusal to approve sale by executor because of a higher bid would not be disturbed, except that before accepting the higher bid the court should afford the original bidder, and other bidders, opportunity to submit further bids if desired. *De Marco* v. *Kertz* (App. D. C. 1945, 151 F. 2d 305).

The Judicial Sales Act, 28 U. S. C. §§ 847–849, and the local civil rules of the District Court for the District of Columbia adopted thereunder are applicable only to sales which are required or authorized by court order, and not those under a power created by will; hence, for sales made by executor under terms of a will, ratification by the probate court according to the practice in equity is required, and not in accordance with provisions of said sections. *De Marco* v. *Kertz* (App. D. C. 1945, 151 F. 2d 305).

Price of Bid

Where a will authorizes executor to sell real estate at his discretion, the bidder makes his offer to the executor subject to the approval of the court, as required by this section, and in selling the property the court is acting as trustee for the parties in interest and must exercise a wise, judicial discretion to secure for the estate the highest price consistent with a just regard for the rights of the bidder. *De Marco* v. *Kertz* (App. D. C. 1945, 151 F. 2d 305).

The general rule applicable to public judicial sales of property, that the court will not ordinarily set aside a sale made in the manner prescribed by law because of mere inadequacy of price, grew out of the necessity of encouraging free bidding at public sales, and rule is not applicable to a private sale. *De Marco* v. *Kertz* (App. D. C. 1945, 151 F. 2d 305).

Rejection of Offer or Bid

Where a will authorizes executor at his discretion to sell real estate, a private offer, which is made subject to ratification by the court under this section, may be rejected when a higher bid is made at any time prior to ratification. *De Marco* v. *Kertz* (App. D. C. 1945, 151 F. 2d 305).

§ 18–605 [29: 235]. Power of co-executors to sell under power in will.

Where part of the executors named in any testament of any person so making or declaring any will of any lands, tenements, or other hereditaments to be sold by his executors, after the death of any such testator, do refuse to take upon him or them the administration and charge of the same testament and last will wherein they be so named to be executors, and the residue of the same executors do accept and take upon them the cure and charge of the same testament and last will; then all bargains and sales of such lands, tenements, or other hereditaments, so willed to be sold by the executors of any such testator, as well heretofore made, as hereafter to be made by him or them, only of the said executors that so doth accept, or that heretofore hath accepted and taken

upon him or them any such cure or charge of administration of any such will or testament, shall be as good and as effectual in the law, as if all the residue of the same executors named in the said testament, so refusing the administration of the same testament, had joined with him or them in the making of the bargain and sale of such lands, tenements, or other hereditaments so willed to be sold by the executors of any such testators, which heretofore hath made or declared, or that hereafter shall make or declare any such will, of any such lands, tenements, or other hereditaments after his decease, to be sold by his executors. (21 Henry VIII, ch. 4, § 1, 1529; Kilty's Rept. p. 230; Alex. Br. Stat., p. 280; Comp. Stat. D. C., p. 20, § 85.)

CROSS REFERENCE

See note to § 19–104.

§ 18–606 [29: 236]. Survivor of several trustees.

In all cases where two or more trustees shall be appointed by last will to execute a trust, or shall be empowered to sell, dispose of, or convey lands or other property devised to them jointly, upon the death of any one or more of them the survivor or survivors shall be held authorized to execute such trust or power; and if any one of such trustees shall in writing, signed by him and attested by a witness, relinquish or disclaim said trust or refuse to act under said will, and shall deliver such writing to the probate court of the District for record, the right of such trustee to act shall cease, and the remaining trustee or trustees appointed by said will shall be authorized to execute the trusts of said will and make all sales and execute all conveyances and other acts necessary for that purpose. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 326.)

NOTES TO DECISIONS

EFFECT OF DEATH

A trust charged upon the executors, as such, does not become extinct by the death of one of them, and if the executors were authorized to sell real estate, the survivor can sell it. *Kennedy* v. *Mangan* (51 App. D. C. 296, 278 Fed. 1009).

When will devised real property in trust for missing brother and if not heard from in seven years to have trustees sell, in such case the trustees had power to sell the property after seven years for the benefit of legatees, and equity would limit power to sell only if required by express terms of the will. *Kennedy* v. *Mangan* (51 App. D. C. 296, 278 Fed. 1009).

§ 18–607 [29: 237]. Sale of real estate.

The probate court shall have plenary authority to administer also the real estate situated in the District of Columbia of decedents so far as may be necessary for the payment of debts and legacies, and to distribute among those entitled thereto any surplus proceeds of any sale of real estate made in the course of such administration, and the bonds of all executors and administrators shall be responsible for the proceeds of sale of all real estate sold by them under the order of the said justice for such purposes of administration: *Provided, however,* That no such sale shall be made unless the same be required for the purposes of paying debts and such legacies as are chargeable upon the real estate, nor until the auditor of the court shall have ascertained and reported such debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of debts and legacies; and such report shall be subject to exception. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 146; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "a deficiency of personal assets for such purposes" and inserted in lieu thereof the words "such debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of debts and legacies."

CROSS REFERENCES

Bond to sell real estate, § 20–202.

Exempted from operation of law requiring license to deal in real estate, § 45–1402.

Form of executor's deed, § 45–301.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Prior to the enactment of the Code, the Supreme Court of this District had "jurisdiction and power to decree the sale of the real estate of a deceased debtor, whether the title be legal or equitable, for the payment of debts; and upon the allegation that the deceased was seized * * * and died indebted, there would be furnished a foundation for a decree of sale of such real estate." *Duncanson* v. *Manson* (3 App. D. C. 260, affd. 166 U. S. 533, 41 L. Ed. 1105, 17 Sup. Ct. 647).

ALLOWANCE OF LITIGATION COSTS

Where testator, prior to his second marriage, had made will giving his property to his stepchildren, but shortly after testator's death a child was born of the second marriage, resulting in litigation and a holding that the will was revoked by the marriage and birth of the child, and the personal estate was insufficient to pay all costs of litigation, the court properly charged against the real estate an allowance to executors for services of their attorneys and an allowance to the infant's guardian ad litem. *Pascucci* v. *Hart* (App. D. C. 1947, 160 F. 2d 255).

The authority of the probate court to sell real estate to pay debts and legacies includes the right to sell to pay the ordinary and necessary administration costs, and where litigation was necessary in the establishment of an infant's right to title to realty, the costs of such litigation would be entitled to priority over debts and legacies. *Pascucci* v. *Hart* (App. D. C. 1947, 160 F. 2d 255, 82 U. S. App. D. C. 12).

COLLATERAL ATTACK

If the court had jurisdiction, the sale cannot be attacked collaterally. *Duncanson* v. *Manson* (3 App. D. C. 260, affd. 166 U. S. 533, 41 L. Ed. 1105, 17 Sup. Ct. 647).

DISTRIBUTION AFTER PAYMENT OF DEBTS

When the real estate of an intestate is sold in administration proceeding in the District of Columbia for the payment of his debts, there can be no distribution of any part of the proceeds until after payment of all of the estate's debts, and this provision is not limited to debts payable to residents of the District. *Wiggins* v. *Mayer* (57 App. D. C. 293, 22 Fed. (2d) 869).

EXECUTORS' EXPENSES

Where a suit to cancel a deed was not for the purpose contemplated by §§ 607, 608, and 609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey* v. *Curtis* (C. A. D. C. 1950, 182 F. 2d 687, 86 U. S. App. D. C. 386).

PERSONAL PROPERTY MUST BE FOUND TO BE INSUFFICIENT

The statute contemplates a prior determination of the insufficiency of the personal property before an administrator can claim rents. *Shields* v. *Shields* (69 App. D. C. 331, 101 Fed. (2d) 255).

§ 18–608 [29: 238]. Bond to prevent sale of real estate.

An order for the sale of the real estate shall not be granted if any of the persons interested in the estate shall give bond to the United States, with security to be approved by said probate court, conditioned to pay all the debts or legacies, or both, as the case may be, that shall eventually be found due, and the costs of administration. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 147.)

NOTES TO DECISIONS

EXECUTORS' EXPENSES

Where a suit to cancel a deed was not for the purpose contemplated by §§ 607, 608, and 609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey* v. *Curtis* (C. A., D. C. 1950, 182 F. 2d 687, 86 U. S. App. D. C. 386).

§ 18–609 [29: 239]. Sale of real estate to satisfy debts and legacies.

If the said probate court shall be satisfied, upon a report of the auditor, that it is necessary to sell said real estate, or part thereof, it shall authorize the same, or so much thereof as may be necessary for the payment of the debts or legacies, or both, to be sold by the executor or administrator, on such terms as the court may direct. Any surplus of the proceeds of such sale, after payment of debts and legacies and costs of administration, shall be deemed real estate, and shall be distributed among the heirs or devisees as the right may appear. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 148.)

NOTES TO DECISIONS

EFFECT OF DIRECTIONS IN WILL

A conveyance of real estate to trustees with specific directions to sell as soon as possible, converted such property into personalty, by the doctrine of equitable conversion, and was therefore subject to federal estate tax. *Tait* v. *Dante* ((C. C. A. 4), 78 Fed. (2d) 303, cert. den. 296 U. S. 614, 80 L. Ed. 436, 56 Sup. Ct. 134).

EXECUTORS' EXPENSES

Where a suit to cancel a deed was not for the purpose contemplated by §§ 607, 608, and 609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey* v. *Curtis* (C. A., D. C. 1950, 182 F. 2d 687, 86 U. S. App. D. C. 386).

§ 18–610 [29: 240]. Sale of property subject to dower.

Where there shall be a widow entitled to dower in the real estate of the decedent, the probate court, before authorizing a sale of said real estate, shall issue a commission to one or more suitable persons to set off and assign her dower out of such estate, and her dower shall be assigned to her; or, if the court shall find the widow's dower can not be set off without injury to the property, if she shall consent thereto by her answer to the petition, the real estate may be sold free of her dower, and she shall receive out of the proceeds a commutation of her dower according to the practice in equity. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 149.)

§ 18–611 [29: 241]. Appointment of trustee to sell real estate—Bond of trustee.

If any person shall die having devised real estate to be sold for the payment of debts or other purposes without having appointed a trustee to sell or convey the property, or if the person so appointed shall neglect or refuse to execute the trust, or shall die before the execution of such trust, the equity court shall have authority, on the application of any person interested, to appoint a trustee to sell and convey said property and apply the proceeds of sale to the purposes intended. And in all cases where a trustee shall be appointed by last will and testament to execute any trust, and any person interested in the execution of such trust shall make it appear that it is necessary for the safety of those interested therein that the trustee should give bond and security for the due execution of the trust, the said court may order and direct that such bond be given by the trustee by a day named, and on failure of the trustee to give such bond, with security to be approved by the court as directed, the court may displace such trustee and appoint another in his stead, who shall give such bond; and such bond shall be given to the United States and may be sued on for the use of any person interested. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 94.)

§ 18–612 [29: 242]. Proceeding by creditors to have real estate sold.

When any person shall die leaving any real estate in possession, remainder, or reversion, and not leaving personal estate sufficient to pay his debts, the said equity court, on any suit instituted by any of his creditors, may decree that all the real estate left by such person, or so much thereof as may be necessary, shall be sold to pay his debts; and this section shall apply to cases where the heirs or devisees are residents or nonresidents, are of full age or infants, are of sound mind or non compos mentis, and also to cases where the deceased left no heirs or it is not known whether he left heirs or devisees or the heirs or devisees be unknown; and if there be no known heirs the attorney of the United States for the District of Columbia shall be notified of said suit and appear thereto. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 96.)

NOTES TO DECISIONS

COLLATERAL ATTACK

If sale of real estate is made under a decree, an infant cannot successfully in later proceeding, collaterally attack the decree when he was present in person and did not object to appointment of guardian for him. *Duncanson* v. *Manson* (3 App. D. C. 260, affd. 166 U. S. 533, 41 L. Ed. 1105, 17 Sup. Ct. 647).

PARTIES

In a creditors' bill filed for purpose of subjecting real estate of a deceased person as assets to payment of his debts, the executor or administrator is a necessary party, but if there are no personal assets, and consequently no qualified executor or administrator, a creditors' bill may be maintained without executor or administrator. *Plumb* v. *Bateman* (2 App. D. C. 156).

PERSONAL ESTATE INSUFFICIENT

Allegation and proof of deficiency in personal assets is jurisdictional in proceedings under this section. *Dahlgren*

v. *National Sav. & Trust Co.* (41 App. D. C. 201), citing *Glenn* v. *Sothoron* (4 App. D. C. 125).

In suit brought under this section by creditors of a decedent, a decree ordering the sale of decedent's real estate for payment of creditors' claims was affirmed, the personal estate being insufficient to pay them. *West* v. *McLaughlin* (57 App. D. C. 163, 18 Fed. (2d) 813).

Chapter 7.—DISTRIBUTION OF SURPLUS—BENEFICIARIES

Sec.

18–701. Distribution—When to be made.
18–702. When surviving spouse entitled to whole.
18–703. When surviving spouse entitled to one-third.
18–704. When surviving spouse entitled to one-half.
18–705. Distribution of surplus after payment to surviving spouse.
18–706. Children to share equally.
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18–720. Partial distribution.
18–721. Distribution of specific bequests.
18–722. Bequest to female.
18–723. Meeting of legatees or next of kin.

§ 18–701 [29: 281]. Distribution—When to be made.

When the debts of an intestate, exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained for as herein directed, the administrator shall proceed to make distribution of the surplus as follows: (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 373.)

CROSS REFERENCES

Descent of real estate, § 18–101 et seq.

Distribution before discovery of will or before will is declared invalid, § 20–106.

Distribution of death benefits of fraternal benefit associations, § 35–901.

Distribution of proceeds of action for wrongful death, § 16–1203.

Dower and curtesy rights, § 18–201 et seq.

Interest of widow who renounces under will, § 18–211.

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

Life insurance for benefit of wife and children, §§ 30–213, 30–214.

NOTES TO DECISIONS

IN GENERAL

"It is not the full and complete administration of the estate that marks the period for distribution, but the payment of or allowance for all debts and claims made known against the estate, after notice given, and when that is done it at once becomes the duty of the administrator to deliver up and distribute the residue of the estate to those entitled thereto." *Sterrett* v. *National Safe Deposit, Sav. & Trust Co.* (10 App. D. C. 131), construing § 10 of subch. 10 of the Testamentary Act of Maryland of 1798.

Distribution of property of persons dying in common disaster. *Young Womens Christian Assn.* v. *French* (187 U. S. 401, 47 L. Ed. 233, 23 Sup. Ct. 184, revg. 18 App. D. C. 9).

"An executor or administrator may make distribution of the surplus in his hands, after discharging the debts of the estate, without waiting for an order of the probate court." *Miller-Shoemaker Co.* v. *Sturgeon* (31 App. D. C. 406).

§ 18–702 [29: 282]. When surviving spouse entitled to whole.

If the intestate leave a widow or surviving husband and no child, parent, grandchild, brother, or sister, or the child of a brother or sister of the said intestate, the said widow or surviving husband shall be entitled to the whole. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 374; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

§ 18–703 [29: 283]. When surviving spouse entitled to one-third.

If there be a widow or surviving husband and a child or children, or a descendant or descendants from a child, the widow or surviving husband shall have one-third only. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 375; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

NOTES TO DECISIONS

CAUSA MORTIS GIFTS

The United States Supreme Court has held in cases involving a gift causa mortis that title to the property passes at the time of delivery, subject to a condition subsequent that the grantor may revoke the transfer if he lives and that it cannot, therefore, be considered as property of which the grantor dies possessed. *Wilkins* v. *Woodruff* (D. C. Mun. App. 1950, 74 A. 2d 59).

LIFE ESTATE

Will construed to give wife life estate in realty during widowhood, consent of devisees necessary to sale. *Evans* v. *Evans* (60 App. D. C. 371, 55 Fed. (2d) 533).

§ 18–704 [29: 284]. When surviving spouse entitled to one-half.

If there be a widow or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or brother or sister, or child of a brother or sister, the widow or surviving husband shall have one-half. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 376; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

NOTES TO DECISIONS

WAR-RISK INSURANCE

Distributees of war-risk insurance policy after death of the widow were to be determined as of the date of the death of the insured, under this section and § 385 of the Code (§ 18–713). *Condon* v. *Mallan* (58 App. D. C. 371, 30 Fed. (2d) 995).

Where decedent's estate consisted of proceeds from war risk insurance policy and decedent was resident of District of Columbia at the date of death, the law of the District is controlling. *Condon* v. *Mallan* (58 App. D. C. 371, 30 Fed. (2d) 995).

WRONGFUL DEATH

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman* v. *Levine* (295 U. S. 221, 79 L. Ed. 1402, 55 Sup. Ct. 741).

§ 18–705 [29: 285]. Distribution of surplus after payment to surviving spouse.

The surplus, exclusive of the widow's or surviving husband's share, or the whole surplus (if there be no widow or surviving husband), shall go as follows: (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 377; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

NOTES TO DECISIONS

WRONGFUL DEATH

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman* v. *Levine* (295 U. S. 221, 79 L. Ed. 1402, 55 Sup. Ct. 741).

§ 18–706 [29: 286]. Children to share equally.

If there be children and no other descendants, the surplus shall be divided equally among them. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 378.)

NOTES TO DECISIONS

INDEBTEDNESS TO CHILDREN

When mother dies indebted to children and bequeaths to them a portion of her own estate which is more than the indebtedness, such bequest is not in satisfaction for they would inherit the entire estate if no will had been made. *Patten* v. *Glover* (1 App. D. C. 466, affd. 165 U. S. 394, 41 L. Ed. 760, 17 Sup. Ct. 411).

When mother borrowed money on real estate and gave it to son to establish him in business, taking no security therefor but under agreement that it would be deducted from his share of estate, such advancement operates as an ademption of a legacy. *Miller* v. *Payne* (28 App. D. C. 396).

§ 18–707 [29: 287]. Grandchildren's share — Advancements.

If there be a child or children and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her, or their deceased parent would, if living, be entitled to, and every other descendant or descendants in existence at the death of the intestate shall stand in the place of his, her, or their deceased ancestor: *Provided,* That if any child or descendant shall have been advanced by the intestate, by settlement or portion, the same shall be reckoned in the surplus, and, if it be equal or superior to a share, such child or descendant shall be excluded, but the widow shall have no advantage by bringing such advancement into reckoning: *And provided further,* That, if any child or descendant shall have received from the intestate any real estate by way of advancement, which shall not be equalized under the provisions of section 18–108, the value of any such advancement shall be treated as personalty for the purposes of this section; but maintenance or education or money or realty, given without a view to a portion or settlement in life, shall not be deemed advancement; and in all cases those in equal degree claiming in the place of an ancestor shall take equal shares. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 379; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the word "personality" and inserted in lieu thereof the word "personalty."

CROSS REFERENCE

Advancement as satisfacton of legacy, § 19–109.

§ 18–708 [29: 288]. Share of father and mother.

If there be no child, or descendant, the whole shall go to the father and mother in equal shares, or to the survivor of them. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 380; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 1.)

AMENDMENT

The superseded 1901 Act read as follows: "If there be a father and no child or descendant, the father shall have the whole; if there be a mother and no father, child or descendant, the mother shall have the whole."

NOTES TO DECISIONS

WRONGFUL DEATH

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman* v. *Levine* (295 U. S. 221, 79 L. Ed. 1402, 55 Sup. Ct. 741).

§ 18–709 [29: 289]. Share of brother or sister or their descendants.

If there be a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother of the intestate, the said brother, sister, or child or descendant of a brother or sister shall have the whole. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 381.)

NOTES TO DECISIONS

CONSTRUCTION

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson* v. *Charlent* (D. C. D. C. 1949, 81 F. Supp. 690).

§ 18–710 [29: 290]. Brothers and sisters to share equally.

Every brother and sister of the intestate shall be entitled to an equal share, and the child or children, or descendants of a brother or sister of the intestate, shall stand in the place of their deceased parents respectively. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 382.)

NOTES TO DECISIONS

CONSTRUCTION

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson* v. *Charlent* (D. C., D. C. 1949, 81 F. Supp. 690).

PER STIRPES OR PER CAPITA

In construing an illiterate will children of testator's brothers held to take per capita rather than per stirpes under residuary clause, although testator had used the words "divided between my Brother Edwin and Charles children." *McIntire* v. *McIntire* (192 U. S. 116, 48 L. Ed. 369, 24 Sup. Ct. 196, affg. 20 App. D. C. 134).

§ 18–711 [29: 291]. Share of collateral relations.

After children, descendants, father, mother, brothers, and sisters of the deceased and their descendants,

all collateral relations in equal degree shall take, and no representation among such collaterals shall be allowed. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 383; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the words "and there shall be no distinction between the whole and half-blood" at the end.

NOTES TO DECISIONS

COUSINS

Where will devised the residue consisting of personal property to heirs at law and next of kin in accordance with existing laws of the District, the surviving next of kin, who were first cousins, are entitled to take all the personalty as against second cousins who would have been heirs had realty been devised. *Binford* v. *Diller* (C. A., D. C. 1949, 177 F. 2d 731).

§ 18–712 [29: 292]. Share of grandfather and grandmother.

If there be no collaterals, the grandfathers and grandmothers, or such of them as survive, shall take alike. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 384; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 2.)

AMENDMENT

The superseded 1901 act read as follows: "If there be no collaterals, a grandfather may take, and if there be two grandfathers they shall take alike; and a grandmother, in case of the death of her husband, the grandfather, shall take as he might have done."

§ 18–713 [29: 293]. Death of distributee before distribution.

If any person entitled to distribution shall die before the same shall be made, his or her share shall go to his or her representatives. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 385.)

CROSS REFERENCE

See note to § 18–704. *Condon* v. *Mallan* (58 App. D. C. 371, 30 Fed. (2d) 995).

NOTES TO DECISIONS

IN GENERAL

The widow on the death of her husband was a distributee of one-half of his personal estate. Owing to her being the beneficiary, this portion could not be ascertained until her death. Her estate then became entitled to her share, and her next of kin, her daughter, inherited her estate. *Condon* v. *Mallan* (58 App. D. C. 371, 30 Fed. (2d) 995).

§ 18–714 [29: 294]. Share of posthumous children.

Posthumous children of intestates shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 386.)

CROSS REFERENCE

Other provisions concerning rights of posthumous children, §§ 18–103, 45–204.

NOTES TO DECISIONS

IN GENERAL

"A child en ventre sa mere is deemed to be in esse for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig* v. *Rowland* (10 App. D. C. 402).

§ 18–715 [29: 295]. No distinction between whole and half-blood.

In the distribution of personal estate there shall be no distinction between the whole and half-blood. (June 30, 1902, 32 Stat. 530, ch. 1329, § 386a.)

§ 18–716 [29: 296]. Share of illegitimate children—Their issue—Mother.

The illegitimate child or children of any female and the issue of any such illegitimate child or children shall be capable to take from their mother, or from each other, or from the descendants of each other, in like manner as if born in lawful wedlock. When an illegitimate child or children shall die leaving no descendants, or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children, if living, shall be entitled as next of kin, and if the mother be dead the next of kin of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 387.)

CROSS REFERENCES

Antenuptial children, § 18–106.
Inheritance of issue of colored persons, slave marriages, §§ 30–116, 30–117.

NOTES TO DECISIONS

CONSTRUCTION

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson* v. *Charlent* (D. C. D. C. 1949, 81 F. Supp. 690).

CONSTRUCTION OF TERMS

"The mother of illegitimate children may be their next of kin, and illegitimate children of any female are next of kin to each other," and the phrase "next of kin" in section 1301 of the Code (§ 16–1201) is used in the same sense. *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313).

LEGISLATIVE INTENT

"It was evidently the intent of Congress in enacting this statute to remove the common-law disability of inheritance through the maternal line, and to that extent places illegitimates upon the same basis as legitimates. This amounted to a declaration of public policy." *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313).

Congress intended that an illegitimate child, insofar as inheritance is concerned, is to be considered in all respects as the child of its mother. It would be highly artificial to draw a distinction between property of which the mother was seized and possessed at the time of her death and the property of which she should have become seized and possessed had she lived. *Wilson* v. *Charlent* (D. C., D. C. 1949, 81 F. Supp. 690).

§ 18–717 [29: 297]. Escheatment.

If there be no widow or relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the District of Columbia, to be disbursed by the commissioners of the District for the benefit of the poor. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 388.)

NOTES TO DECISIONS

CITED

Webb v. *Lohnes* (68 App. D. C. 310, 96 Fed. (2d) 582).

CONVERSION OF PROPERTY

Where, in 1879, one died without known heirs or next of kin and a sum of money was found on his person which the authorities turned over to the policemen's pension fund, an administrator appointed in 1886 could recover such fund in tort for conversion since there was no authority in law for turning the money over to the pension fund. *Tucker* v. *Nebeker,* 2 App. D. C. 326.

POWER OF COURT

The probate court, upon a finding that there are no heirs of deceased intestate, has power to decree distribution to District of Columbia as escheatee. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

The probate court's jurisdiction to hear, determine and decree upon all claims between executors and administrators and legatees or persons entitled to a distributive share of an intestate estate includes duty of finding that there are or that there are not statutory heirs, and upon the finding to make distribution as this section requires. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

The probate court has power, in absence of next of kin, to order in a proper case the payment of residuum of intestate's estate to an escheatee, as this section provides. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

PRESUMPTIONS

There is a presumption that an intestate left heirs and the presumption obtains until claimant by escheat overcomes it by strong and convincing evidence. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

REMOTENESS OF RELATIONSHIP

A bequest to each one of testatrix's cousins living at the time of testatrix's death, irrespective of the remoteness of relationship, and of whether his or her parent cousin should be living, was not intended to incorporate this section, which provides that intestate property shall pass to the District, when there are no relations within the fifth degree. *Dalton* v. *White,* 1942 (129 F. 2d 55, 76 U. S. App. D. C. 93).

REMAND FOR FURTHER PROOF

Where creditor filed petition for administration of deceased's estate stating that after diligent search, creditor was satisfied that deceased died intestate and without surviving relation, and District of Columbia relied upon allegations of creditor's petition, pleadings and evidence were insufficient to authorize probate court to determine whether the District was entitled to distribution under this section, and case was remanded for determination of question whether intestate died without heirs. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

TIME WHEN TITLE RESTS

If on death of an intestate there were no kin within classes named in this section, property after payment of debts eo instante vested in and became property of the District of Columbia as statutory escheatee. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

§ 18–718 [29: 298]. Distribution of specific property.

In case the surplus remaining in the administrator's hands after payment of all just debts exhibited and proved or notified and not barred, or after retaining for the same, shall consist of specific property or articles mentioned in the inventory or inventories, the administrator, if he can not satisfy the parties, may apply to the court to make distribution, and the court may appoint a day for making distribution and by summons call on the said parties to appear; and the said court may, at the appointed time, proceed to distribute. But if a majority in point of value shall neglect to appear, or appearing shall object to the distribution of the articles, or if the court shall deem a sale of the said articles or any part of them more advantageous, a sale shall be directed accordingly, and the rules herein laid down relative to a sale by order of the said court shall be observed. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 389.)

§ 18–719 [29: 299]. Distribution of specific articles, how to be made.

Whenever a distribution of specific articles is to be made the probate court may appoint two disinterested persons, not in any way related to the parties concerned, to make such distribution among the persons entitled as to them shall seem meet and proper; or if, in their opinion, upon a view of such articles, no distribution among the persons entitled could be by them made which would operate equally, but a sale thereof would be more advantageous to such persons, they shall return to the probate court their opinion in writing, and the court shall thereupon order a sale of such articles, upon reasonable notice, and cause the proceeds of such sale to be equally distributed among the parties entitled. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 390.)

§ 18–720 [29: 300]. Partial distribution.

When any person entitled, after payment of debts, shall be in want of subsistence or greatly straitened in his circumstances, and shall apply to the probate court by petition, and satisfy the court that he is in want of subsistence or greatly straitened in circumstances, and that it probably will not require more than one-half of the assets to discharge the debts, the court may direct the administrator to deliver to the petitioner any part of what the court shall suppose will be his distributive share, or any part of a legacy or bequest in money not exceeding one-third part, the said petitioner giving bond, with security approved by the court, to the administrator for returning the same or an equivalent, with interest, whenever so directed by the court; and the court shall have power to determine in a summary way on any such petition, after summons against such administrator duly returned "summoned" or "non est." (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 391.)

NOTES TO DECISIONS

IN GENERAL

"Section 391 (this section) authorizes the court to deliver any part of what the court shall suppose will be the distributive share," and the requirement of a bond is sufficient protection in the event that the beneficiary should subsequently be divested of her interest in the estate. *Hutchins* v. *Hutchins* (41 App. D. C. 122).

COLLECTORS

Collector may be authorized to make partial distribution under this section. *Hutchins* v. *Hutchins* (41 App. D. C. 122).

TRUSTEES

This section confers no jurisdiction on an equity court to order partial distribution of a fund administered by a trustee under its supervision. *Hutchins* v. *Dante* (40 App. D. C. 262).

§ 18–721 [29: 301]. Distribution of specific bequests.

And the court, in like manner, on any petition by a person in such circumstances to whom a specific legacy or bequest has been made, being satisfied that

the assets, exclusive of all specific legacies, will not be nearly exhausted by debts, may direct the executor or administrator with the will annexed to deliver to the petitioner the said specific legacy or bequest on his giving bond as aforesaid. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 392.)

§ 18–722 [29: 302]. Bequest to female.

Where a bequest of personal property or money is made to a female and directed by the will to be paid on her attaining to full, mature, or to a lawful age, such female shall be entitled to receive and demand such personal property or money on her arriving at the age of eighteen years or being married. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 393.)

CROSS REFERENCES

Appointment of guardian, §§ 21–109, 21–110.
General provisions concerning infant married woman's separate estate, § 30–201 et seq.

NOTES TO DECISIONS

IN GENERAL

Under a will directing the payment of income from an estate to a female "when she shall reach the age of eighteen years," she is entitled to receive it on attaining that age, and it should not be paid to her guardian. *Perin* v. *Perin* (41 W. L. R. 265).

This section provides an exception to the general rule under common law that infants, whether male or female, attain their majority at the age of 21 years. *Jones* v. *Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

§ 18–723 [29: 303]. Meeting of legatees or next of kin.

Any administrator shall be entitled to appoint a meeting of persons entitled to distributive shares or legacies or a residue, on some day by the court approved, and payment or distribution may be there made under the court's direction and control. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 394.)

NOTES TO DECISIONS

IN GENERAL

"Ordinarily it would be safer for an administrator to pursue the course pointed out by this latter section (this section), but there is no express command of the law that he should do so." *Miller-Shoemaker Co.* v. *Sturgeon* (31 App. D. C. 406).

"This provision merely gives expression to the well-settled rule that a legacy is payable in cash, unless some other form of payment is authorized by the person entitled. In the present case the distributee was a nonresident, and the executors, waiving their right to make payment here under the direction of the court, assumed the risk of sending the money by check to California. To absolve themselves from responsibility to the distributee, it must appear that he expressly or impliedly authorized them so to act, and, unless he did, in contemplation of law the money still is in their hands and they must respond to the order of the court" directing them to pay it. In this case the check was received and cashed by an imposter, and the executors were directed to pay the legatee his distributive share. *Moore* v. *Moore* (47 App. D. C. 23).

Settlement of administrator's first and final accounts was not to be given the effect of an adjudication of distributee's rights. *Claudy* v. *Duvall* (55 App. D. C. 319, 5 Fed. (2d) 381).

Chapter 8.—FAMILY ALLOWANCE AND ADMINISTRATION OF SMALL ESTATES

Sec.
18–801. Family allowance for surviving spouse and minor children.
18–802. Petition for distribution of small estate—Order.
18–803. Waiver of administration—Publication of notice to creditors—Final order.
18–804. Exemptions from liability.
18–805. Waiver of bond and commissions.
18–806. Forms to be furnished—Fees.
18–807. Discovery of additional property.
18–808. False affidavits and other violations—Penalty.
18–809. Repeal of inconsistent laws.
18–810. Application of chapter.

§ 18–801. Family allowance for surviving spouse and minor children.

Upon the death of any person leaving a surviving spouse the said surviving spouse shall be entitled to an allowance out of the personal estate of said decedent of the sum of $500 for his or her use, and that of any minor children, to be paid in money or in specific property at its fair value as may be elected, and which allowance shall be exempt from any and all debts and obligations of the decedent, and subject only to payment of funeral expenses not exceeding $200; and, if there be no surviving spouse, the surviving minor children if any there be shall be entitled to a like allowance, and which shall be payable, in the discretion of the probate court, to the person having their custody or to such other person as it shall designate, and shall be used by such person solely for said minor's care and maintenance. Said family allowance shall be in addition to the respective share or shares of the surviving spouse and children. (Mar. 3, 1901, ch. 854, § 394 (a), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–802. Petition for distribution of small estate—Order.

When any person dies, leaving a small estate consisting only of personal property of a value not in excess of $500, and there be a surviving spouse or minor children entitled to the family allowance authorized in the preceding section, if such surviving spouse or minor children (acting through the person having their custody or a next friend) file in the probate court a petition, under oath, declaring: The time and place of decedent's death; the known next of kin; the known assets and by whom held; that petitioner has made a diligent search to discover all assets of the deceased; the amount of funeral expenses and to whom due; and that said assets do not exceed $500 in value, the probate court, if satisfied that the allegations in the petition are true, shall pass a final order (1) declaring that no formal administration is necessary and no probate is required of any will; (2) fixing the amount of funeral expenses allowable, to whom due, and out of what property to be paid; (3) vesting title to the remainder of the property in the surviving spouse or minor children, as the case may be, in satisfaction of his, her, or their family allowance; and (4) directing the person or persons having possession of said property to pay over, transfer, and deliver the same as allotted. The probate court may also authorize in said order, or by further order, the sale of any of said property as the exigencies of the situation require. (Mar. 3, 1901, ch. 854, § 394 (b), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–803. Waiver of administration—Publication of notice of creditors—Final order.

(1) When anyone dies intestate, leaving a small estate consisting only of personal property of a value not in excess of $500, and there be no spouse or minor children surviving, if the person entitled to be preferred in the appointment of an administrator files in the probate court a petition, under oath, declaring: The time and place of decedent's death; the known next of kin; that diligent search has been made for a will; the known creditors, together with the amount of each claim, including contingent and disputed claims; and funeral expenses; the known assets and by whom held; that petitioner has made a diligent search to discover all assets and debts of the deceased; that said assets do not exceed $500 in value; and that there are no known legal proceedings pending in which the decedent is a party; the probate court, if satisfied that the allegations in said petition are true, shall pass a preliminary order declaring that no formal administration is necessary and instructing the petitioner to publish once in substantially the usual form notice to creditors to exhibit their claims duly authenticated, within thirty days after such notice, and which notice shall be inserted in one newspaper of general circulation in the District of Columbia as said court shall direct.

(2) Whenever such a preliminary order has been passed and the notice has been published and the time provided in such notice has expired, the petitioner shall file, under oath, a statement, with the usual proof of publication attached, that the notice has been published, and that the said time has expired, and listing all then known creditors, including contingent and disputed claims, and the amount of each claim. If satisfied that said statement is true, and after hearing and disposing of any objections filed in the probate court by any one interested in the estate, the probate court shall pass a final order (1) directing the petitioner to pay from the estate all of said claims, in the order of priority provided by law, and (2) authorizing any person having possession of any property of the decedent's estate to transfer, pay over, and deliver the same in accordance with petitioner's directions, and (3) decreeing that, after the Register of Wills certifies upon said final order that he has seen the vouchers for the payment of said claims and is satisfied that said claims, as well as the fees hereinafter provided for, have been paid, then the remaining balance of the estate, if any, shall be vested as follows: First, in the adult surviving children equally, and, secondly, if there be no adult surviving children, then in those persons who would be entitled thereto under the statute of distributions (the share of any minor shall be payable, in the discretion of the probate court, to the person having custody or to such other person as it shall designate, to be used solely for the care and maintenance of such minor).

(3) The probate court may also provide in its final order for sale of any property, upon such terms as it deems advisable, and for the distribution of the proceeds in accordance with its final order. (Mar. 3, 1901, ch. 854, § 394 (c), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–804. Exemptions from liability.

In the absence of fraud, no person who pays over, transfers, or delivers any property pursuant to the provisions of a final order entered under section 18–802, or to the directions of a petitioner acting under authority of a final order under section 18–803, shall be liable for the application thereof, nor shall any such person, nor any person who receives any property pursuant to the provisions of a final order entered under section 18–802, or to the directions of a petitioner acting under authority of a final order under section 18–803, be responsible for any claims on account of the payment, transfer, delivery, or receipt of such property; and the property distributed pursuant to a final order in either case shall be and become the absolute property of the respective distributees thereof. (Mar. 3, 1901, ch. 854, § 394 (d), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–805. Waiver of bond and commissions.

No petitioner under this chapter shall be required to be represented by an attorney, or to give bond, nor receive any commission for performing any work or services hereunder. (Mar. 3, 1901, ch. 854, § 394 (e), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–806. Forms to be furnished—Fees.

The Register of Wills shall prepare, and make available, forms whereby the petition and final order under section 18–802, and the petition, preliminary order, the statement, the final order, and the certificate of payment under section 18–803, shall constitute in each case one connected instrument. In lieu of all other fees, costs, or charges, the Register of Wills shall receive a fee of $5 for all services and work administered under this chapter, including the taking of all affidavits plus a fee of 25 cents for each certified copy of the aforesaid instruments. (Mar. 3, 1901, ch. 854, § 394 (f), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–807. Discovery of additional property.

The discovery of any additional property of the decedent, after the filing of a petition in either case provided for in this chapter, shall be reported by the petitioner to the probate court as soon as discovered by him. The existence of said additional property shall not invalidate any proceedings under this chapter except when the additional property is discovered before the passage of the final order provided for, and either (1) is real estate or (2) increases the total value of the estate to more than $500, in which case no final order shall be passed under this chapter and the court shall require regular administration. Where additional property is discovered after passage of the final order, if said property is entirely personal and does not increase the value of the total estate to more than $500, then such additional property may be distributed pursuant to a new petition under the appropriate section of this chapter; in all other cases such addi-

tional property may not be distributed under this chapter. (Mar. 3, 1901, ch. 854, § 394 (g), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–808. False affidavits and other violations—Penalties.

Any person who makes a false affidavit under this chapter, or who willfully violates any order of the probate court under this chapter or any other provision of this chapter, shall be liable to a fine of not exceeding $500 for each offense. (Mar. 3, 1901, ch. 854, § 394 (h), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–809. Repeal of inconsistent laws.

All Acts or parts of Acts inconsistent with the provisions of this chapter shall be, and they are hereby, repealed to the extent of such inconsistency but only to such extent. (Mar. 3, 1901, ch. 854, § 394 (i), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18–810. Application of chapter.

This chapter shall apply to the estates of all persons dying after June 24, 1949. (Mar. 3, 1901, ch. 854, § 394 (j), as added June 24, 1949, 63 Stat. 269, ch. 244.)

TITLE 19.—WILLS

Chap.		Sec.
1.	Wills in general	19–101
2.	Devises by will	19–201
3.	Probate of wills	19–301
4.	Register of wills	19–401

Chapter 1.—WILLS IN GENERAL

Sec.
19–101. Capacity to make will.
19–102. Nuncupative wills invalid—Exception—Proof.
19–103. Form of will—Witnesses—Alteration—Revocation.
19–104. Devises to attesting witnesses void.
19–105. Attesting devisee not to retain nor demand any property under will or codicil.
19–106. Attestation by creditor valid.
19–107. Execution of power by will.
19–108. Revival of will after revocation.
19–109. Advancement as satisfaction of legacy.
19–110. Lapsed or void devises.
19–111. Opening will before delivery to probate court.

§ 19–101 [29: 21]. Capacity to make will.

No will, testament, or codicil shall be good and effectual for any purpose whatever unless the person making the same be, if a male, of the full age of twenty-one years, and if a female, of the full age of eighteen years, and be at the time of executing or acknowledging it, as hereinafter directed, of sound and disposing mind and capable of executing a valid deed or contract. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1625.)

Cross References

Stealing, destroying, secreting, or withholding will, penalty, § 22–1403.

See notes to § 19–201.

Cited

Brosnan v. *Brosnan* (263 U. S. 345, 68 L. Ed. 332, 44 Sup. Ct. 117); *Jones* v. *Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

NOTES TO DECISIONS

Evidence

Any degree of importunity or undue influence which deprives the testator of his free agency, and which is such as he is too weak to resist, and in effect renders the instrument not his free and unconstrained act, is sufficient to and will invalidate the will or testament of the party. *Barbour* v. *Moore* (4 App. D. C. 535).

Declarations of testator and his relations with the parties are competent circumstances tending to throw light upon his state of mind and disposition. The only limitation is that it shall not be received as proof of the independent fact or the truth of the things declared, but as supplementary only to direct proof of the alleged fraud and undue influence. *Manogue* v. *Herrell* (13 App. D. C. 455).

Testimony plainly of a hearsay character, including the certificates of the physicians for the commitment of testator to insane asylum is inadmissible, especially when testimony of physicians themselves was not taken. *Keely* v. *Moore* (22 App. D. C. 9, affd. 196 U. S. 38, 49 L. Ed. 376, 25 Sup. Ct. 169).

In Federal courts a will is not set aside on evidence showing only suspicion or possibility of undue influence. *Robinson* v. *Duvall* (27 App. D. C. 535, affd. 207 U. S. 583, 52 L. Ed. 351, 28 Sup. Ct. 260).

It was proper to submit question to jury to determine testamentary capacity of testatrix, a woman of about eighty-two years, when she executed will during a decline of her physical and mental condition. *Morgan* v. *Adams* (29 App. D. C. 198, app. dism. 211 U. S. 627, 53 L. Ed. 362, 29 Sup. Ct. 213).

Trial court did not err when it excluded evidence which tended to show a delusion affecting person more than thirty years before the making of the will and codicils. *Turner* v. *American Security & Trust Co.* (29 App. D. C. 460, affd. 213 U. S. 257, 53 L. Ed. 788, 29 Sup. Ct. 420).

Testimony of testatrix's brother, who had made his home with her for 36 years, that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her was admissible on issues of undue influence and testamentary capacity in opposition to probate of will naming testatrix's sister sole beneficiary. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

Fraud and Undue Influence

If sole beneficiary of will, after taking sole charge of testatrix, first made false statements to other relatives with purpose of inducing them not to visit testatrix and then allowed her to suppose, contrary to fact, that the other relatives were making no effort to see testatrix, doing nothing for her and showing no interest in her welfare, such conduct would constitute both "fraud" and "undue influence" which would vitiate the will. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

Incorporation of Document

Testator may so construct disposition of his property as to have recourse to some paper or document in order to explain his intention and to apply provisions of his will to the subject matter thereof. This doctrine of incorporation by reference must clearly identify the instrument to which will refers and must be in existence at the date of the will. *Vestry of St. John's Parish* v. *Bostwick* (8 App. D. C. 452).

Law Governing

The law of wills and of probate as existing in Maryland on February 27, 1801, was and is the law of the District of Columbia, except as since altered by Congress. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880; 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987).

In re Allen's Estate (D. C., D. C. 1946, 64 F. Supp. 107).

Nature of Proceedings

Proceedings for the probate of wills are statutory and are substantially in rem. The proceeding is upon the will itself and to determine its status. The judgment runs against no person, but is, simply, that the instrument before the court is, or is not, the will of the testator. *Cruit* v. *Owen* (21 App. D. C. 378).

Sound and Disposing Mind

Fact to be found by the jury is not that the testator was demented at the particular time or that he was victim of insane delusions, but whether from any one of these conditions that he was not of sound and disposing mind and of capacity to make a valid deed or contract. *National Safe Deposit, Sav. & Trust Co.* v. *Heiberger* (19 App. D. C. 506).

If person of sound mind executes a will, and the same is his voluntary act, the law presumes knowledge on his part of its contents and such presumption also applies to illiterates. *Lipphard* v. *Humphrey* (28 App. D. C. 355, affd. 209 U. S. 264, 52 L. Ed. 783, 28 Sup. Ct. 561).

An insane delusion exists when a person conceives the existence of something fanciful and extravagant, something having no foundation in reason or fact, and is domi-

nated and controlled by such imagination, and therefore acts as he would not otherwise have acted. *Riddle* v. *Gibson* (29 App. D. C. 237).

If one acts under a delusion superinduced by false testimony, of the falsity of which he has no knowledge, it cannot be said that he is the victim of an insane delusion. *Morgan* v. *Morgan* (30 App. D. C. 436, 13 Ann. Cas. 1037).

The test is whether the testator, at the time of executing the paper purporting to be his will, was capable of making a valid deed or contract. *Lewis* v. *American Security & Trust Co.* (53 App. D. C. 258, 289 Fed. 916); *Thompson* v. *Smith* (70 App. D. C. 65, 103 Fed. (2d) 936).

STATUS AS MARRIED WOMAN

Will made by married woman while separated from husband, from whom she is later divorced, was not revoked although she subsequently remarried. *Chapman* v. *Dismer* (14 App. D. C. 446).

§ 19–102 [29: 22]. Nuncupative wills invalid—Exception—Proof.

No nuncupative will made after Jan. 1, 1902, shall be valid in the District; but any soldier being in actual military service, or mariner being at sea, may dispose of his movables, wages, and personal estate by word of mouth: *Provided,* That such disposition shall be proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that such was his last will, nor unless such will were made in the time of the last sickness of the deceased, and the substance thereof reduced to writing within ten days after the making thereof. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1634.)

§ 19–103 [29: 23]. Form of will—Witnesses—Alteration—Revocation.

All wills and testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses, or else they shall be utterly void and of no effect; and, moreover, no devise or bequest, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same by the testator himself or in his presence and by his direction and consent; but all devises and bequests shall remain and continue in force until the same be burned, canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing, or other writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1626.)

CITED

Throckmorton v. *Holt* (180 U. S. 552, 45 L. Ed. 663, 21 Sup Ct. 474, revg. 12 App. D. C. 552); *Keely* v. *Moore* (196 U. S. 38, 49 L. Ed. 376, 25 Sup. Ct. 169); *Vestry of St. John's Parish* v. *Bostwick* (8 App. D. C. 452) incorporation by reference; *Chapman* v. *Dismer* (14 App. D. C. 446); *Cruit* v. *Owen* (21 App. D. C. 378).

NOTES TO DECISIONS

ALTERATION

Where a testator properly executed a will on two sheets of paper, and subsequently attempted to alter the will by substituting another sheet for the first, which was discarded, without notifying witnesses, or signing in the presence of witnesses, it is not entitled to probate. *Henry* v. *Fraser* (58 App. D. C. 260, 29 Fed. (2d) 633, 62 A. L. R. 1364).

BIRTH OF CHILD

Where testator was unmarried and without children by a former marriage at time he executed will which contained no provision for any child of subsequent marriage, his subsequent marriage and the birth of a child amounted to an implied revocation of the previously executed will, notwithstanding this section specifying with particularity the manner in which will may be revoked. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880, 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987).

A will in favor of wife executed by married man without children was not revoked by subsequent birth of a child. *Allen* v. *Heron* (App. D. C. 1946, 157 F. 2d 707).

Where will was executed after testator's marriage, subsequent birth of a child to the marriage did not operate as a revocation of will. *In re Allen's Estate* (D. C., D. C. 1946, 64 F. Supp. 107).

CANCELLATION

Pencil cross-marks across entire first page of will and large parts of second and third page, and across individual words and attestation clause, constituted "cancellation" of will. *In re Smith's Estate* (D. C., D. C. 1948, 77 F. Supp. 217).

CONSTRUCTION

In ascertaining meaning of this section governing revocation of will, court was to be guided by the construction of like provision of statute of frauds by courts of England and like provisions by courts of Maryland, from which jurisdiction, this section had been adopted. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880, 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987).

Where this section, specifying with particularity the manner in which a will may be revoked and concluding with words "any former law or usage to the contrary notwithstanding," had been adopted from Maryland which had adopted the English statute of frauds which had been enacted in 1676, it was the "law or usage" prior to 1676 that was affected by those words. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880, 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987).

Where English statute has been adopted, the known and settled construction of the statute by courts of law is considered as silently incorporated into the statute, or is received with all the weight of authority. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880, 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987).

In absence of District of Columbia decisions construing this section regarding cancellation of wills, cases from other jurisdictions having similar statutory provisions are persuasive. *In re Smith's Estate* (D. C., D. C. 1948, 77 F. Supp. 217).

DEPENDENT RELATIVE REVOCATION

Attempted revision of bequest of six thousand eight hundred dollars after execution and attestation of will by writing other numbers and numerals over the word "six" and corresponding but entirely obliterated numeral was ineffective to revoke or revise bequest and hence under doctrine of "dependent relative revocation," original bequest must prevail. *In re Chaconas' Estate* (D. C., D. C. 1948, 80 F. Supp. 549).

Where second will, revoking first will, was cancelled by pencil marks across portions of will and attestation clause, without substituted will being prepared and without clear and convincing showing that testator had determined what disposition to make of property upon revocation, the doctrine of "dependent relative revocation" was inapplicable and second will must be deemed to have been revoked, without reinstating first will. *In re Smith's Estate* (D. C., D. C. 1948, 77 F. Supp. 217).

EVIDENCE

In the absence of other evidence of intent of testatrix in making various cancelations in her own handwriting

on the face of original will, unwitnessed holographic writing found after death in writing desk drawer with original will constituted persuasive "evidence" that cancelations on original will were conditional and were dependent upon the consummation of an effective revised testamentary disposition along the lines of uncompleted suggestions in holographic writing. *Wolfe* v. *Snyder* (D. C., D. C. 1943, 48 F. Supp. 227).

Evidence established that cancelations in testatrix' handwriting on the face of original will were "conditional revocations" dependent upon consummation of an effective revised testamentary disposition in accordance with suggestions in unwitnessed holographic writing found in writing desk drawer with original will, and no such revised disposition having been consummated, the cancelations were ineffective, leaving original will in force. *Wolfe* v. *Snyder* (D. C., D. C. 1943, 48 F. Supp. 227).

Formalities

The re-execution of a will requires the same formalities as required for its original execution. *Notes* v. *Doyle* (32 App. D. C. 413).

Unless the formalities prescribed are complied with, the instrument is void. *Survivors of Seventh Georgia Regiment* v. *Larner* (55 App. D. C. 156, 3 Fed. (2d) 201).

Execution of will—qualification of witnesses—interest. *Peters* v. *Peters* (64 App. D. C. 331, 78 Fed. (2d) 215).

Marriage

In the United States, in absence of a statute abolishing the common-law rule and establishing a new rule in its place, the marriage of a man and the birth of a child, capable of inheriting, revoke a prior will, if both occur after the execution thereof, especially where the child is born after the death of its father. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880, 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987).

Order of Signatures

Will was valid even though attesting witnesses signed it before testatrix where all signed at substantially same time and in each other's presence. *Billings* v. *Woody* (App. D. C. 1948, 167 F. 2d 756, certiorari denied 69 S. Ct. 46, 335 U.S. 822, 93 L. Ed. 377).

Partial Cancelation

Partial cancelation of will should be regarded as a final act of "revocation" by the testator in the absence of evidence that the act of cancelation was merely a deliberative act performed with the intention of later executing a codicil or a new will. *Wolfe* v. *Snyder* (D. C., D. C. 1943, 48 F. Supp. 227).

Presumptions

Marks amounting to cancellation on face of will are presumed to have been placed on document with intent to revoke. *In re Smith's Estate* (D. C., D. C. 1948, 77 F. Supp. 217).

Revocation—What Constitutes

A conveyance of the title subsequently declared void does not operate as a revocation of a previous will. *McGowan* v. *Elroy* (28 App. D. C. 188).

Subsequent marriage of testatrix and birth of issue does not revoke will. *Morris* v. *Foster* (51 App. D. C. 238, 278 Fed. 321).

Where cancellation or destruction of will is connected with the making of another will so as fairly to raise the inference that testator meant revocation of old will to depend upon the efficacy of the new disposition, if the will intended to be substituted is inoperative from defect of attestation or any other cause, the revocation fails and the original will remains in force. *Wolfe* v. *Snyder* (D. C., D. C. 1943, 48 F. Supp. 227).

Signature on Envelope

Writing which purported to be the will of decedent, which was executed by decedent, folded and sealed in an envelope, the face of which envelope was inscribed "my last will and testament" followed by witnesses' signatures under such inscription, was not entitled to probate because paper upon which witnesses affixed their signatures was not physically attached to paper purporting to be the will and witnesses had not affixed their signatures to will itself. *In re Lee's Estate* (D. C., D. C. 1948, 80 F. Supp. 293).

Subscription

The evidence would allow an inference that the testator had signed in an adjoining room before he brought the will to the room in which the witnesses were present, and in the absence of clear and convincing testimony to the contrary, the presumption of regularity is not defeated. *Betts* v. *Lonas* (C. A. D. C. 1948, 172 A. 2d 759, 84 U. S. App. D. C. 206).

Transfer Effective at Death

Generally, where design of owner of bank deposit is to retain sole control during his life and intended transfer or gift is not to take effect until death, arrangement is testamentary in character and void under statute of wills. *Gibson* v. *Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

What Law Governs

All wills, in their very nature, are ambulatory and revocable during the life of the testator; and, in respect to personal estate, they speak only from and have effect upon the death of the testator; and to say that a will shall have effect and be declared valid in respect to a prior law, which has been repealed and given place to a different rule as a substitute, is to declare valid a testamentary paper without existing law to support it. *Colonna* v. *Alton* (23 App. D. C. 296).

Witnessing

Attesting witnesses need not know the contents of the document; "they may attest it without the presence of each other; they, or any of them, need not see the testator sign the will, provided he acknowledge the signature to each of the witnesses; and they need not even know that the document they have witnessed is a will." *Notes* v. *Doyle* (32 App. D. C. 413).

It is not necessary that testator should sign his will in the presence of witnesses, but that he shall, before witnesses sign, indicate that the document is his will and that he has signed it. *Bullock* v. *Morehouse* (57 App. D. C. 231, 19 Fed. (2d) 705).

§ 19–104 [29: 24]. Devises to attesting witnesses void.

If any person shall attest the execution of any will or codicil to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate, other than and except charges on lands, tenements or hereditaments for payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil; notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will or codicil. (25 Geo. II, ch. 6, § 1, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 781; Comp. Stat., D. C., p. 557, § 5.)

Compiler's Note

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

§ 19–105 [29: 25]. Attesting devisee not to retain nor demand any property under will or codicil.

No person to whom any beneficial estate, interest, gift, or appointment shall be given or made, which is null and void under section 19–104, and who shall have been examined as a witness concerning the

execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of or receive any profits or benefit of or from any such estate, interest, gift, or appointment so given or made to him in or by any such will or codicil; or demand, receive, or accept from any person or persons whatsoever, any such legacy or bequest, or any satisfaction or compensation for the same, in any manner, or under any colour or pretence whatsoever. (25 Geo. II, ch. 6, § 7, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 783; Comp. Stat. D. C., p. 558, § 7.)

CROSS REFERENCE

See compiler's note to § 19–104.

§ 19–106 [29: 26]. Attestation by creditor valid.

In case, by any will or codicil already made or hereafter to be made, any lands, tenements, or hereditaments, are or shall be charged with any debt or debts; and any creditor whose debt is so charged, hath attested or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil. (25 Geo. II, ch. 6, § 2, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 782; Comp. Stat. D. C., p. 558, § 6.)

CROSS REFERENCE

See compiler's note to § 19–104.

§ 19–107 [29: 27]. Execution of power by will.

No appointment made by will in the exercise of a power shall be valid unless the same be so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1629.)

CROSS REFERENCES

General devise, § 19–203.

Provisions concerning powers to create estates, §§ 45–1001 to 45–1019.

§ 19–108 [29: 28]. Revival of will after revocation.

No will or codicil, or any part thereof, which shall be in any manner revoked shall, after being revoked, be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and then only to the extent to which an intention to revive is shown. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1627.)

NOTES TO DECISIONS

APPLICATION OF STATUTE

Section has no bearing when the doctrine of "dependent relative revocation" is invoked. *In Re Nutting's Estate* (D. C. D. C. 1949, 82 F. Supp. 689).

§ 19–109 [29: 29]. Advancement as satisfaction of legacy.

A provision for or advancement to any person shall be deemed a satisfaction, in whole or in part of a devise or bequest to such person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to be so intended. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1630.)

CROSS REFERENCE

See §§ 18–108, 18–707.

NOTES TO DECISIONS

EVIDENCE

Evidence established that payments made by testator during lifetime to brother were made in payment of trust obligation arising before execution of will and were not intended to be in partial satisfaction of bequest to brother. *In re Chaconas' Estate* (D. C., D. C. 1948, 80 F. Supp. 549).

PARENT AS DEBTOR

Where parent, who is a debtor to his child, makes an advancement to such child, it is presumed to be a satisfaction pro tanto of the debt. *Glover* v. *Patten* (165 U. S. 394, 41 L. Ed. 760, 17 Sup. Ct. 411, affg. 1 App. D. C. 466).

PRESUMPTIONS

A legacy is never presumed to be in satisfaction of a trust obligation. *In re Chaconas' Estate* (D. C., D. C. 1948, 80 F. Supp. 549).

§ 19–110 [29: 30]. Lapsed or void devises.

If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed as the devisee or legatee would have done if he had survived the testator, unless a different disposition be made or required by the will. Unless a contrary intention appear by the will, such property as shall be comprised in any devise or bequest in such will which shall fail or be void or otherwise incapable of taking effect shall be deemed included in the residuary devise or bequest, if any, contained in such will. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1631.)

NOTES TO DECISIONS

CERTAINTY OF CHARITABLE BEQUESTS

Charitable bequest held not void for uncertainty. *Washington Loan & Trust Co.* v. *Hammond* (51 App. D. C. 260, 278 Fed. 569).

COMMON LAW

The common law still prevails in this District as to devises and bequests contained in the residuum. *George Washington University* v. *Riggs Nat. Bank* (66 App. D. C. 389, 88 Fed. (2d) 771).

At common law, a bequest of personalty which failed of distribution would go to the residuum or next of kin, but not so as to devises of realty. *George Washington University* v. *Riggs Nat. Bank* (66 App. D. C. 389, 88 Fed. (2d) 771).

CONSTRUCTION

Where a bequest was made to a legatee and the legatee predeceased grantor and where the residuary clause distributed the residue including lapsed legacies to four institutions, the special bequest passes into the residuary estate and goes to the institution named. *Bunker* v. *Jones* (C. A. D. C. 1950, 181 F. 2d 619, 86 U. S. App. D. C. 231).

CY PRES DOCTRINE

The doctrine of "judicial cy pres" applies in the District of Columbia. *Noel* v. *Olds,* 1944 (138 F. 2d 581, 78 U. S. App. D. C. 155, certiorari denied 64 S. Ct. 611, 321 U. S. 773, 88 L. Ed. 1067).

The doctrine of judicial cy pres is recognized in the District of Columbia but the facts of the case do not warrant the invocation of such doctrine. *Roberds* v. *Markham* (D. C. D. C. 1948, 81 F. Supp. 38).

DEATH OF LEGATEE

Death of a specific legatee prior to death of the testator will "lapse" the legacy in the absence of a statute otherwise providing. *Wolfe* v. *Snyder* (D. C., D. C. 1943, 48 F. Supp. 227).

INTENT

Words of a will cannot be ignored in searching its meaning as the court must look within the four corners of the will for the intention of the testatrix and the language must be given effect. If and when read with other parts of the will such intent can be ascertained, the statute does not apply in this case. *Pace* v. *Bradley* (C. A. D. C. 1948, 171 F. 2d 350, 84 U. S. App. D. C. 212).

TRUST FUNDS, BALANCE OF

Testamentary provision for issue of beneficiary for life of testamentary trust to take the balance of trust fund was a "different disposition made or required by will" within meaning of this section, and hence where beneficiary for life predeceased testatrix his issue took the trust fund outright. *Wolfe* v. *Snyder* (D. C., D. C. 1943, 48 F. Supp. 227).

§ 19–111 [29: 31]. Opening will before delivery to probate court.

It shall be lawful for any person in whose possession or custody a will or codicil shall be after the death of the testator or testatrix, to open and read the same in the presence of any near relatives of the deceased, who may conveniently have notice thereof, and of other persons, and immediately thereafter to deliver such will or codicil to the District Court of the United States for the District of Columbia, holding a special term as a probate court, or to the register of wills, until due proceedings may be had for proving the same, or until it be demanded by an executor or other person authorized to demand it, for the purpose of having it proved according to law. (June 30, 1902, 32 Stat. 545, ch. 1329, § 1635a.)

CROSS REFERENCE

Stealing, destroying, secreting, or withholding will, § 22–1403.

NOTES TO DECISIONS

TIME FOR PROBATE

"While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done (citing this section)." *McGowan* v. *Elroy* (28 App. D. C. 188).

Chapter 2.—DEVISES BY WILL

Sec.
19–201. What may be devised.
19–202. Bequests for religious purposes.
19–203. General devise of all property.
19–204. Devise of land to include leaseholds.
19–205. After-acquired real estate.

§ 19–201 [29: 41]. What may be devised.

All lands, tenements, and hereditaments, and personal estate which might pass by deed or gift, or which would, in case of the proprietor's dying intestate, descend to or devolve on his or her heirs or other representatives, shall be subject to be disposed of, transferred, and passed by his or her last will, testament, or codicil, in accordance with the provisions of this title. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1623.)

CROSS REFERENCES

Bequests payable on majority of female, § 18–722.
Devise in lieu of dower, § 18–210.
Devises in trust for use of another, §§ 45–1201 to 45–1203.
Discharge of debt construed to be a specific bequest and invalid as to creditors, § 18–302.
Estate which may be created in lands, §§ 45–801 to 45–819.
Estates which may be created by will, method, requirements, adversely held property, §§ 45–101 to 45–106.
Estates which may be created in personal property, § 45–823.
Form and interpretation of devise; words of inheritance unnecessary; rule in Shelley's case abolished; posthumous children, §§ 45–201 to 45–205.
Naming debtor executor does not discharge debt, § 18–303.
Order for sale of property unnecessary where will directs such sale, § 18–602 et seq.
Provisions concerning powers to create estates, §§ 45–1001 to 45–1019.
Rule against perpetuities, §§ 45–102, 45–103.
Wife's election to take dower in lieu of provisions of will, §§ 18–211 to 18–214.

NOTES TO DECISIONS

EQUITABLE ESTATE

Devise of equitable estate remaining in grantor, after he has created a naked power in one to convey an estate to another upon the performance of a condition. *Mayer* v. *American Security & Trust Co.* (33 App. D. C. 391, affd. 222 U. S. 295, 56 L. Ed. 206, 32 Sup. Ct. 95).

PRESUMPTION

In determining whether the property of a testator passes by his will, there is a presumption that he did not intend to die intestate, which presumption is greatly strengthened by words of general description in the residuary clause. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

TITLE, PASSAGE OF

Where property or interest is devisable at the time of testator's death, and testator has sufficiently indicated his testamentary intention to dispose of it, the will is effective to pass the title to the devisee. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

§ 19–202 [29: 42]. Bequests for religious purposes.

No devise or bequest of lands, or goods, or chattels to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order, or denomination, or to or for the support, use, or benefit of or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, shall be valid unless the same shall be made at least one calendar month before the death of the testator. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1635.)

NOTES TO DECISIONS

CONSTRUCTION

Statute is to be strictly construed, since its purpose is to prevent improvident testamentary gifts to the exclusion of lawful heirs. Such a construction should be adopted which will prevent intestacy and not one which will render the will invalid. The doctrine of "dependent relative revocation" is to be applied to facts presented. *In Re Nutting's Estate* (D. C., D. C. 1949, 82 F. Supp. 689).

SECTARIAN INSTITUTIONS

Georgetown College held not to be a sectarian institution, so that bequest made to it less than one calendar month before testator's death was not void. *Speer* v. *Colbert* (200 U. S. 130, 50 L. Ed. 403, 26 Sup. Ct. 201, affg. 24 App. D. C. 187).

§ 19–203 [29: 43]. General devise of all property.

Every devise and bequest purporting to be of all real or personal property, or both, belonging to the testator shall be construed to include also all property of either or both kinds, respectively, over which he has a general power of appointment, unless the

contrary intention shall appear in the will or codicil containing such devise or bequest. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1633; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

The act of 1902 deleted a phrase, "and the legal title of all such property which he holds in trust," following the word "appointment."

CROSS REFERENCE

See notes to § 19–201.

§ 19–204 [29: 44]. Devise of land to include leaseholds.

A devise of the land of a testator, or of his land in any place, or in the occupation of a person named or otherwise described in a general manner, shall be construed to include his leasehold estates or any of them to which such descriptions shall extend, as well as freehold estates, unless a contrary intention shall appear by the will. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1632.)

§ 19–205 [29: 45]. After-acquired real estate.

Any will executed after January 17, 1887, and before the first day of January 1902, devising real estate, from which it shall appear that it was the intention of the testator to devise property acquired after the execution of the will, shall be deemed, taken, and held to operate as a valid devise of all such property; and any will executed after January 1, 1902, which shall by words of general import devise all the estate or all the real estate of the testator shall be deemed, taken, and held to operate as a valid devise of any real estate acquired by said testator after the execution of such will, unless it shall appear therefrom that it was not the intention of the testator to devise such after-acquired property. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1628; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

The 1902 amendment added the first part of the section ending with the words "January 1, 1902."

NOTES TO DECISIONS

INTENTION

Although a testator may dispose by will of after-purchased lands, it is nevertheless necessary that his intention to make such disposition should clearly appear upon the face of the will. *Bradford* v. *Matthews* (9 App. D. C. 438).

Under act of June 30, 1902, a will is made to operate and take effect upon all real estate of the testator owned by him at the time of his death, unless it shall appear from the will that it was not the intention of the testator to devise such after-acquired property. *Crenshaw* v. *McCormick* (19 App. D. C. 494).

PASSAGE BY RESIDUARY CLAUSE

Any will containing a general residuary clause, or general devise of all of the testator's real property, sufficient under the old law to pass all real estate possessed at the time of its execution, would pass all after-acquired real estate as well. *Taylor* v. *Leesnitzer* (37 App. D. C. 356), overruling *McAleer* v. *Schneider* (2 App. D. C. 461).

PROPERTY IN ENTIRETY

A will by either spouse disposing of property held in entirety will be given effect when the other spouse dies first and the will remains unchanged and unrepublished until the death of the survivor. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

PURPOSE

The purpose of this section making wills executed after January 1, 1902, effective as to after-acquired real estate in absence of intention to contrary, was to make general words of devise effective without reference to the time of acquisition of property and not to change the nature of estates from inalienable or nondevisable to devisable ones. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

RESIDUARY CLAUSE

Where will executed in 1928 stated that testatrix's husband had been excluded from benefits thereunder because all the real estate in which testatrix was interested was held in joint tenancy with husband and all of testatrix's earnings for 25 years had gone into such real estate, and the residuary clause devised all the residue, real, personal, and mixed, to testatrix's brother, and testatrix's husband thereafter died before testatrix whose will was not thereafter republished, the residuary clause was valid, as respects real estate theretofore owned by testatrix in joint tenancy with her husband who had predeceased testatrix. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

WILL, EFFECTIVE DATE

Before the Wills Act of 1837 and the after-acquired property statutes, the testator could not devise realty which he did not own at the time he made his will because of the theory that a devise of realty took effect on the date of the execution of the will but so far as it formerly applied to exclude after-acquired property from the effects of the will, this section has overruled such theory and the will is effective as of the date of death. *Fairclaw* v. *Forrest,* 1942 (130 F. 2d 829, 76 U. S. App. D. C. 197, certiorari denied 63 S. Ct. 531, 318 U. S. 756, 87 L. Ed. 1130).

Chapter 3.—PROBATE OF WILLS

Sec.
19–301. Notice of petition for probate.
19–302. Who may appear.
19–303. Guardian ad litem for infant or non compos.
19–304. Waiver of notice—Proof of execution.
19–305. Probate.
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19–312. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.
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§ 19–301 [29: 51]. Notice of petition for probate.

Upon the filing of a petition for probate of a will, notice, as hereinafter provided, shall be issued to all persons who would be entitled to or interested in the estate of the testator in case such will had not been executed to appear in said court on a date named in the notice, and to show cause why the prayer of the petition should not be granted.

(a) Such notice may be by a citation in which the return date named is not earlier than ten days after the filing of said petition, and which citation shall be served in the District of Columbia, by the United States marshal, or deputy marshal, not less than five days before the return day named in said citation.

(b) Such notice may be by a citation in which the return date named is not earlier than twenty

days after the filing of said petition, and which citation shall be served not less than ten days before the return date named in said citation: *Provided,* That such citation may be served only on nonresidents of the District of Columbia, and upon residents of said District who have been returned "Not to be found" under paragraph (a) of this section, and such service may be made only by a person not less than eighteen years of age who is not a party to or otherwise interested in the estate of the decedent, and the return in such case must be made under oath in the District of Columbia, unless the person making the service be a sheriff or deputy sheriff, a marshal or deputy marshal, authorized to serve process where service is made, and such return must show the time and place of service.

(c) Such notice, whenever there is proof by the petition for probate or by other affidavit that any or all of such persons, interested as aforesaid, are nonresidents of the District of Columbia, or whenever they or any of them have been returned "Not to be found" under paragraph (a) of this section, may be by a publication in which the return date named is not less than thirty days after the date of the first appearance of the publication, and which shall be published once in each of three successive weeks in some newspaper of general circulation in the District of Columbia, and a copy of this published notice shall be mailed to the last-known address of each of the persons, interested as aforesaid, who is not shown to have been returned served personally under either paragraph (a) or paragraph (b) of this section. The court may by general rule prescribe the form of such notice by publication, and may order such other publication as the case may require.

In all cases where it is made to appear to the satisfaction of the court that all or any of the next of kin or heirs at law of the deceased are unknown, such unknown next of kin or heirs at law may be proceeded against and described in the publication of notice hereinbefore provided for as "the unknown next of kin," or "the unknown heirs at law," as the case may be, of the deceased, and by such publication of such notice under such designation such unknown next of kin and heirs at law shall be as effectually bound and concluded as if known and their names were specifically set forth in said order of publication.

In case any will shall have been admitted to probate prior to June 30, 1902, upon publication against unknown heirs or next of kin, any person interested may file a petition for further probate of such will, alleging that the heirs at law or next of kin of the deceased, or some of them, as the case may be, are unknown, and upon satisfactory showing being made to the court publication of notice may be made against the unknown next of kin or heirs at law of the deceased; and upon such publication being made, as required by the court, a decree may be made confirming such previous probate, and such decree so made shall be as effectual as if the said heirs at law or next of kin were named in the order of publication. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, sec. 130; June 30, 1902, 32 Stat. 526, ch. 1329; June 24, 1949, 63 Stat. 267, ch. 241, § 1.)

AMENDMENTS

The act of June 24, 1949, cited to text, among other changes in the first paragraph, set out separately paragraphs (a), (b) and (c).

The 1902 amendment struck out the following: "If the parties in interest, or any of them, be unknown, upon statement of that fact in the petition under oath, they may be described therein, and in the notice of publication, as the unknown heirs and next of kin of the decedent, with like effect as if known and specifically named in the petition, notice and proceedings," and inserted the last two paragraphs.

CROSS REFERENCE

Jurisdiction, pleading and practice of probate court, §§ 11–501 to 11–520.

NOTES TO DECISIONS

JURISDICTION OF PROBATE COURT

Probate court has been clothed with full and complete jurisdiction to take proof of wills of either personal or real estate, and to admit the same to probate and record, and Congress, having established this special court for this special purpose, intended its jurisdiction to be exclusive. *Gracie* v. *American Security & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

LAW GOVERNING

The law of wills and of probate as existing in Maryland on February 27, 1801, was and is the law of the District of Columbia, except as since altered by Congress. *Pascucci* v. *Alsop,* 1945 (147 F. 2d 880, 79 U. S. App. D. C. 354, certiorari denied 65 S. Ct. 1406, 89 L. Ed. 1987); *In re Allen's Estate* (D. C., D. C. 1946, 64 F. Supp. 107).

VOLUNTARY APPEARANCE

Where a petition alleged widower as only next of kin, upon whom service was had, and he appeared, filed a caveat, and the will was sustained, and thereafter publication was had for unknown heirs, and the widower moved to vacate the verdict on the ground that court was without jurisdiction because of failure to publish before framing the issues, jurisdiction attached to any person who voluntarily appeared. *Lewis* v. *Luckett* (32 App. D. C. 188, affd. 221, U. S. 554, 55 L. Ed. 851, 31 Sup. Ct. 682), citing *Dugan* v. *Northcutt* (7 App. D. C. 351).

WAIVER OF CITATION

Citation may be waived (see § 19–304) and such waiver of citation does not estop the filing of a caveat. *Bowen* v. *Howenstein* (39 App. D. C. 585).

§ 19–302 [29: 52]. Who may appear.

Any person, although not cited, who may be interested in sustaining or defeating the will may appear and support or oppose the application to admit the same to probate. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 133.)

NOTES TO DECISIONS

SUFFICIENCY OF INTEREST

"Any interest, however slight, is sufficient to entitle a party to oppose a testamentary paper, and for like reason, such interest entitles a party to insist upon probate." *Vestry of St. John's Parish* v. *Bostwick* (8 App. D. C. 452).

§ 19–303 [29: 53]. Guardian ad litem for infant or non compos.

Whenever it shall appear that any party interested as aforesaid is under age, or non compos, the court shall appoint a guardian ad litem to represent said party at the hearing of the application to admit the will to probate, and with authority to file a

caveat, as he may be advised, in behalf of said party. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 138.)

§ 19–304 [29: 54]. Waiver of notice—Proof of execution.

If all parties interested adversely to the will shall waive the notice aforesaid and consent that the will be admitted to probate and record, it may be so admitted to probate and record without the proceedings directed as aforesaid: *Provided,* That in no case shall any will or testament be admitted to probate and record save upon formal proof of its proper execution. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 135.)

NOTES TO DECISIONS

JURISDICTION OF PROBATE COURT

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie* v. *American Security & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

PROOF

Admission by caveator of formal execution of will does not dispense with necessity for proof thereof. *National Safe Deposit, Sav. & Trust Co.* v. *Heiberger* (19 App. D. C. 506).

WAIVER OF CITATION

Waiver of citation does not preclude subsequent filing of caveat, *Bowen* v. *Howenstein* (39 App. D. C. 585), but does bring party within jurisdiction of court. *Fardon* v. *Washington Loan & Trust Co.* (44 App. D. C. 69).

§ 19–305 [29: 55]. Probate.

When the notice as prescribed in section 19–301 has been completed in any case, the court shall proceed, if no caveat be filed, to take the proofs, or to consider the proofs theretofore taken, of the execution of the will. All the witnesses to such will who are within the District and competent to testify must be produced and examined, or the absence of any of them satisfactorily accounted for. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 131; June 24, 1949, 63 Stat. 267, ch. 241, § 2.)

AMENDMENTS

The act of June 24, 1949, cited to text, amended section by subsituting as the first sentence thereof, the words "When notice as prescribed in section 19–301 has been completed in any case, the court shall proceed, if no caveat be filed, to take the proofs, or to consider the proofs theretofore taken, of the execution of the will" in lieu of "On the day appointed as aforesaid, or such subsequent day as the court may appoint, due proof of such publication and mailing being made, the court shall proceed to take proof of the will".

NOTES TO DECISIONS

ILLITERATE TESTATORS

The same rule applies in cases of illiterate testators. *Lipphard* v. *Humphrey* (28 App. D. C. 355, affd. 209 U. S. 264, 52 L. Ed. 783, 28 Sup. Ct. 561).

PRODUCTION OF WITNESSES

"In all cases the subscribing witnesses, if living and within the jurisdiction, must be called to prove the fact of execution; and if it appears from their evidence that the will was formally executed and the testator competent, it must be admitted to probate." *Lipphard* v. *Humphrey* (28 App. D. C. 355, affd. 209 U. S. 264, 52 L. Ed. 783, 28 Sup. Ct. 561).

WITNESS DEAD

"When any of the witnesses to a will has died, proof of his signature is sufficient prima facie proof of attestation of the will by him." *Keely* v. *Moore* (22 App. D. C. 9, affd. 196 U. S. 38, 49 L. Ed. 376, 25 Sup. Ct. 169).

§ 19–306 [29: 56]. Proof of will—Register of wills may take testimony—Witnesses beyond District of Columbia.

In case the will contains a devise of real estate, and any attesting witness thereto residing in the District is unable, from sickness, age, or other cause, to attend court, the register of wills may, with such will, attend upon said witness and take his testimony. If the testimony of resident attesting witnesses or witness to such will shall have been taken, and any other such witness to said will shall reside out of the District or be temporarily absent therefrom, but within the United States, it shall be sufficient to prove the signature of such witnesses so out of the District.

If the sole witnesses to such will shall be out of said District as aforesaid, or if one or more should be within the United States and one or more be in some foreign country, then it shall be sufficient to take the testimony of any one or all within the United States, as the court may determine, and to prove the signatures of those whose testimony is not required to be taken.

If all such witnesses shall be out of the United States, then it will be sufficient to take the testimony of such of them as the court may require, and to prove the signature or signatures of the others.

The testimony of such witnesses out of the District to be taken hereunder shall be under a commission issued by the court to one or more competent persons, and in such case the original will or codicil shall accompany the commission and be exhibited to the witnesses.

No notice need be given of the time and place of taking such testimony, unless in a case in which probate is opposed. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 132.)

NOTES TO DECISIONS

DEPOSITIONS

Depositions can be substituted for oral testimony only by statutory authority. *Hutchins* v. *Hutchins* (41 App. D. C. 367).

EVIDENCE

Declarations of testatrix made after execution of her will showing that she made a different disposition of her property are inadmissible, especially when there is no tendency to show want of mental capacity. *Lipphard* v. *Humphrey* (28 App. D. C. 355, affd. 209 U. S. 264, 52 L. Ed. 783, 28 Sup. Ct. 561).

NONRESIDENT WITNESS

"Section 132 of the Code (this section) specifically provides that, if the testimony of the resident witness is taken and any other witness resides out of the District, it shall be sufficient to prove the signature of such nonresident witness, and that the will shall thereupon be admitted to probate." *Scott* v. *Herrell* (31 App. D. C. 45).

TESTIMONY OF WITNESS IN FOREIGN COUNTRY

D. C. 1901, § 1058 (31 Stat. 1354, ch. 854 (§ 14–201)) expressly provides that to take the testimony of a witness in a foreign country, letters rogatory shall issue, addressed to some court of record therein, accompanied by the interrogatories and cross-interrogatories propounded to the witness. *Hutchins* v. *Hutchins* (41 App. D. C. 367).

§ 19–307 [29: 57]. Caveat—Will not to be probated while issues pending.

If, upon or prior to the hearing of the application to admit the will to probate, any party in interest shall file a caveat in opposition, duly verified, and

setting forth facts inconsistent with the validity of the will, the said will shall not be admitted to probate until the issues raised by said caveat shall be determined, as hereinafter directed. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 136.)

CROSS REFERENCES

See note to § 11–504. *Hutchins* v. *Hutchins* (49 App. D. C. 118, 261 Fed. 460).

See note to § 19–302. *Vestry of St. John's Parish* v. *Bostwick* (8 App. D. C. 452).

See note to § 19–304. *Gracie* v. *American Security & Trust Co.* (51 App. D. C. 141, 277 Fed. 543).

NOTES TO DECISIONS

BURDEN OF PROOF

Under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator. *Brosnan* v. *Brosnan* (263 U. S. 345, 68 L. Ed. 332, 44 Sup. Ct. 117).

EQUITABLE REMEDIES

"Equity furnishes the only complete remedy in the exceptional class of cases * * * where the complex relief sought consists in setting aside a deed and will embracing the same property and the same parties, enjoining the beneficiaries * * * and declaring them trustees * * * with a general order for an accounting. This is true, even though there be * * * an adequate statutory remedy (this section and § 19–309)." *Karrick* v. *Landon* (41 App. D. C. 416).

§ 19–308 [29: 58]. Admission to probate.

If, upon hearing the proofs submitted, the court shall be of opinion that the will was duly executed and the testator was competent to execute the same, and no caveat shall be filed against the admission of the same to probate, the court shall decree that the said will be admitted to probate and record. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 134.)

CROSS REFERENCES

Introduction into evidence, §§ 14–401 to 14–404.

See note to § 19–301. *Bowen* v. *Howenstein* (39 App. D. C. 585).

See note to § 19–305. *Lipphard* v. *Humphrey* (28 App. D. C. 355, affd. 209 U. S. 264, 52 L. Ed. 783, 28 Sup. Ct. 561).

§ 19–309 [29: 59]. Caveat.

If, upon the hearing of the application to admit a will to probate, the court shall decree that the same be admitted to probate, any person in interest may file a caveat to said will and pray that the probate thereof may be revoked at any time within one year after such decree. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 137; June 24, 1949, 63 Stat. 268, ch. 243.)

AMENDMENTS

The act of June 24, 1949, cited to text, amended the section generally.

CROSS REFERENCES

See note to § 19–307. *Karrick* v. *Landon* (41 App. D. C. 416).

CITED

Brosnan v. *Brosnan* (263 U. S. 345, 68 L. Ed. 332, 44 Sup. Ct. 117).

NOTES TO DECISIONS

APPEAL

Appellate court will not reach the question of fraud upon the merits because a caveator cannot raise on appeal an issue which he failed to pose as an issue to be tried in a caveat proceeding. Probate procedure in this jurisdiction gives any person in interest ample opportunity to raise by caveat, prior to the decree of probate, any issue he may wish to raise in respect of the validity of a will. *Lanston* v. *Schwartz* (C. A. D. C. 1949, 174 F. 2d 31, 84 U. S. App. D. C. 329).

APPEARANCE

Signing of waiver constitutes appearance, but, by leave of court, same may be withdrawn. *Fardon* v. *Washington Loan & Trust Co.* (44 App. D. C. 69).

Signing of waiver brings one within one-year limitation, notwithstanding fact that there was a subsequent order of publication. *Fardon* v. *Washington Loan & Trust Co.* (44 App. D. C. 69).

DEFENSE TO COMPULSORY ACCOUNTING

After probate of a will and until revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. *Cashell* v. *Eslin* (D. C., D. C. 1944, 55 F. Supp. 747).

ESTOPPEL TO FILE

Quaere: Whether receipt of legacy under will works an estoppel to file a caveat and effect of offer to return the same. *Craighead* v. *Alexander* (38 App. D. C. 229).

RIGHT TO FILE

"The object of the section is to extend to the persons coming within its description a certain period within which to contest a will that has been regularly admitted to probate. As to them the probate is not a finality until the expiration of the prescribed periods. Until then the right to the caveat is absolute." *Craighead* v. *Alexander* (38 App. D. C. 229).

Waiver and consent does not deprive any person of right to file a caveat. *Fardon* v. *Washington Loan & Trust Co.* (44 App. D. C. 69), citing *Bowen* v. *Howenstein* (39 App. D. C. 585).

SUFFICIENCY OF INTEREST

The interest which a person must possess to enable him to assail the validity of a will is such that, had the testator died intestate, he would have been entitled to a distributive share in the estate. *Angell* v. *Groff* (42 App. D. C. 198).

Petition for caveat of will must show petitioner to be "next of kin," but also "person in interest." *Naylor* v. *Mealy* (62 App. D. C. 321, 67 Fed. (2d) 693).

To be a person interested, a beneficiary under a prior will must show that, except for the effect of the later will, if valid, to revoke the earlier one, the latter remained the last will and testament of the testator until his death. *Werner* v. *Frederick* (68 App. D. C. 158, 94 Fed. (2d) 627).

An heir, claiming by intestacy, may caveat a probated will regardless of possible effect of an earlier purported will which has not been proved or put in issue by any one claiming under it. *Lonas* v. *Betts* (App. D. C. 1947, 160 F. 2d 281, 82 U. S. App. D. C. 55; see also 172 F. 2d 759, 84 U. S. App. D. C. 206).

TIME FOR FILING

When the caveat was not filed until more than three months after the order of probate, the allegations of fraud, practiced in procuring the waiver of citation and service, were evidently made to excuse their failure to proceed within statutory period, and when further delayed for year and day, it was of no effect. *Craighead* v. *Alexander* (38 App. D. C. 229).

When person was legally alive for more than two years after the probate of his father's will, he was barred from caveating the will, and his heirs, having no rights which they could assert during his lifetime, are likewise barred. *Angell* v. *Groff* (42 App. D. C. 198).

The dismissal of a caveat to a will, which involved real and personal property, in so far as caveat was a caveat to a will of personal property, was proper where will was admitted to probate on July 5, 1938, and caveat was not filed until June 30, 1939. *Hengesbach* v. *Hengesbach,* 1940 (114 F. 2d 845, 73 App. D. C. 1).

§ 19–310 [29: 60]. No prior will to be probated pending issues.

While issues raised by a caveat are pending, either for trial or on appeal, no prior will shall be admitted to probate. (Apr. 19, 1920, 41 Stat. 557, ch. 153, § 137a.)

§ 19–311 [29: 61]. Plenary proceedings.

The court may, in all cases of controversy therein, direct a plenary proceeding to be had, by bill or petition, to which there shall be answer under oath, which may be compelled by the usual process, and all the depositions shall be taken down in writing and filed; or, if either party shall require it, the court shall direct an issue to be made up to be tried by a jury. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 139.)

§ 19–312 [29: 62]. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.

Whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: *Provided,* That in all cases in which all persons interested are sui juris and before the court the issues may be tried and determined by the court, without a jury, upon the written consent of all such parties. If they are to be tried by a jury, they shall be triable in said probate court by petit jurors drawn for service in the District Court of the United States for the District of Columbia; and at least ten days prior to the time of trial all of the heirs at law or next of kin of the decedent, or both together, as the case may require, and all persons claiming under the will in question, or any other instrument on file purporting to be a will of the decedent, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. If any one of them be an infant or of unsound mind he shall have a guardian ad litem appointed for him by the court before such trial shall proceed. If, as to any party in interest, the notification shall be returned "not to be found," the court shall assign a new day for such trial, and shall order publication, at least twice a week for a period of not less than four weeks, of the substance of the issues and of the date fixed for the trial thereof in some newspaper of general circulation in the District, and may order such further publication as the case may require. And the District Court of the United States for the District of Columbia may from time to time prescribe and revise rules and regulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification. Personal service on absent parties shall not be essential to the jurisdiction of the court. The proceeding for impaneling a jury for the trial of said issues shall be the same as if they were being tried in the Circuit Court. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereupon shall, subject to proceedings in error and to such revision as the common law provides, be res judicata as to all persons; nor shall the validity of such judgment be impeached or examined collaterally. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 140; June 30, 1902, 32 Stat. 526, ch. 1329; Apr. 19, 1920, 41 Stat. 557, ch. 153.)

AMENDMENTS

The 1902 amendment struck out the words "a copy of the issues and notification of trial" and substituted therefor the words "the substance of the issues and of the date fixed for trial thereof."

The 1920 amendment provided for service in the Supreme Court of the District of Columbia, and struck out a sentence following the sentence ending "of the court" and three sentences at the end of the section, all of which were procedural as to juries.

CROSS REFERENCE

See note to § 20–106. *Morris* v. *Foster* (51 App. D. C. 238, 278 Fed. 321).

NOTES TO DECISIONS

BURDEN OF PROOF

"In the District of Columbia, under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator * * * was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator." *Brosnan* v. *Brosnan* (263 U. S. 345, 68 L. Ed. 332, 44 Sup. Ct. 117).

CONSTRUCTION

Under § 6 of the act of Congress of June 8, 1898, the word "week" was not intended to mean the conventional week beginning with Sunday and ending with Saturday, but a period of seven consecutive days. *Leach* v. *Burr* (17 App. D. C. 128, affd. 188 U. S. 510, 47 L. Ed. 567, 23 Sup. Ct. 393).

This section is still in force, notwithstanding Rule 38, 28 U. S. C., following § 723c, relating to jury trials, demand therefor, and waiver thereof, in view of rule 81 following said section providing that rules do not apply to probate proceedings in the District Court of the United States for the District of Columbia except to appeals therein, and hence the failure to demand jury trial in a will contest was not a "waiver" of the right thereto. *In re Cottrill's Estate* (D. C., D. C. 1941, 39 F. Supp. 689).

Rule 1, § 2, of the District Court of the United States for the District of Columbia providing that in determining contested issues of law or fact or of law and fact in probate proceedings, District Court rules and federal procedural rules shall also govern procedure on motions, depositions, discovery and testimony and at hearing or trial of issues, does not purport to modify this section. *In re Cottrill's Estate* (D. C., D. C. 1941, 39 F. Supp. 689).

Under 28 U. S. C., § 723b, providing that all laws in conflict with procedural rules shall be of no further force or effect. Rule 38, 28 U. S. C., following § 723c, relating to jury trials, demand therefor, and waiver thereof is not applicable as such to will contests in the District of Columbia, and does not in effect repeal this section in view of Rule 82 providing that rules do not apply to probate proceedings in the District Court of the United States for the District of Columbia except to appeals therein. *In re Cottrill's Estate* (D. C., D. C. 1941, 39 F. Supp. 689).

DIRECTED VERDICT

In proceeding to probate will, where there was no evidence of fraud sufficient to justify submission of such issue to jury the trial judge properly directed a verdict against caveators on such issue. *Pollard* v. *Hawfield* (C. A., D. C. 1948, 170 F. 2d 170, certiorari denied 69 S. Ct. 514, 336 U. S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U. S. 929, 93 L. Ed. 1089).

DISCRETION OF COURT

In proceeding to probate will where it did not appear that physician had had any experience or training in mental illnesses or that he had ever treated or observed any paralytic case which had resulted in impairment of the mind and there was but little if any evidence in the record to indicate that either partial paralysis of the testatrix with its resultant confinement or advanced age of testatrix caused any impairment of mind, limiting testimony of physician as to paralysis and refusing to permit him to

testify to effect of paralysis on mental faculties was not an abuse of discretion. *Pollard* v. *Hawfield* (C. A., D. C. 1948, 170 F. 2d 170, certiorari denied 69 S. Ct. 514, 336 U. S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U. S. 929, 93 L. Ed. 1089).

EVIDENCE

Where probate of will naming testatrix's sister sole beneficiary was opposed on ground of undue influence and want of testimentary capacity, § 14–302 providing that if one of original parties to transaction or contract has died, the other party thereto shall not be allowed to testify to any declaration of the deceased in suit against personal representative of deceased did not require exclusion of testimony of testatrix's brother that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

The persons named as executors and legatees in an alleged will cannot, in order to probate the will, be permitted to utilize § 14–302 providing that if one of original parties to transaction or contract has died the other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

Testimony of testatrix' brother, who had made his home with her for 36 years, that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her was admissible on issues of undue influence and testamentary capacity in opposition to probate of will naming testatrix's sister sole beneficiary. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

Where probate of will is opposed on ground of fraud and undue influence, it is not necessary that there be direct proof of undue influence. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

A finding that testator's subscription to purported will was procured by fraud, coercion, misrepresentation, undue influence, and pretension, executed by the sole beneficiary named in will, or some other person, was supported by sufficient evidence. *Duckett* v. *Duckett* (App. D. C. 1945, 150 F. 2d 985).

Evidence supported finding that will had been procured by undue influence, duress or coercion by beneficiary, so that it should be denied probate.—*Martin v. Staples* (App. D. C. 1947, 164 F. 2d 106).

HARMLESS OR PREJUDICIAL ERROR

In will contest, refusal to permit attorney for testatrix to testify concerning instruction given him by testatrix on ground that communication was privileged was error. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

Where witness was permitted to use notes to refresh her memory, refusal to strike out testimony of witness when it developed on cross-examination that some of notes were not made until two years after event about which witness testified was not reversible error where counsel failed to object to use of notes when witness asked if she might use them, and later when it developed that they had not been made contemporaneously, counsel not only failed to move that her testimony be stricken from record, but used her notes in argument to jury. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

In will contest, erroneous refusal to permit attorney for testatrix to testify concerning instructions given him by testatrix did not authorize reversal, where record did not show what was intended to be elicited from witness or time when the instructions were received. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

In will contest, where it was developed when counsel for testatrix was on witness stand that he had held in his possession, and not offered for probate for a period of two weeks wills of testatrix's brother-in-law and sister, remark of court that when will is left with an attorney to be filed "it ought to be filed immediately" was not prejudicial where judge in subsequent charge left jury free to determine, without comment on his part, weight to be given to the evidence. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

INSTRUCTIONS

In proceeding to probate will, refusal of requested prayers on presumption of undue influence and on testamentary capacity was not error where the charge given properly informed the jury as to the law. *Pollard* v. *Hawfield* (C. A., D. C. 1948, 170 F. 2d 170, certiorari denied 69 S. Ct. 514, 336 U. S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U. S. 929, 93 L. Ed. 1039).

QUESTIONS FOR JURY

In proceeding for probate of will, where there was evidence that testatrix' sister, who was named sole beneficiary, after taking sole charge of testatrix first made false statements to other relatives with purpose and effect of inducing them not to visit testatrix and then allowed her to suppose, contrary to fact, that the other relatives were making no effort to see testatrix, doing nothing for her and showing no interest in her welfare, issues of fraud and undue influence were for the jury. *Duckett* v. *Duckett,* 1943 (134 F. 2d 527, 77 U. S. App. D. C. 303).

In will contest, evidence on question whether testatrix at time of making and signing the will was of sound and capable mind was sufficient for jury. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

In will contest, evidence on question whether will was obtained or procured by undue influence, duress or coercion was sufficient for jury. *Sorrels* v. *Alexander,* 1944 (142 F. 2d 769, 79 U. S. App. D. C. 112).

In will contest, evidence of fraud in procurement of will was sufficient for jury. *Frene* v. *Muratori,* 1944 (142 F. 2d 768, 79 U. S. App. D. C. 101).

REVIEW

Order framing issues is interlocutory only, and reviewable only by special appeal. *Hutchins* v. *Hutchins* (40 App. D. C. 180), citing *National Safe Deposit, Sav. & Trust Co.* v. *Sweeney* (3 App. D. C. 401), *Dugan* v. *Northcutt* (7 App. D. C. 351), *National Safe Deposit, Sav. & Trust Co.* v. *Heiberger* (19 App. D. C. 506).

In proceeding to probate will where no exceptions were taken to the charge on undue influence and testamentary capacity, charge on such matters could not be attacked on appeal. *Pollard* v. *Hawfield* (C. A., D. C. 1948, 170 F. 2d 170, certiorari denied 69 S. Ct. 514, 336 U. S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U. S. 929, 93 L. Ed. 1039).

STAY BY PROHIBITION

Prohibition will not lie to stay proceedings under an order framing issue for trial by jury. *In re Dahlgren* (30 App. D. C. 588).

TRIAL

The trial proceeded when it was shown by the record that at the time the issues were framed and the trial fixed, and at the trial the caveatees were present in person and by their attorneys. *Storey* v. *Storey* (30 App. D. C. 41).

§ 19–313 [29: 63]. Wills filed prior to June 8, 1898, may be probated as of real estate.

Any person interested under any will filed in the office of the register of wills for the District of Columbia prior to June 8, 1898, may offer the same for probate as a will of real estate, whereupon such proceedings shall be had as by this code are authorized in regard to wills offered for probate after said date. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 141.)

NOTES TO DECISIONS

IN GENERAL

This section is permissive and not mandatory. *Young* v. *Norris Peters Co.* (27 App. D. C. 140).

EQUITY JURISDICTION

Determination of title to real estate devised by will is within the general jurisdiction of a court of equity. *Beyer* v. *Le Fevre* (186 U. S. 114, 46 L. Ed. 1080, 22 Sup. Ct. 765, revg. 17 App. D. C. 238).

JURISDICTION

By act of June 8, 1898, 30 Stat. 434, ch. 394, plenary jurisdiction was given the District Supreme Court of all questions as to wills devising real estate in the District of Columbia. *Leach* v. *Burr* (188 U. S. 510, 47 L. Ed. 567, 23 Sup. Ct. 393, affg. 17 App. D. C. 238).

Chapter 4.—REGISTER OF WILLS

Sec.
19–401. Appointment—Oath of office.
19–402. Bond.
19–403. Powers.
19–404 Repealed.
19–404a. Payment of fees, costs and other moneys.
19–405. Repealed.
19–406. Required to post table of fees.
19–407. Penalty for failure to post table of fees.
19–408. Penalty for charging greater fees.
19–409. To act as clerk of probate court.
19–410. Not to practice law.
19–411. Penalty for charging for advice.

§ 19–401 [29: 1]. Appointment—Oath of office.

There shall be appointed for the District a register of wills, who shall take an oath for the faithful and impartial discharge of the duties of his office. The register of wills shall be appointed by the United States District Court for the District of Columbia and shall be subject to removal by that court. (R. S., D. C., § 929; Aug. 2, 1949, 63 Stat. 491, ch. 383, § 3.)

AMENDMENTS

The act of Aug. 2, 1949, cited to text, added the last sentence.

Said act was entitled: "An Act to transfer the office of the probation officer of the United States District Court for the District of Columbia, the office of the Register of Wills for the District of Columbia, and the Commission on Mental Health, from the government of the District of Columbia to the Administrative Office of the United States Court, for budgetary and administrative purposes."

Said act provided in part as follows:

"That the office of the probation officer of the United States District Court for the District of Columbia, the office of the Register of Wills for the District of Columbia, and the Commission on Mental Health, are hereby transferred from the government of the District of Columbia to the Administrative Office of the United States Courts for budgetary and administrative purposes, and the provisions of chapter 41 of title 28, United States Code, shall apply to such offices.

"SEC. 2. The provisions of title 18, sections 3654, 3655, and 3656, shall apply to the United States District Court for the District of Columbia. Accordingly, the first paragraph of section 3654 of title 18 is amended by striking therefrom the words, 'except in the District of Columbia', so that said paragraph shall read as follows:

" 'Any court having original jurisdiction to try offenses against the United States may appoint one or more suitable persons to serve as probation officers within the jurisdiction and under the direction of the court making such appointment.'

"SEC. 4. That the office of the Register of Wills shall be a part of the United States District Court for the District of Columbia.

* * * * *

"SEC. 10. This Act shall take effect on July 1, 1949

CROSS REFERENCE

Jurisdiction, practice, and procedure in probate court, §§ 11–501 to 11–520.

§ 19–402 [29: 2]. Bond.

The register of wills shall, before he acts as such, give a bond to the United States, with two or more sureties, to be approved of by the chief justice of the District Court of the United States for the District, in the sum of five thousand dollars, faithfully to discharge the duties of his office and seasonably to record the decrees and orders of the justice of the District Court holding the special term for probate court business for the District, and all wills proved before him or the court, and all other matters directed to be recorded in the court or in the office of the register, which bond shall be entered in full upon the minutes of the court, and the original filed with the records thereof. (R. S., D. C., § 930; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

§ 19–403 [29: 3]. Powers.

The said register of wills may receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final passage or rejection of same by the court, may take probate of claims against the estates of deceased persons that are proper to be brought before him, and pass any claims not exceeding three hundred dollars; may take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval by the court. It shall be his duty to make full and fair entries of the proceedings of said court, and also to make a fair record in a strong bound book or books of all wills proved before him or said court, and of all other matters by law directed to be recorded in said court, and to lodge every original paper filed with him in such place of safety as the court may appoint. He shall make out and issue every summons, process, and order of the court, and in every respect act under its control and direction in reference to matters coming within the jurisdiction of said court. He shall be, and hereby is, authorized to appoint five deputies, who may do and perform any and all the acts necessary in the administration of his office and the certification of the records of said court which he himself is authorized to do; also to appoint and fix the number and the compensation of the employees of said probate court and office of register of wills: *Provided,* That the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 121; June 30, 1902, 32 Stat. 525, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265; Apr. 24, 1926, 44 Stat. 322, ch. 176; Aug. 7, 1946, 60 Stat. 889, ch. 792.)

AMENDMENTS

The 1902 amendment raised from one to two the number of deputies permitted to be appointed, and added the concluding proviso.

The 1923 act is the Classification Act of 1923.

The 1926 act provided: "That on and after July 1, 1927, all fees and emoluments of office * * * of register of wills shall be paid at least weekly to the collector of taxes for the District of Columbia for deposit in the Treasury of the United States * * *," and provided that thereafter appropriations for the operation and maintenance thereof be included in the annual estimates

of appropriation for the government of the District of Columbia (see § 19–405).

The act of Aug. 7, 1946, cited to text, increased number of authorized deputies from two to five.

CROSS REFERENCES

Attorney for service of process upon nonresident fiduciaries, § 20–118.

Docket for claims against estates, § 18–513.

Duty to prepare papers for appointment of guardian to enable indigent boys to enlist in the Navy, § 21–105.

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

Notice to absent executor of probation of will, § 20–306.

§ 19–404 [29: 4]. Repealed Aug. 2, 1949, 63 Stat. 492, ch. 383, § 9.

EXTENT OF REPEAL

Sec. 9 of the act of Aug. 2, 1949 provided as follows: "The Act of April 24, 1926, entitled 'An Act providing for expenses of the office of Recorder of Deeds and Register of Wills of the District of Columbia' (44 Stat. 322; title 19, sec. 404 and sec. 405; D. C. Code, 1940), insofar as it relates to the office of the Register of Wills, and any other provisions of law inconsistent with the provisions of this Act are hereby repealed."

EFFECTIVE DATE OF REPEAL

Sec. 10 of the act of Aug. 2, 1949 provided: "This act shall take effect on July 1, 1949."

CROSS REFERENCE

Fees, § 11–1501 et seq.

§ 19–404a. Payment of fees, costs and other moneys.

The register of wills of the District of Columbia shall pay into the treasury all fees, costs, and other moneys collected by him (except uncollected fees not required by Act of Congress to be prepaid), and shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him. (Aug. 2, 1949, 63 Stat. 491, ch. 383, § 5.)

COMPILER'S NOTE

See notes to § 19–404.

§ 19–405 [29: 5]. Repealed Aug. 2, 1949, 63 Stat. 492, ch. 383, § 9.

COMPILER'S NOTE

See notes to § 19–404.

§ 19–406 [29: 6]. Required to post table of fees.

The register is required to make fair tables of his fees, and to post the same in some conspicuous place in his office, for the inspection of all persons who may have business therein. (R. S., D. C., § 933.)

CROSS REFERENCE

Fees, § 11–1501 et seq.

§ 19–407 [29: 7]. Penalty for failure to post table of fees.

The register shall forfeit for each day such tables shall be missing through his neglect the sum of ten dollars, to be recovered as other debts of the same amount are recoverable, one-half to the District, and one-half to the informer. (R. S., D. C., § 934.)

§ 19–408 [29: 8]. Penalty for charging greater fees.

If the register or any person for him, shall take greater fees than provided for in section 11–1503 of this Code, such officer shall forfeit and pay the party injured fifty dollars, to be recovered as debts of the same amount are recoverable. (R. S., D. C., § 935.)

§ 19–409 [29: 9]. To act as clerk of probate court.

The register of wills of the District of Columbia shall be, and hereby is, authorized, empowered, and directed to act as clerk of the said probate term, to keep and certify its records and generally, with respect to said term, to exercise all the powers and perform all the duties which might otherwise be properly exercised or performed by the clerk of the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 120.)

§ 19–410 [29: 10]. Not to practice law.

No person, being register of wills shall plead as an attorney at law in any court in the District of Columbia, for any person or persons, on any pretence whatsoever; and no register of wills as aforesaid shall exact, extort, demand, take, accept, or receive, from any person whatsoever, any fee or fees, gratuity, gift, or reward, for giving his advice in any matter or thing that will be transacted in the courts of the District of Columbia, under the penalty of $80, current money for every such offense. (Md. Act 1871, ch. 16; Md. Act 1786, ch. 10; Apr. 2, 1792, 1 Stat. 248, ch. 16, § 9.)

§ 19–411 [29: 11]. Penalty for charging for advice.

The register of wills shall not demand, take, or receive, from any person whatever any fee, gratuity, gift or reward, for giving his advice in any matter or thing relative to his office, under the penalty of $133.33, for every offense. (Md. Act, 1779, ch. 25, § 7; Md. Act, 1781, ch. 16; Apr. 2, 1792, 1 Stat. 248, ch. 16, § 9.)

TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

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Chapter 1.—GENERAL PROVISIONS

Sec.

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20–119. Resignation—Petition—Accounting—Liability.

§ 20–101 [29: 71]. Competency—Determination by probate court.

No letters testamentary or of administration shall be granted to a person convicted of an infamous offense, or to an idiot or lunatic, or person non compos mentis, or one under eighteen years of age, or to an alien; and all questions as to the disqualification on any of said grounds of any person claiming to be entitled to letters testamentary or of administration shall be determined by the probate court, after such notice to the said persons as the court may direct. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 261.)

CROSS REFERENCE

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

NOTES TO DECISIONS

COMPENSATION ALTHOUGH DISQUALIFIED

Where petitioners failed to bring the disqualification of the administrator to the attention of the probate court until administration was almost completed, such administrator will be allowed reasonable commissions and compensation to date of appointment and qualification of his successor, including expenses and reasonable attorney's fees, and costs of the proceeding will be taxed against petitioners. *In re Allen's Estate* ((D. C.-D. C.), 30 Fed. Supp. 243).

DISQUALIFICATION OR REMOVAL

An order removing a disqualified administrator is a final appealable order. *Perry* v. *Wilson* (60 App. D. C. 109, 48 Fed. (2d) 1021).

Petitioners whose knowledge of the disqualification of administrator existed at the time of his appointment are reprimanded by the court for failure to disclose it at that time. *In re Allen's Estate* ((D. C.-D. C.), 30 Fed. Supp. 243).

Conviction of conspiracy to violate the National Prohibition Act is sufficient under this act to disqualify and cause removal of an administrator. *In re Allen's Estate* ((D. C.-D. C.), 30 Fed. Supp. 243).

§ 20–102 [29: 72]. Persons between 18 and 21 years of age.

In case letters testamentary or of administration shall be granted to any person above eighteen but under twenty-one years of age, the bond executed by him for the faithful performance of his duties shall be as binding as if he were of full age. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 294.)

§ 20–103 [29: 73]. Administrator with the will annexed—Preference.

In case any will admitted to probate shall not appoint an executor, or the executor therein appointed shall have died or renounced the executorship, or shall be incompetent to serve, administration shall be granted with the will annexed to the person who would have been entitled to administration in case of the intestacy of the deceased testator: *Provided, however,* That if there be a residuary legatee named in such will, he shall be preferred to all, except a widow. And the condition of the bond of the administrator so appointed and the oath to be taken by him and his duties and liabilities shall be the same if he had been appointed executor in the will and had received letters testamentary. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 298.)

§ 20–104 [29: 74]. Application for letters—Contents—Bond—Sale of real estate.

Whenever any person shall apply to the probate court for letters testamentary or of administration, he shall set forth, under oath, as fully as possible, all the personal and real estate left by the decedent and the amount of his debts as far as can be ascertained; and the penalty of the bond required of him, except in the cases provided for in sections 20–203, 20–302, 20–303, shall be sufficient to secure the proper application of all the personal estate of the testator or

intestate; and when it shall become necessary to sell the real estate of the decedent, in part or in whole, the executor or administrator shall give such additional bond, with approved security, as shall be directed by the court, to secure the proper application of the proceeds arising from such sale or sales. And whenever an executor is empowered by the will to make sale of the real estate of the testator, for any purpose, he shall account for said proceeds in said court. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 295.)

§ 20–105 [29: 75]. Letters de bonis non—Form—Duties.

If an executor or administrator shall die before the administration of the estate is completed, letters of administration de bonis non or de bonis non cum testamento annexo, as the case may require, shall be granted, in the discretion of the court, giving preference, however, to the person who would be entitled in the order given in sections 20–201 to 20–219, if he shall actually apply for the same; and the form of the letters shall be the same as in the case of an original administration, except that it shall be confined to the property of the deceased not already administered, and the authority shall be to administer all property herein described as assets and not distributed and delivered or retained by the executor or former administrators, under the court's direction. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 299.)

NOTES TO DECISIONS

Appointment of Brother or Mother

Where decedent's father was also his administrator, the appointment, at father's death, of brother as administrator, to exclusion of divorced mother, was proper. *Haviland* v. *Harriss* (60 App. D. C. 255, 50 Fed. (2d) 1069).

§ 20–106 [29: 76]. Will proved after letters granted—Letters revoked—Administrator's liability—Pending actions—Accounting—Prior distribution—Will declared invalid after distribution—Liability.

If administration be granted, and a will disposing of the estate of the deceased shall afterwards be proved according to law, and letters testamentary shall have issued thereon, the same shall be considered a revocation of the letters of administration. But the administrator shall not be held to answer for any acts done by him according to law, in good faith, and in ignorance of such will and before any actual or implied revocation of his letters; and the executor obtaining letters shall be authorized to prosecute any actions at law or in equity commenced by the administrator and obtain judgment in his own name, and likewise to defend any suit commenced against the administrator; and said executor shall have the benefit of all judgments obtained by the administrator and be bound by all judgments obtained against him to the extent of assets received by said executor, unless such judgments were obtained by fraud. And it shall be the duty of said administrator to account for and deliver to the executor without delay all goods, chattels, and personal estate and proceeds of any realty sold in his possession, belonging to the deceased, in default of which his bond may be put in suit by the executor or administrator cum testamento annexo.

And if distribution of the estate, or any part thereof, shall have been lawfully made by the administrator, the distributee or distributees, and their personal representatives, and not the administrator so distributing the estate, shall be answerable for the property so distributed, or its value, to the person or persons thereto entitled.

And if any will be hereafter adjudged invalid in any action begun after distribution of the estate, or any part thereof, lawfully made by the executor or executrix, in good faith and without knowledge on his or her part of the invalidity of such will, and without notice that such action was intended, the distributee or distributees of the property, and their personal representatives, and not such executor or executrix, shall be answerable for the property, or its value, to the person or persons thereto entitled. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 290; June 30, 1902, 32 Stat. 528, ch. 1329.)

Amendment

The 1902 amendment changed the first part of the second sentence of the first paragraph before the semicolon which formerly read: "But all acts done by the administrator according to law, before any actual or implied revocation of his letters, shall be valid and effectual," and added the last two paragraphs of the section.

Cross Reference

Revocation of letter and accounting, § 11–515.

NOTES TO DECISIONS

Defenses to Compulsory Accounting

That time within which a caveat to will could be filed by heirs not found within jurisdiction but given notice of application for probate of will by publication had not yet expired was not a sufficient defense to residuary legatee's action against executor to compel an accounting and distribution of residuary estate. *Cashell* v. *Eslin* (D. C., D. C. 1944, 55 F. Supp. 747).

Duty of Executor

After probate of a will and until its revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. *Cashell* v. *Eslin* (D. C., D. C. 1944, 55 F. Supp. 747).

Effect of Letters of Administration

Letters of administration granted on a petition setting out the existence of a will and averring that no proceedings had been taken for its probate and seeking no adjudication as to the will, and the order being silent on that point, is not an adjudication that decedent died intestate. *Morris* v. *Foster* (51 App. D. C. 238, 278 Fed. 321). A subsequent probate of the will and granting of letters testamentary revoke the letters of administration. *Morris* v. *Foster* (51 App. D. C. 238, 278 Fed. 321), citing *In re Coit* (3 App. D. C. 246).

§ 20–107 [29: 77]. Removal of co-executor, co-administrator, or co-collector for negligence or misconduct—Complaint—Recovery of loss or damage.

If any joint executor, administrator, or collector shall apprehend that he is likely to suffer by the negligence or misconduct in the administration or the improper use or misapplication of the assets of the estate by any co-executor, co-administrator, or co-collector, he may make complaint to said court; and if said complaint shall be adjudged well founded, the court shall have authority, in its discretion, to revoke the powers and authority of the executor, administrator, or collector so complained of and to compel the delivery and surrender to the remaining executor, administrator, or collector of the assets and all books, papers, and evidences of debt of the estate

that may be in the possession or control of the person so dismissed from the administration; and the remaining executors, administrators, or collectors shall be entitled to recover, in an action on the case, for any loss or damage they may suffer through the executor, administrator, or collector whose powers shall have been revoked as aforesaid. (Mar. 3, 1901, 31 Stat. 1210, ch. 854, § 125.)

§ 20–108 [29: 78]. Additional bond—Failure to provide—Revocation—Delivery of assets.

Whenever the probate court shall be satisfied that the bond already given by an executor or administrator is insufficient, the said executor or administrator may be required to file an additional bond, and on his failure to do so his letters may be revoked. And upon the revocation of letters testamentary or of administration under this provision, the executor or administrator whose letters are so revoked shall forthwith deliver to any substituted executor or administrator all the assets of his testator or intestate in his possession or under his control. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 296.)

CROSS REFERENCE

Bonds required of trust companies, §§ 26–333, 26–334.

NOTES TO DECISIONS

PETITION FOR ADDITIONAL BOND

Court has power, upon petition of attorney who has contract with executrix for payment of a fee, but no lien on proceeds of judgment, alleging insolvency of executrix and her intention to remove the fund from the jurisdiction on its receipt, to require the executrix to give additional bond, or revoke her letters and thus prevent collection of judgment by her. *Parish* v. *McGowan* (39 App. D. C. 184, revd. on other grounds, 237 U. S. 285, 59 L. Ed. 955, 35 Sup. Ct. 543). See also *Cropper* v. *McLane* (6 App. D. C. 119, dism. 163 U. S. 682, 41 L. Ed. 316, 16 Sup. Ct. 1200).

§ 20–109 [29: 79]. Counter security—Application of surety—Delivery of property—Inventory—Duties and liability of surety.

If any surety of an executor or administrator shall apprehend himself to be in danger of suffering from the suretyship, he may apply to the probate court, and the said court may call upon the party to give counter security, to be approved by the court; and if the party so called on shall not, within a fixed reasonable time, give counter security, the court may order the property remaining in the hands of such executor or administrator to be delivered up to such surety, and the court may enforce the delivery by proper process; and an inventory of the property delivered to such surety shall be returned without delay, and the property contained in such inventory shall be by the said surety sold, distributed, and delivered up, as the case may require, under the immediate order of the court, as if such surety were executor or administrator; but inasmuch as it would be inconvenient to creditors and others interested in the estate, if there should be a double administration, the executor or administrator shall go on to discharge his trust, unless the court revoke his letters for some just cause, as hereinbefore directed, and he shall be answerable for the property in the same manner as if it were not on his default as aforesaid delivered to the surety; and he shall be entitled to sue the said surety and recover damages in case he shall suffer from the misconduct of such surety, in diminishing any part of the property, without obtaining an allowance for the same from the court; and the said surety shall bring into court, to be deposited with the register of wills, the money arising from the sale of any property as aforesaid, to be applied according to the meaning of this code. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 128.)

CROSS REFERENCE

Bonds required of trust companies, §§ 26–333, 26–334.

NOTES TO DECISIONS

"PROPERTY" DEFINED

Term "property" as herein used includes the proceeds of the sale of property. *In re McKnight's Estate* (1 App. D. C. 28).

§ 20–110 [29: 80]. Accounting by representative of deceased executor or administrator.

On the application of an administrator de bonis non the court may order the executor or the administrator of a deceased executor or administrator to deliver over to him all the personal property that was in the hands of the said deceased executor or administrator, as such, and also all the money, bonds, notes, accounts, and evidences of debt which the said deceased executor or administrator may have taken, received, and had at the time of his death, including the proceeds of sale of either personal or real estate made by said deceased executor or administrator, which shall be deemed unadministered assets. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 301.)

CROSS REFERENCE

Other provision concerning accounting for deceased executor or administrator, §§ 20–607, 20–608.

§ 20–111 [29: 81]. Enforcement of order against representative of deceased executor or administrator.

On the failure of said executor or administrator to comply with said order by a day named, the court may enforce its order by attachment against such executor or administrator, and may direct the bond of the deceased executor or administrator, or that of the executor or administrator so failing, or both, to be put in suit for the use of the administrator de bonis non. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 302.)

§ 20–112 [29: 82]. Liability of executor or administrator of a deceased executor or administrator for conversion of property of estates.

All and every the executor and executors, administrator or administrators of an executor or administrator of right, who shall waste or convert to his own use, goods, chattels, or estate of his testator or intestate, shall from henceforth be liable and chargeable in the same manner as his or their testator or intestate should or might have been. (4 and 5 Wm. and Mary, ch. 24, § 12, 1692; Alex. Br. Stat., p. 585; Comp. Stat. D. C., p. 41, § 180.)

§ 20–113 [29: 83]. Executor de son tort.

Every person and persons that shall obtain, receive, and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any

fraud, or without valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease) shall be charged and chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself allowance of all just, due and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by law. (43 Eliz. ch. 8, § 2, 1601; Kilty's Rep., p. 236; Alex. Br. Stat., p. 427; Comp. Stat. D. C., p. 41, § 178.)

§ 20–114 [29: 84]. Executor de son tort—Liability for waste.

All and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall waste or convert any goods, chattels, estate or assets of any person deceased to their own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living. (30 Car. 2, ch. 7, § 2, 1677; Kilty's Rep., p. 176; Alex. Br. Stat., p. 567; Comp. Stat. D. C., p. 41, § 179.)

§ 20–115 [29: 85]. Investment of funds.

Whenever, under the provisions of a will, it shall be necessary for an executor or an administrator cum testamento annexo to retain in his hands the personal estate or any part thereof after all just claims are discharged, as where money or some other thing is directed to be paid at a distant period or upon a contingency, the probate court shall have the power, on the application of such executor or administrator or of a party interested, to decree or give directions in relation thereto; and it shall be the duty of said executor or administrator to apply to the said probate court, and the said court shall have full power to decree or direct what part of the personal estate shall be retained or appropriated for the purpose and in what manner it shall be disposed of, and the legacy or benefit intended by the will shall be secured to the person to be entitled at a future period or contingency, and how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from lying dead or being unproductive, and how it shall be applied, agreeably to the intent of the will or the construction of law, in case the contingency shall not take place. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 369.)

CROSS REFERENCE

Other provisions for investment of funds, § 11–513.

NOTES TO DECISIONS

DUTIES OF EXECUTOR

Under a bequest of the income of a fund to a life tenant, with remainder over, it is the duty of the executor to invest the fund, pay the income to the person entitled for life, and preserve the principal for the remainderman. *Payne* v. *Robinson* (26 App. D. C. 283).

STATUS OF EXECUTOR

"The executor does not cease to be executor because the period of administration, so called, may be passed. He is still executor as long as he has anything under the will to execute." *Marfield* v. *McCurdy* (25 App. D. C. 342).

"The principal difference between an executor during the period of administration and an executor after the lapse of the period of administration is that the former is responsible to the probate court for the faithful execution of his trust, the latter to a court of equity." *Marfield* v. *McCurdy* (25 App. D. C. 342).

§ 20–116 [29: 86]. Continuing decedent's business—Verified petition—Affidavits—Contents—Accounting—Debts of business as expenses of estate.

The probate court may, in its discretion, authorize any fiduciary, accountable to it, to continue the business of a decedent for a period not exceeding twelve months after decedent's death. No order shall be entered so authorizing a fiduciary until he shall have filed a petition under oath, supported by the affidavits of two reputable persons familiar with the decedent's business, setting forth the appraised value of the business, whether the decedent conducted it at a profit or loss and the approximate amount thereof, and the estimated amount of the expenses per month necessary to be incurred in order to continue the business. Any fiduciary who is given such authorization shall file monthly statements showing all receipts and disbursements, debts contracted and obligations incurred, and the profit or loss; and the court, in its discretion, may order the discontinuance of the business at any time.

Debts contracted and obligations incurred by the fiduciary in so continuing the business of the decedent shall be deemed to be an expense of administration of the estate. (Apr. 19, 1920, 41 Stat. 556, ch. 153, § 123a.)

NOTES TO DECISIONS

COMPUTATION OF COMMISSIONS

No case is made for payment to executor in operating decedent's business over and above the amount already permitted by the Code. *Stoner* v. *Doherty* (C. A. D. C. 1950, 182 F. 2d 673, 86 U. S. App. D. C. 368).

CONTINUING BUSINESS

Executor is not required to continue the business of a decedent although he followed the appropriate practice in obtaining the approval of the court to do so. *Stoner* v. *Doherty* (C. A. D. C. 1950, 182 F. 2d 673, 86 U. S. App. D. C. 368).

§ 20–117 [29: 87]. Executor's or administrator's bond—Recording—Copies—Ex rel. actions upon—Actions by subsequent administrator—Actions by creditors.

Every bond executed by an executor or administrator shall be recorded in the office of the register of wills; and any person conceiving himself to be interested in the administration of the estate shall be entitled to have or demand a copy of such bond, under the hand and seal of the register of wills, on which an action may be maintained, in the name of the United States, for the use of the party interested, and judgment may be recovered in such action for the damage actually sustained. And an administrator appointed in the place of an executor or

administrator who has resigned, been removed, or whose letters have been revoked, may in like manner maintain an action against the executor or former administrator and his sureties, on his administration bond, for all loss and damage to the estate resulting from this breach of duty. No creditor shall be entitled to maintain an action on a testamentary or administration bond for any claim against a testator or intestate until, when practicable, an action has been commenced against the executor or administrator of the deceased and a summons issued therein has been returned "Not to be found," or a writ of fieri facias or of attachment, issued on a judgment against such executor or administrator, has been returned "nulla bona," or until such apparent insolvency of the executor or administrator or insufficiency of his effects as in the judgment of the court before which such action may be tried shall show the said creditor to be without remedy except by such action on the executor's or administrator's bond. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 297; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1902 amendment inserted the words "when practicable" after the word "until."

NOTES TO DECISIONS

ACTIONS WITHIN SECTION

This section was inapplicable to action against an executrix, on a special bond, to recover value of a note executed by testator. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

This section governs actions on general bonds and the normal "administration of estates" which involves the collection, management, and distribution of estate, including legal proceedings necessary to satisfy claims of creditors, next to kin, legatees, or whatever other parties may have any claim to property of a deceased person. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

CONSTRUCTION BY MARYLAND COURT—EFFECT

A decision of the Maryland Court of Appeals interpreting Maryland statute from which a section of District of Columbia Code was derived was not controlling because rendered after law was adopted by the District, but was persuasive of proper interpretation of the District statute. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

EFFECT OF JUDGMENT

Quaere: Whether a judgment or decree against an administrator is conclusive evidence of the debt in an action against the surety on his bond, although the preponderance of authority seems to affirm that it is. *Bonding Co.* v. *United States ex rel. Paynter* (23 App. D. C. 535).

EXECUTION AND RETURN

"The requirement of execution and return was satisfied, notwithstanding the return was made the next day after issue, by order of the plaintiff's attorney." *Bonding Co.* v. *United States ex rel. Paynter* (23 App. D. C. 535).

SPECIAL UNDERTAKING

That executor with consent of residuary legatee gave a special undertaking instead of a general bond did not affect executor's obligation to account to residuary legatee and make distribution of such legatee's share of residuary estate within a reasonable time after such residue could be determined. *Cashell* v. *Eslin* (D. C., D. C. 1944, 55 F. Supp. 747).

The giving of a special undertaking by executor creates a personal obligation to creditors and legatees not present where a general bond is given. *Cashell* v. *Eslin* (D. C., D. C. 1944, 55 F. Supp. 747).

§ 20–118 [29: 88]. Fiduciary residing outside District of Columbia—Power of attorney to register of wills—Failure to give power.

In the case of the grant of either original or ancillary letters testamentary, or of administration, or of collection, or of guardianship, the person designated shall, if a nonresident of the District of Columbia, file in the office of the register of wills, before the issuance of such letters, an irrevocable power of attorney designating the register of wills and his successors in office as the person upon whom all notices and process issued by any competent court in the District of Columbia may be served, with like effect as personal service, in relation to any suit, matter, cause, or thing affecting or pertaining to the estate in which the letters are issued. It shall be the duty of said register of wills to forthwith forward by registered mail to the address of such fiduciary, which shall be stated in said power of attorney, any notice or process served upon said register as aforesaid.

In the event that any fiduciary shall fail to file such power of attorney within ten days after the passing of the order of appointment, such order shall thereupon stand revoked, and he shall forfeit all rights to the office. (Apr. 19, 1920, 41 Stat. 562, ch. 153, § 308a.)

§ 20–119 [29: 89]. Resignation—Petition—Accounting—Liability.

If any person, after having accepted the office of executor or administrator, shall desire to retire from and resign the same, he may file his petition to that effect, accompanied by a full and particular account, under oath, of his receipts and disbursements, if any, and the court shall thereupon direct such notice as it may think proper to be given of said application, and, if no cause be shown to the contrary, may release and discharge him from his office and pass such order as to costs and commissions and impose such terms in other respects as the nature of the case may require: *Provided,* That such executor or administrator shall not, by said discharge, be released from any liability for past acts, defaults, or omissions of duty. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 292.)

Chapter 2.—ADMINISTRATORS

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20–201. Granting of letters of administration.
20–202. Bond by administrator.
20–203. Special bond.
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20–214. Persons entitled to administer—Relations on part of father.
20–215. Persons entitled to administer—Persons incompetent to serve to be excluded.
20–216. Persons entitled to administer—Creditors.
20–217. Notice of application.
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§ 20–201 [29: 101]. Granting of letters of administration.

On the death of any person leaving real or personal estate in the District, letters of administration on his estate may be granted, on the application of any person interested, on proof satisfactory to the probate court, that the decedent died intestate. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 273.)

CROSS REFERENCES

General provisions concerning appointment and tenure of executors and administrators, § 20–101 et seq.

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

Trust companies authorized to act, §§ 26–309, 26–312, 26–316, 26–333, 26–334.

NOTES TO DECISIONS

ELIGIBILITY

Consul of Greece in the city of Washington entitled to sole administration of estate of deceased national. (See notes to § 20–107.) *Diamantopoulos* v. *Glekas* (56 App. D. C. 151, 11 Fed. (2d) 200).

Appointment of administrator in Virginia does not imply a finding of domicile in Virginia. *In re Grinnage's Estate* (69 App. D. C. 370, 101 Fed. (2d) 695).

Appointment of administrator in Virginia does not prevent granting of letters of administration of personalty in the District by the District Court of the United States for the District of Columbia. *In re Grinnage's Estate* (69 App. D. C. 370, 101 Fed. (2d) 695).

PROPERTY

A claim against the United States does not furnish the foundation for a local administration when the decedent was domiciled in another jurisdiction at the time of his death. *In re Coit's Estate* (3 App. D. C. 246).

A government check in the possession of the treasurer of the United States, payable to a particular person, is for jurisdictional purposes personal property in the District of Columbia. *In re Grinnage's Estate* (69 App. D. C. 370, 101 Fed. (2d) 695).

REMOVAL OF ADMINISTRATOR

Unless power of probate court to remove an administratrix for a particular cause can be found in this chapter or by necessary inference therefrom, it does not exist. *Perkins* v. *Berger,* 1944 (145 F. 2d 856, 79 U. S. App. D. C. 286).

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. *Perkins* v. *Berger,* 1944 (145 F. 2d 856, 79 U. S. App. D. C. 286).

§ 20–202 [29: 102]. Bond by administrator.

Every administrator, except corporations authorized to act as administrators, shall, before entering on his duties, file in the probate court his bond to the United States, with security approved by the court, in such penalty as the court shall direct, with condition to administer according to law all the money, goods, chattels, rights, and credits of the deceased; and when the court shall have ordered the sale of the decedent's real estate, he shall give a like bond conditioned to administer the proceeds of the real estate that may be sold for the payment of the decedent's debts which shall come into his possession, or to the possession of any other person for him, and in all other respects perform the trust reposed in him, and shall also take and subscribe an oath similar to that prescribed for executors. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 274.)

CROSS REFERENCE

Bonds required of trust companies, §§ 26–333, 26–334.

NOTES TO DECISIONS

CONSULAR OFFICER

A bond is required where Greek consul is appointed administrator of estate of deceased national. *Diamantopoulos* v. *Glekas* (56 App. D. C. 151, 11 Fed. (2d) 200).

§ 20–203 [29: 103]. Special bond.

If the person appointed as administrator shall be entitled to the residue of the estate after the payment of the debts, he may, instead of the bond herein provided for, execute a bond, with security approved by the court, in such penalty as the court may consider sufficient, conditioned for the payment of all the debts and claims against the deceased, and all damages which shall be recovered against him as administrator; and where the administrator shall file the consent in writing of those entitled to the residue and they shall all be of full age, the court may, if it sees fit, direct that only such special bond be given, and in such cases the administrator shall not be required to return any inventory or account, but shall be personally answerable for all debts, claims, and damages that may be recovered against him, in like manner as the executor who gives a similar bond: *Provided,* That the surety or sureties in said bond shall not be liable for a greater amount than the penalty thereof. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 275; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

The 1902 amendment added the clause beginning with the words "and where" and ending with the words "be given."

CROSS REFERENCE

Bonds required of trust companies, §§ 26–333, 26–334.

§ 20–204 [29: 104]. Persons entitled to administer—Surviving spouse or children.

If the intestate leave a widow or surviving husband and a child or children, administration, subject to the discretion of the court, shall be granted either to the widow or surviving husband or to the child, or one or more of the children qualified to act as administrator, and further subject to the discretion of the court as follows: (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 276; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

CROSS REFERENCE

See note under § 11–504. *Dennis* v. *Hamilton* (48 App. D. C. 160).

NOTES TO DECISIONS

RIGHT TO APPOINTMENT

These statutory regulations imply a right to appointment upon the part of the described parties, in the absence of disqualification, and consequently after they are once regularly appointed and qualified they can not

be removed without notice and a trial. *Brosnan* v. *Brosnan* (53 App. D. C. 149, 289 Fed. 547).

In the absence of competent relatives or creditors administration shall be granted at the discretion of the court. *Diamantopoulos* v. *Glekas* (56 App. D. C. 151, 11 Fed. (2d) 200).

§ 20–205 [29: 105]. Persons entitled to administer—Grandchild.

If there be a widow or surviving husband and no child, the widow or surviving husband shall be preferred, and next to the widow or surviving husband or children a grandchild shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 277; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

CROSS REFERENCE

See notes to § 20–204.

§ 20–206 [29: 106]. Persons entitled to administer—Father—Mother.

If there be neither widow or surviving husband, nor child, nor grandchild to act, the father shall be preferred; and if there be no father, the mother shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 278; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

CROSS REFERENCE

See notes to § 11–504.

NOTES TO DECISIONS

BROTHER OR MOTHER

Appointment of decedent's brother as administrator de bonis non upon death of decedent's father and administrator, held properly within discretion of court on motion of divorced mother for removal. *Haviland* v. *Harriss* (60 App. D. C. 255, 50 Fed. (2d) 1069).

§ 20–207 [29: 107]. Persons entitled to administer—Brothers and sisters.

If there be neither widow or surviving husband, nor child, nor grandchild, nor father, nor mother to act, brothers and sisters shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 279; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

CROSS REFERENCE

See notes to § 20–204.

NOTES TO DECISIONS

NONRESIDENT ALIEN

Brother of deceased alien who was naturalized preferred to widow and parents who are nonresident aliens. *Lely* v. *Kalinoglu* (64 App. D. C. 213, 76 Fed. (2d) 983, cert. den. 295 U. S. 765, 79 L. Ed. 1707, 55 Sup. Ct. 925).

§ 20–208 [29: 108]. Persons entitled to administer—Next of kin.

If there be neither widow or surviving husband, nor child, nor grandchild, nor father, nor mother, nor brother, nor sister, the next of kin shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 280; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

The 1920 amendment added the words "or surviving husband."

CROSS REFERENCE

See notes to § 20–204.

§ 20–209 [29: 109]. Persons entitled to administer—Males to be preferred.

Males shall be preferred to females in equal degree. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 281.)

§ 20–210 [29: 110]. Persons entitled to administer—Relations of whole-blood to be preferred.

Relations of the whole-blood shall be preferred to those of the half-blood in equal degree, and relations of the half-blood shall be preferred to relations of the whole-blood in a remoter degree. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 282.)

§ 20–211 [29: 111]. Persons entitled to administer—Descending relations preferred to collaterals.

Relations descending shall be preferred to relations ascending, in the collateral line; that is to say, for example, a nephew shall be preferred to an uncle. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 283.)

§ 20–212 [29: 112]. Persons entitled to administer—Limit of preference in lineal relatives.

None shall be preferred in the ascending line beyond a father or mother, or in the descending line below a grandchild. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 284.)

§ 20–213 [29: 113]. Persons entitled to administer—Feme sole preferred.

A feme sole shall be preferred to a married woman in equal degree. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 285.)

§ 20–214 [29: 114]. Persons entitled to administer—Relations on part of father.

Relations on the part of the father shall be preferred to those on the part of the mother, in equal degree. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 286.)

§ 20–215 [29: 115]. Persons entitled to administer—Persons incompetent to serve to be excluded.

If any person described in sections 20–204 to 20–216 should be incompetent to serve, then administration shall be granted as if such person were not living. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 287.)

§ 20–216 [29: 116]. Persons entitled to administer—Creditors.

If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply, it may be granted at the discretion of the court. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 288.)

NOTES TO DECISIONS

APPOINTMENT BY OTHER COURT

The validity of appellee's appointment as administratrix by the New Jersey court is not an essential condition to her appointment as administratrix ad litem. *Welch* v. *Welch* (57 App. D. C. 212, 19 Fed. (2d) 686).

DATE OF APPOINTMENT

Where one has so conducted himself by management of a business and sale of assets belonging to a decedent that he becomes an executor de son tort, his subsequent appointment as administrator reflects back to the death of the decedent. *Penn* v. *Whidden* (D. C. Mun. App. 1945, 42 A. 2d 136).

REMAND FOR FURTHER PROOF

Where creditor filed petition for administration of deceased's estate stating that after diligent search, creditor was satisfied that deceased died intestate and without surviving relation, and District of Columbia relied upon allegations of creditor's petition, pleadings and evidence were insufficient to authorize probate court to determine whether the District was entitled to distribution under escheat statute, § 18–717, and case was remanded for determination of question whether intestate died without heirs. *Frazier* v. *Kutz,* 1944 (139 F. 2d 380, 78 U. S. App. D. C. 241).

VALIDATION OF ACTS

Where one has so conducted himself by management of business and sale of assets belonging to a decedent that he becomes an executor de son tort, his subsequent appointment as administrator validates any previous acts which would have been valid if done after his appointment and his acts as executor de son tort, though void, are thereby made valid. *Penn* v. *Whidden* (D. C. Mun. App. 1945, 42 A. 2d 136).

§ 20–217 [29: 117]. Notice of application.

Upon any application for letters of administration, such notice thereof shall be given, by publication or otherwise, as the rules of the court may require. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 289; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

The 1902 amendment deleted the words "but it shall not be necessary to notify any collateral relatives more remote than brothers and sisters of the intestate" following the present last word of the section.

§ 20–218 [29: 118]. Declining administration.

If any person entitled to administration shall, in writing, decline the same, the court shall proceed as if such person were not entitled. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 291.)

§ 20–219 [29: 119]. Letters of administration—Form.

The form of letters of administration shall be as follows:

District of Columbia, to wit:

The United States of America.

To all persons to whom these *presents* shall come, greeting:

Know ye that administration of the goods, chattels, and credits of ———, late of ———, deceased, is hereby granted and committed unto ———, of ———.

Witness (A B) the Chief Justice of the District Court of the United States for the District of Columbia.

Test: C D, Register of Wills.

(Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 293; June 30, 1902, 32 Stat. 529, ch. 1329.)

COMPILER'S NOTE

The act of June 25, 1936, 49 Stat. 1921, ch. 804, changed the name of the Supreme Court to "District Court of the United States for the District of Columbia" and provided "nothing in this act shall affect the jurisdiction or functions of the court."

AMENDMENT

The 1902 amendment changed the word "present" to "presents."

Chapter 3.—EXECUTORS

Sec.

20–301. Letters testamentary—Bond—Oath—Corporations.
20–302. Bonds for debts only—Removal of executor for waste.
20–303. Special bond.
20–304. Joint executor—Joint or separate bond.
20–305. Letters of administration cum testamento annexo.
20–306. Absent executor—Summons—Notice.
20–307. Summons to each of several executors.
20–308. Renunciation.
20–309. Executor disqualified.
20–310. No power to act without letters.
20–311. Form of letters testamentary.
20–312. Executor of executor.

§ 20–301 [29: 131]. Letters testamentary—Bond—Oath—Corporations.

When any will or codicil respecting either real or personal property shall have been authenticated and admitted to probate, letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust: *Provided,* That he shall first execute a bond to the United States, with security to be approved by the court, in such penalty as the court may require, with a condition that he will administer according to law and to the will of the testator all his goods, chattels, rights, and credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies which shall at any time come to the possession of the executor or to the possession of any other person for him, and in all other respects faithfully perform the trusts reposed in him: *And provided further,* That said executor shall take and subscribe and file an oath that he will well and truly administer the estate of the deceased according to law and will give a just account of his administration when thereto lawfully called: *Provided,* That the above conditions as to bond and oath shall not apply to corporations authorized to act as executors. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 262.)

CROSS REFERENCES

General provisions concerning appointment and tenure of administrators and executors, § 20–101 et seq.

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

Naming debtor as executor does not discharge debt, § 18–303.

Trust companies authorized to act, §§ 26–309 to 26–312, 26–316, 26–333, 26–334.

See note to § 20–115. *Marfield* v. *McCurdy* (25 App. D. C. 342).

NOTES TO DECISIONS

ANCILLARY LETTERS

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia, as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. *Purcell* v. *Cramton,* 1944 (143 F. 2d 22, 79 U. S. App. D. C. 99).

The requirement of this section that when any will shall have been authenticated and admitted to probate letters

testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust, does not apply to ancillary letters. *Purcell* v. *Cramton,* 1944 (143 F. 2d 22, 79 U. S. App. D. C. 99).

LIABILITY OF EXECUTOR

An executor executing a general bond is responsible for payment of debts and claims to extent of assets collected only, and cannot be sued on general bond until determination is made of the extent to which creditors can be paid from assets. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

§ 20–302 [29: 132]. Bonds for debts only—Removal of executor for waste.

Whenever a testator shall, by last will and testament, request that his executor be not required to give bond for the performance of his duty, in such case the bond required of the executor shall be in such penalty as the court may consider sufficient to secure the payment of the debts due by the testator: *Provided, however,* That the penalty of such bond shall not exceed double the value of the personal estate; and when less than this sum it may be increased, or an additional bond may be required, whenever it shall be made to appear to the court that the bond as given is insufficient to secure the payment of the debts of the testator: *And provided further,* That whenever any party interested shall make it appear to the court that any executor who has given such bond only as is herein provided for is wasting the assets of the estate, or that the assets are in danger of being lost, wasted, or misappropriated, then the said executor may be removed or required to give additicnal bond with security in a penalty sufficient to secure the interests of all the creditors, distributees, and legatees entitled to take said estate, and on his failure to give bond as required his letters may be revoked; and upon such revocation the same results shall ensue as hereinafter provided in section 20–108. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 263; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "creditor, distributee, or legatee entitled to take under the will," and inserted in lieu thereof the words "party interested."

CROSS REFERENCES

Bonds required of trust companies, §§ 26–333, 26–334.
Liability of sureties for debt due from executor to estate, § 18–303.

NOTES TO DECISIONS

AVOIDANCE OF DEED

If deed was procured by undue influence and deceased grantor left a valid will, her executor had right to avoid the deed. *Kashouty* v. *Deep,* 1942 (126 F. 2d 233, 75 U. S. App. D. C. 259).

§ 20–303 [29: 133]. Special bond.

If the executor is the residuary legatee of the personal estate of the testator, or provided the residuary legatee of full age shall notify his consent to the court, he may, instead of the bond prescribed as aforesaid, give bond with security approved by the court, and in a penalty prescribed by the court, conditioned to pay all the debts and just claims against the testator, and all damages which shall be recovered against him as executor, and all legacies bequeathed by the will, in which case he shall not be required to file any inventory or render any account. And if such bond be given by the executor, he shall be answerable for the full amount of all debts, claims, and damages that may be recovered against him as executor as if he were sued in his own right, and any legatee may recover the full amount of his legacy in a suit on the executor's bond or in equity, and the giving of the bond shall be considered an assent to the legacy: *Provided,* That the surety or sureties in said bond shall not be liable for a greater amount than the penalty thereof. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 264.)

CROSS REFERENCE

See notes to § 20–302.

NOTES TO DECISIONS

ACTIONS ON BONDS

This section does not prevent recovery on special bond until debt or claim sued upon has been recovered in a separate action brought against executor. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

LIABILITY OF EXECUTOR

A special bond given by an executor who is also residuary legatee operates as an admission that there are sufficient assets in the estate to pay all debts and forecloses that question, and executor assumes thereby responsibility of payment of debts to the full extent of his personal estate. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

§ 20–304 [29: 134]. Joint executor—Joint or separate bond.

When two or more persons are appointed executors, the court may take a separate bond with security from each of them or a joint bond with security from all of them together. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 265.)

CROSS REFERENCE

See notes to § 20–302.

§ 20–305 [29: 135]. Letters of administration cum testamento annexo.

If there be only one executor named in the will, and he shall have been present at the probate of the will, and shall not within twenty days thereafter file a bond and qualify as executor by taking the oath aforesaid, letters of administration with the will annexed may be granted as if no executor had been named. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 266.)

§ 20–306 [29: 136]. Absent executor—Summons—Notice.

If said executor shall not have been present at the probate of the will, but shall be within the District, a summons may be issued to him, either at the instance of any person interested or ex officio by the register of wills, requiring him to appear and file his bond as required by law within twenty days after service of said summons; and if he be not found in said District, notice shall be given to him by publication to appear within thirty days after the first publication of said notice, and on his failure to appear and give his bond and qualify by taking the prescribed oath, as aforesaid, administration may be granted as if no executor had been named in the will. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 267; June 24, 1949, 63 Stat. 268, ch. 242, § 2.)

AMENDMENTS

The act of June 24, 1949, cited to text, struck out the words "twenty" and "within thirty days after the first publication", and inserted in lieu thereof, respectively, the words "five" and "within ten days after publication".

§ 20–307 [29: 137]. Summons to each of several executors.

If there be more than one executor named in a will, there may be the same proceeding with respect to each of them as if he were the sole executor, and any circumstances under which letters of administration may be granted on failure of a sole-named executor shall authorize the granting of letters testamentary to one or more of the executors on failure of one or more of the others; and any circumstances under which letters of administration may be granted on failure of a sole-named executor shall authorize the granting of such letters of administration on failure of all the executors named to appear and qualify as aforesaid. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 268.)

§ 20–308 [29: 138]. Renunciation.

If any executor named in a will shall file or transmit to the probate court an attested renunciation of his executorship, there shall be the same proceeding with respect to granting letters testamentary or of administration as if the party so renouncing had not been named in the will. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 269.)

§ 20–309 [29: 139]. Executor disqualified.

If any person named as executor be disqualified from serving, letters testamentary or of administration may be granted as if he had not been named as executor. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 270.)

§ 20–310 [29: 140]. No power to act without letters.

In case letters testamentary shall be granted to one or more of the executors named in a will on failure of the rest, no executor not named in said letters shall in any manner interfere with the administration; and if letters of administration with the will annexed shall be granted, no executor named in the will shall in any manner interfere with the administration; and no executor named in a will shall, before letters testamentary are granted to him, have any power to dispose of any part of the estate of the deceased or to interfere therewith, further than is necessary to collect and preserve the same. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 271.)

§ 20–311 [29: 141]. Form of letters testamentary.

The following shall be the form of letters testamentary to be issued under the seal of the probate term of the District Court of the United States for the District of Columbia:

District of Columbia, to wit:

The United States of America.

To all persons to whom these presents shall come, greeting:

Know ye that the last will and testament of ———, of ———, deceased, hath, in due form of law, been exhibited, proved, and recorded in the office of the register of wills of the District of Columbia, a copy of which is to these presents annexed, and administration of all the goods, chattels, and credits of the deceased is hereby granted and committed unto ———, the executor by said will appointed.

Witness (A B) the Chief Justice of the District Court of the United States for the District of Columbia, this ——— day of———.

Test: C D, Register of Wills.

(Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 272.)

COMPILER'S NOTE

The act of June 25, 1936, 49 Stat. 1921, ch. 804, changed the name of the Supreme Court to "District Court of the United States for the District of Columbia" and provided "Nothing in this Act shall affect the jurisdiction or functions of the court."

§ 20–312 [29: 142]. Executor of executor.

In no case shall the executor of an executor, as such, be entitled to administration de bonis non on the estate of the first deceased. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 300.)

Chapter 4.—COLLECTORS

Sec.
20–401. Letters ad colligendum.
20–402. Bond of collector—Oath—Form.
20–403. Duties of collector—Liability—Commission.
20–404. When powers to cease.
20–405. Liability of collector for refusing to deliver estate.

§ 20–401 [29: 151]. Letters ad colligendum.

Letters ad colligendum may be granted to one or more persons in case of a contest in relation to a will, or the absence of the executor from the District, or his delay in qualifying, or for other sufficient cause, and the form of such letters shall be as follows:

To all persons to whom these presents shall come, greeting:

Know ye that, whereas ———, of ———, deceased, had, as is said, at his decease, personal property within the District of Columbia, administration whereof can not immediately be granted, but which, if speedy care be not taken, may be lost, destroyed, or diminished, to the end that the same may be preserved for those who may appear to have a legal right or interest therein, we do hereby request and authorize ———, of ———, to secure and collect said property, wheresoever the same may be, in said District, whether the same be goods, chattels, debts, or credits, and to make a true inventory thereof and exhibit the same with all convenient speed, with an account of his collections, into the office of the register of wills.

Witness (A B) the Chief Justice of the District Court of the United States for the District of Columbia.

Test: C D, Register of Wills.

(Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 304.)

COMPILER'S NOTE

The act of June 25, 1936, 49 Stat. 1921, ch. 804, changed the name of the Supreme Court to "District Court of the United States for the District of Columbia" and provided "Nothing in this act shall affect the jurisdiction or functions of the court."

CROSS REFERENCES

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

Trust companies authorized to act, §§ 26–309 to 26–312, 26–316, 26–334.

§ 20–402 [29: 152]. Bond of collector—Oath—Form.

Every collector, except corporations authorized to act as such, before letters shall be issued to him, shall execute a bond to the United States, in a penalty and with security to be approved by said court, with the following condition:

"The condition of the above obligation is such that if the above bounden ——— shall well and honestly discharge the office of collector of the goods, chattels, and personal estate of ———, deceased, in the District of Columbia, and shall make or cause to be made a true and perfect inventory or inventories of such of said goods, chattels, personal estate, and debts as shall come to his possession or knowledge and make return of the same to the probate court of the District, and shall also deliver to the person or persons who shall be authorized by the court to receive them such of said goods, chattels, personal estate, and debts as shall come to his possession, except such as shall be allowed for by said court, then the said obligation shall be void; it shall otherwise be in full force and virtue at law."

And he shall also take and subscribe the following oath:

"I, ———, do swear that I will well and truly discharge the office of collector of the goods, chattels, and personal estate of ———, deceased, according to the tenor of the letters granted me by the probate court of the District of Columbia and the directions of law, to the best of my knowledge, so help me God." (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 305.)

CROSS REFERENCE

Bonds required of trust companies, §§ 26–333, 26–334.

§ 20–403 [29: 153]. Duties of collector — Liability — Commission.

The collector shall collect the goods, chattels, and personal estate of the deceased, including the debts due him, and cause the same to be appraised and return an inventory thereof, as an administrator is required to do, and may, under the authority of the court, sell perishable articles and bring suits for debts or other property, as an administrator may do, and shall account for the money recovered. The said collector may, if authorized by the court, take possession of, hold, manage, conserve, and control all real estate affected by the will or wills in dispute, and said collector shall discharge, pendente lite, all the duties of an administrator, including the payment of debts, and shall be liable to an action by any creditor of the deceased and shall be entitled to the protection of any provision of law expressly relating to executors and administrators.

Said collector may be allowed a commission not exceeding 10 per centum on the personal property, debts due the estate, and rentals from real estate actually collected by him.

In the event that such collector is authorized by the court to take possession of the real estate affected by such will or wills as hereinbefore set forth, the letters of collection shall so expressly specify, and his bond as such collector, in addition to the several matters set forth in section 20–402, shall specifically include the faithful performance of his duties with respect to such real estate. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 306; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

The 1920 amendment deleted the words "said collector may be authorized and directed by the court to discharge, pendente lite, all or any of the duties of an administrator, including the payment of debts" and inserted the second sentence of the first paragraph; raised the maximum from 3 to 10 per centum; and, added the last paragraph.

CROSS REFERENCE

Inventory after appointment of executor or administrator, § 18–407.

NOTES TO DECISIONS

ATTORNEY'S FEES

An attorney whose services are rendered to an estate at request of collector of estate may look to the estate for his compensation and measure of allowance to the attorney is such as court may consider proper in light of applicable facts. *Buck* v. *Putnam,* 1944 (146 F. 2d 662, 79 U. S. App. D. C. 295).

Where account of collector of estate showed collection of assets to amount of approximately $580,000, allowance of fee of $6,000 to collector's attorney for services rendered by him to collector in administration of estate was not an abuse of discretion. *Buck* v. *Putnam,* 1944 (146 F. 2d 662, 79 U. S. App. D. C. 295).

COMMISSION

Where account of collector of an estate showed collection of assets to amount of approximately $580,000, allowance of a commission of 1½ percent of fund handled by collector during the 10-month period which he served was not an abuse of discretion. *Buck* v. *Putnam,* 1944 (146 F. 2d 662, 79 U. S. App. D. C. 295).

DECISIONS UNDER PRIOR LAW

Probate court has authority, in case of the contest of a will, to appoint a collector of the personal estate, under sec. 304 of the 1901 Code (31 Stat. 1237, ch. 854 (§ 20–401)), and his powers, when so appointed, are those in general of a temporary administrator. *Hutchins* v. *Dante* (40 App. D. C. 262).

Duty of executors and trustees in respect to the payment of income is merely ministerial, and the collector, acting as administrator, may, under the court's direction, temporarily perform that duty. *Hutchins* v. *Hutchins* (41 App. D. C. 122).

Under secs. 306–308 of the 1901 Code (31 Stat. 1238, ch. 854 (§§ 20–403 to 20–405)), collectors may bring suits, but there is no expression permitting suits to be brought against them. *Berry & Whitmore Co.* v. *Dante* (43 App. D. C. 110).

Attorneys rendering services to the estate may recover fees from collector when such services were requested by collector in his representative capacity. *Brandenburg* v. *Dante* (49 App. D. C. 141, 261 Fed. 1021).

POWERS OF COLLECTOR

Collector has no power under this section (as amended) to prosecute appeal from order disbarring his decedent from practice of law. *Metzger* v. *O'Donoghue* (53 App. D. C. 107, 288 Fed. 461).

A collector of an estate for time being performs all duties and exercises all powers of an administrator. *Buck* v. *Putnam,* 1944 (146 F. 2d 662, 79 U. S. App. D. C. 295).

§ 20–404 [29: 154]. When powers to cease.

On the granting of letters testamentary or of administration the power of any such collector shall cease, and it shall be his duty to deliver, on demand,

all the property and money of the decedent in his hands, except as before excepted, to the person obtaining such letters, and the executor or administrator may be permitted to prosecute any suit commenced by said collector as if the same had been begun by said executor or administrator, and may also defend any suit brought against said collector by any creditor of the deceased. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 307; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

The 1920 amendment added the last phrase.

CROSS REFERENCE

See notes to § 20–403.

NOTES TO DECISIONS

SERVICES OF ATTORNEY

This section contemplates that the collector may bind the estate for the services of counsel. *Brandenburg* v. *Dante* (49 App. D. C. 141, 261 Fed. 1021).

VARIANCE BETWEEN DECREE AND ORDER

Where petitioner, seeking writ of habeas corpus, had been ordered to turn over concealed assets to collector of deceased's estate, whereas petitioner was held in contempt on petition of executor of estate for failing to deliver assets to the executor who had been appointed subsequent to the entry of the turn-over order, alleged variance between contempt decree and the turn-over order was not "fatal," since, upon the grant of letters to the executor, he was entitled to prosecute any suit commenced by the collector as if the suit had been begun by the executor. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

§ 20–405 [29: 155]. Liability of collector for refusing to deliver estate.

If the said collector shall neglect or refuse to deliver over the property and estate to the executor or administrator, the court may, by citation and attachment, compel him to do so, and the executor or administrator may also proceed, by civil action, to recover the value of the assets from him and his sureties by action on his bond. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 308; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

The 1920 amendment deleted the following: "Such collector shall not be liable to an action by any creditor of the deceased."

CROSS REFERENCE

See notes to § 20–403.

NOTES TO DECISIONS

RIGHT TO SUE

Congress was careful to use words that in no way abridged the right to pursue such a remedy of one in whose favor the remedy was inferentially recognized in the preceding sections. *Brandenburg* v. *Dante* (49 App. D. C. 141, 261 Fed. 1021).

Chapter 5.—SUITS

Sec.

20–501. Suits by and against executors or administrators.
20–502 Judgments against executor or administrator—Amount of damages—When assessed.
20–503. Concealment of assets by strangers.
20–504. Concealment by executor or administrator.
20–505. Foreign executors and administrators—Suits by.
20–506. Suits on bonds against heirs.

§ 20–501 [29: 251]. Suits by and against executors or administrators.

Executors and administrators shall have full power and authority to commence and prosecute any personal action at law or in equity which the testator or intestate might have commenced and prosecuted: *Provided, however,* That in tort actions, the said right of action shall be limited to damages for personal injury except for pain and suffering resulting therefrom; and they shall also be liable to be sued in the District Court of the United States for the District of Columbia in any action at law or in equity, except as aforesaid, which might have been maintained against the deceased; and they shall be entitled to or answerable for costs in the same manner as the deceased would have been, and shall be allowed for the same in their accounts, unless it shall appear that there were not probable grounds for instituting or defending the suits in which judgments or decrees shall have been given against them. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 327; June 30, 1902, 32 Stat. 529, ch. 1329; June 19, 1948, 62 Stat. 488, ch. 508, § 2).

AMENDMENTS

The 1902 amendment deleted the words "slander and for" and inserted after the word "person" the words "or to the reputation."

The 1948 amendment deleted the words "except actions for injuries to the person or to the reputation" and substituted the words: *"Provided, however,* In tort actions, the said right of action shall be limited to damages for personal injury except for pain and suffering resulting therefrom."

CROSS REFERENCES

Action for wrongful death, § 16–1201 et seq.

Jurisdiction, pleading, and practice in probate court, §§ 11–501 to 11–520.

Property may be attached, § 16–313.

Prosecution of suits begun by collectors, § 20–404.

Set-off, § 16–1908.

CITED

Tuohy v. *Trail* (19 App. D. C. 79); *Clawans* v. *Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

NOTES TO DECISIONS

ATTACHMENT OR GARNISHMENT

The District Court for District of Columbia has exclusive jurisdiction of suits against an executor on claims against the estate, but an attachment or garnishment directed to an executor, in connection with an action against a third party who claims an interest in the estate, is not a "suit against executor" within jurisdiction of district court. *Frank* v. *Malone,* 1942 (126 F. 2d 651, 75 U. S. App. D. C. 296).

COMPROMISE

Where executor reasonably believed that estate was entitled to claim Government bonds notwithstanding their registration in names of decedent or another person, and reasonably claimed an interest in savings account deposits which were made entirely from decedent's money, and when question of ownership of bonds and deposits was first raised, such other person might have made claim of complete ownership of both, the situation furnished the basis for a valid compromise and settlement of the respective claims. *Magruder* v. *National Metropolitan Bank of Wash.* (D. C. Mun. App. 1945, 40 A. 2d 828).

CONSTRUCTION

While perhaps proviso excepting damages for pain and suffering is somewhat inartistically drawn, nevertheless

it is not ambiguous and the legistlative history supports this conclusion. *Phillips* v. *Lust* (D. C. D. C. 1949, 82 F. Supp. 63).

JURISDICTION OF SUIT

"An executor or administrator cannot be sued in another jurisdiction than that which the administration of the estate is depending, for an accounting, or for acts involving the administration of the estate, or the assets thereof in his hands as such executor or administrator." *Johns* v. *Herbert* (2 App. D. C. 485).

If, however, he becomes a trustee of the property, after the estate should be closed, "he is amenable to suit in the courts of any jurisdiction within which he may be found." *Johns* v. *Herbert* (2 App. D. C. 485).

"An administrator or executor cannot sue or be sued in his representative capacity in any other jurisdiction than the one of his appointment, except where it is permitted by the laws of the jurisdiction in which the suit is sought to be maintained." *Bryan* v. *Curtis* (30 App. D. C. 234), citing *Plumb* v. *Bateman* (2 App. D. C. 156).

The right conferred by section 329 of the 1901 code (§ 20–505) does not imply "that suit can be maintained in the courts of the District against such administrator or executor." *Bryan* v. *Curtis* (30 App. D. C. 234, cited with approval in *Ryan* v. *McAdoo*, 46 App. D. C. 117).

Section 1 of the Municipal Court Act (41 Stat. 1310), this section, and section 328 of the 1901 code (§ 20–502) are in pari materia, and must be construed together. The municipal court has no jurisdiction over suits against executors or administrators. *Sanford* v. *Sanford* (52 App. D. C. 315, 286 Fed. 777).

PARTIES

Where mortgagor executed mortgage covering Pennsylvania realty and died resident of Pennsylvania, mortgagor's administrator was a "necessary party" to suit for an accounting against mortgagees by executrix of estate of mortgagor's mother who was the mortgagor's sole heir. *Cain* v. *Hutson*, 1942 (127 F. 2d 19, 75 U. S. App. D. C. 335, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

RELIANCE ON STATUTE

In a prior case, § 20–501 of Code was construed as not only permitting but requiring the presence of an executor as a plaintiff in action of this nature, and as such case has not been changed or overruled, etc., executors were warranted in relying upon the Code provision, so construed, as direct statutory authority to institute action to avoid a deed. *Ramsey* v. *Curtis* (C. A. D. C. 1950, 182 F. 2d 687, 86 U. S. App. D. C. 386).

SALE BY EXECUTOR

When will directs the executor to sell the real estate of testator, the legal title vests in him and he has the power to convey, and also authority to enforce specific performance of contract for the sale. *Griffith* v. *Stewart* (31 App. D. C. 29, affd. 217 U. S. 323, 54 L. Ed. 782, 30 Sup. Ct. 528, 19 Ann. Cas. 639).

§ 20–502 [29:252]. Judgments against executor or administrator—Amount of damages—When assessed.

If the verdict of the jury in any suit against an executor or administrator be against such executor or administrator, or if he shall be willing to confess judgment, and the debt or damages which the deceased (if he or she were alive) ought to pay be ascertained by verdict, or confession, or otherwise, the court shall thereupon assess the sum which the executor or administrator ought to pay, regard being had to the amount of assets in his hands and the debts due to other persons; and if it shall appear to the court that there are assets to discharge all just claims against the deceased, the judgment shall be for the whole debt or damages found by the jury, or confessed, or otherwise ascertained, and costs; and if it shall appear to the court that there are not assets to discharge all such just claims, the judgment shall be for such sum only as bears a just proportion to the amount of the debt or damages and costs, regard being had to the amount of all the just claims and of the assets—that is to say, as the amount of all the said claims shall be to the assets, so shall the amount of the said debt or damages and costs be to the sum required, for which judgment is to be given.

And in no case shall the court proceed to assess as aforesaid and to pass such judgment against an executor or administrator until the time limited by law or by the court for the executor or administrator to pass his account shall have expired: *Provided,* That the said executor or administrator shall make oath (or affirmation, as the case may require) that he hath not assets to discharge all such just claims; and the account settled by the probate court, in which the debt or damages sued for ought to be stated, shall be evidence to show the amount of assets and claims; and the court shall have power, when the real debt or damages are ascertained, to refer the matter to an auditor to ascertain the sum for which judgment shall be given; and in case the judgment shall be for a sum inferior to the real debt or damage and costs, it shall go on and say "that the plaintiff be entitled to such further sum as the court shall hereafter assess on discovery of further assets in the hands of the defendant"; and the court, at any time afterwards, when applied to by the plaintiff, on three days' notice to the defendant or his attorney, may assess and give judgment for such further proportionable sum as the plaintiff shall appear entitled to, regard being had as aforesaid to the amount of the debt and other claims; and on any judgment passed as aforesaid a fieri facias may issue against the defendant, and either his own goods or the goods of the deceased may be thereupon taken and sold, and it shall be the duty of the executor or administrator to discharge said judgment or put it on a footing with other just claims, and on failure his administration bond may be put in suit by the plaintiff. (Mar. 3, 1901, 31 Stat. 1242, ch. 854, § 328.)

CROSS REFERENCE

See notes to § 20–501.

NOTES TO DECISIONS

ASSETS

"Assets" for purpose of determining sufficiency of "assets" to discharge just claims of estate means property, real or personal, tangible or intangible, legal or equitable, which can be made available for, or can be appropriated to, the payment of debts. *Stoner* v. *National Metropolitan Bank of Washington* (D. C., D. C. 1948, 77 F. Supp. 699).

DEFENSES

Executors sued for debt or damages and making oath under this section as to insufficiency of assets cannot successfully raise such defense by merely raising doubt as to sufficiency of assets or leaving matter vague, but must establish precisely the condition of estate so that court may not know exactly what part of claim should be allowed, and hence oath that "executors cannot determine that they will have sufficient assets to pay all claims" was insufficient. *Stoner* v. *National Metropolitan Bank of Washington* (D. C., D. C. 1948, 77 F. Supp. 699).

JUDGMENT—AMOUNT

In action against an executor on a demand, unless defense of insufficiency of assets is interposed, judgment may be entered for the full amount of demand sued on. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

JUDGMENT—ENFORCEMENT

In action against an executor on a demand, a fieri facias may issue against the executor, and either his own goods or goods of deceased may be taken and sold. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

JUDGMENT—ENTRY

Final judgment would not be entered against administratrix of one liable for accounting until plaintiff had complied with this section governing judgments against executor or administrator, and court would retain jurisdiction for purpose of enabling plaintiff to comply and of entering final judgment. *Cafritz* v. *Corporation Audit Co.* (D. C., D. C. 1945, 60 F. Supp. 627).

JURISDICTION OF SUIT

Section 1 of the Municipal Court Act (§ 11–703) and sections 327 and 328 of the 1901 Code (§§ 20–501, 20–502) are in pari materia, and must be construed together. Cases covered by said sections 327 and 328 are to be treated as exceptions to those coming within the purview of section 1. *Sanford* v. *Sanford* (52 App. D. C. 315, 286 Fed. 777).

PROCEDURE IN COLLECTION OF CLAIMS

Proceeding for collection of claims against estate is against executor in his official capacity to determine amount of demand sued on, the value of assets in hands of executor, and proration of the two. *Hawley* v. *Hawley,* 1940 (114 F. 2d 745, 72 App. D. C. 376).

§ 20–503 [29: 253]. Concealment of assets by strangers.

If an executor, administrator, or collector shall believe that any person conceals any part of his decedent's estate, he may file a petition in said court alleging such concealment, and the court may compel an answer thereto on oath; and if satisfied, upon an examination of the whole case, that the party charged has concealed any part of the estate of the deceased, the court may order the delivery thereof to the executor, administrator, or collector, and may enforce obedience to such order in the same manner in which orders of said court may be enforced. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 122.)

CROSS REFERENCE

Criminal penalty for concealing or converting assets of estate, § 22–1404.

NOTES TO DECISIONS

DETERMINATION OF OWNERSHIP

On petition of creditor, court is without jurisdiction to order fund in possession of third person (who claims an interest therein) paid into the registry of the court. *Cook* v. *Speare* (13 App. D. C. 446).

Purpose of section is to furnish prompt remedy for discovery of assets and their reduction to possession when discovered. "But we are unable to find a further intention to confer upon the probate court jurisdiction to determine the question of the actual ownership of such property" as between executor and rival claimant. *Richardson* v. *Daggett* (24 App. D. C. 440).

PROBATE COURT JURISDICTION

The probate court of the District of Columbia does not have jurisdiction to decide disputes concerning title or possession of property, as between representatives of an estate and strangers who claim adversely to the estate. *Watkins* v. *Rives* (App. D. C. 1941, 125 F. 2d 33).

Where petitioner had offered for probate a will in which he was named executor and he acted upon his testamentary authority and did not question jurisdiction of probate court of District of Columbia over him until after an earlier will had been admitted to probate, and rule had been sought by new executor to require the petitioner to show cause why he should not be adjudged in contempt for failure to comply with a turn-over order, the petitioner's conduct constituted a "waiver" of objection that he became a stranger to the estate from the moment that the will which he had offered for probate was declared invalid, and that therefore probate court was without jurisdiction to adjudge him in contempt. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

§ 20–504 [29: 254]. Concealment by executor or administrator.

If any person interested in any decedent's estate shall by petition allege that the executor, administrator, or collector has concealed or has in his hands and has omitted to return in the inventory or list of debts any part of his decedent's assets, and the court shall finally adjudge and decree in favor of the allegations of the petition, in whole or in part, it shall order an additional inventory or list of debts, as the case may be, to be returned by the executor, administrator, or collector, and appraisement to be made accordingly, to comprehend the assets omitted, and the court may compel obedience to said order, and, if the same is not complied with, revoke the letters testamentary or of administration or of collection and order the bond of the executor, administrator, or collector to be put in suit. (Mar. 3, 1901, 31 Stat. 1210, ch. 854, § 124.)

CROSS REFERENCE

Criminal penalty for concealing or converting assets of estate, § 22–1404.

NOTES TO DECISIONS

JURISDICTION

Where an executor asserts title to assets adversely to the decedent's estate, the probate court of the District of Columbia has jurisdiction under statute to try the question of title thereby presented. *Watkins* v. *Rives,* 1942 (125 F. 2d 33, 75 U. S. App. D. C. 109).

RIGHT TO HEARING

Petition charging executor with concealing assets is a pleading only and not evidence; and executor is entitled to his day in court—in other words, to a trial upon the evidence. *Brosnan* v. *Brosnan* (53 App. D. C. 149, 289 Fed. 547, citing *Williams* v. *Williams* 24 App. D. C. 214); *Guthrie* v. *Welch* (24 App. D. C. 562).

§ 20–505 [29: 255]. Foreign executors and administrators—Suits by.

It shall be lawful for any person or persons to whom letters testamentary or of administration have been granted by the proper authority in any of the United States or the territories thereof to maintain any suit or action and to prosecute and recover any claim in the District in the same manner as if the letters testamentary or of administration had been granted to such person or persons by the proper authority in the said District; and the letters testamentary or of administration, or a copy thereof certified under the seal of the authority granting the same, shall be sufficient evidence to prove the granting thereof, and that the person or persons, as the case may be, hath or have administration: *Provided, nevertheless,* That the probate court of the District shall have the power, upon the petition of anyone interested, to require from such person or persons the security required by law in like cases from a

resident administrator or executor, or the said court may grant auxiliary or ancillary letters, as the case may require, to the same or other persons. (Mar. 3, 1901, 31 Stat. 1242, ch. 854, § 329.)

CROSS REFERENCE

See notes to § 20–501.

NOTES TO DECISIONS

ANCILLARY LETTERS, PERSONS ENTITLED TO

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. *Purcell* v. *Cramton,* 1944 (143 F. 2d 22, 79 U. S. App. D. C. 99).

The requirement of § 20–301, that when any will shall have been authenticated and admitted to probate letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust, does not apply to ancillary letters. *Purcell* v. *Cramton,* 1944 (79 U. S. App. D. C. 99).

Ordinarily ancillary letters are granted to the domiciliary executor or administrator. *Purcell* v. *Cramton,* 1944 (143 F. 2d 22, 79 U. S. App. D. C. 99).

PARTIES IN SPECIFIC PERFORMANCE

Such an executor may maintain specific performance without joining heirs. *Griffith* v. *Stewart* (31 App. D. C. 29, affd. 217 U. S. 323, 54 L. Ed. 782, 30 Sup. Ct. 528, 19 Ann. Cas. 639).

WHAT LAW GOVERNS

"Letters of administration obtained in the jurisdiction of the domicil of the decedent prevail over letters of administration de bonis non granted in this District, and the statute confers upon such foreign administrator the right 'to recover from any individual within the District of Columbia effects or money belonging to the testator or intestate, and that letters testamentary or of administration obtained in either of the States or Territories of this Union give a right to the person having them to receive or give discharges for assets, without suit, which may be in the hands of any person in the District of Columbia.' *Kane* v. *Paul* (14 Pet. (39 U. S.) 33, 10 L. Ed. 341)." *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313).

A suit filed by a Maryland executor for specific performance of a contract to buy realty located in Maryland must be governed by the law of that state. *Griffith* v. *Stewart* (31 App. D. C. 29, affd. 217 U. S. 323, 54 L. Ed. 782, 30 Sup. Ct. 528, 19 Ann. Cas. 639).

Local administrator, however, may maintain action for death by wrongful act over the objection of the defendant where "the foreign executor did not attempt to bring this suit, and is not here complaining because it was brought by appellee. In such a situation, we think, he may be presumed to have waived any right conferred upon him by the local statute, and that such waiver may be taken advantage of by the real party in interest." *Southern R. Co.* v. *Hawkins* (35 App. D. C. 313). See *Western Union Tel. Co.* v. *Lipscomb* (22 App. D. C. 104).

Under this section, the domiciliary administrator of a Michigan decedent's estate might have the estate in the District of Columbia administered by the probate court, or might apply for the appointment of an ancillary administrator. *Wiggins* v. *Mayer* (57 App. D. C. 293, 22 Fed. (2d) 869).

While authorizing a domiciliary administratrix to sue in the courts of the District of Columbia, this section limits the purposes of such suits and, by implication, limits exercise of the power to situations in which no ancillary administration has been granted in the District. *Duehay* v. *Acacia Mut. Life Ins. Co.* (70 App. D. C. 245, 105 Fed. (2d) 768).

Nothing contained in this section reveals an intention on the part of Congress to abandon the well-established principle of law which governs ancillary administrations. *Duehay* v. *Acacia Mut. Life Ins. Co.* (70 App. D. C. 245, 105 Fed. (2d) 768).

§ 20–506 [29: 256]. Suits on bonds against heirs.

No creditor by a bond which purports to bind the heirs of the obligor shall be entitled to sue the heirs at common law in respect of assets descended to them, but debts by specialty and by simple contract, without distinction, shall be payable primarily out of the personal estate, and, if that be insufficient, shall be payable equally and without preference out of the proceeds of the real estate. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 360.)

NOTES TO DECISIONS

REAL ESTATE MORTGAGES

Debts by specialty and by simple contract, shall be payable primarily out of the personal estate. Mortgage on devised real estate must be paid out of the personal property. *Tracy* v. *Atwell* (58 App. D. C. 397, 32 Fed. (2d) 392).

Chapter 6.—ACCOUNTS

Sec.
20–601. First account within twelve months.
20–602. Subsequent accounts.
20–603. Failure to account.
20–604. Assets to be charged.
20–605. Disbursements and allowances.
20–606. Bequests to executors.
20–607. Executor of deceased executor or administrator to render account.
20–608. Accounts of deceased executrix or administratrix.
20–609. Lost property.
20–610. Executor or administrator of deceased executor or administrator entitled to commission—To render accounts.

§ 20–601 [29: 261]. First account within twelve months.

Every executor and administrator shall render to the probate court within the period of twelve months from the date of his letters the first account of his administration: *Provided,* That said account may be rendered six months from the date of his letters. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 361; June 24, 1949, 63 Stat. 268, ch. 242, § 7.)

AMENDMENTS

The act of June 24, 1949, cited to text, added the proviso.

CROSS REFERENCE

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

§ 20–602 [29: 262]. Subsequent accounts.

If the first account shall not show the estate which was on hand to be fully administered, other accounts shall be rendered from time to time until the estate is fully administered under such rules as the District Court of the United States for the District of Columbia may establish. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 362; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The original act provided for the return of accounts every six months until estate be fully administered.

§ 20–603 [29: 263]. Failure to account.

If an executor or administrator shall fail to return an account within the time limited by law or fixed by the rules of court, or within such further time as

the probate court shall allow, his letters, on application of any person interested, may be revoked and administration granted at the discretion of the court. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 363; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1901 act provided further that "the administrator to whom letters may be granted shall be entitled to put the delinquent's bond in suit" and provided for the recovery of damages; this was deleted by the 1902 amendatory act.

§ 20–604 [29: 264]. Assets to be charged.

In such account shall be stated, on one side, the assets which have come to his hands, according to the inventory or inventories returned to the court or received and appraised as herein directed, after the inventory or inventories returned, and the sales made under the court's direction—that is to say, the inventory or inventories are to show the articles of the estate, and the sales, the amount of their value, where they have been sold, and for articles so sold he shall be charged the price according to the return; and if any articles have been sold for credit and not yet paid for they shall be accounted for in a subsequent account, and all moneys received for debts due the decedent shall be included in said account. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 364.)

NOTES TO DECISIONS

COUNSEL FEES

Counsel fees for defending will be charged against the estate. *McIntire* v. *McIntire* (192 U. S. 116, 48 L. Ed. 369, 24 Sup. Ct. 196, affg. 14 App. D. C. 337).

EFFECT OF SETTLEMENT

Settlement of administrator's first and final accounts held not to be given the effect of an adjudication of distributee's rights. *Claudy* v. *Duvall* (55 App. D. C. 319, 5 Fed. (2d) 381).

INCOME FROM SPECIFIC BEQUESTS

Dividends accruing after death of testatrix upon shares of stock specifically bequeathed are not subject to administrative costs until residuary bequests are exhausted. *Nash* v. *Ober* (2 App. D. C. 304).

INTEREST ON ASSETS

If executor mingles money belonging to estate with his own or is negligent in not paying it over or investing it to render it productive, he is chargeable with interest. *Mades* v. *Miller* (2 App. D. C. 455).

§ 20–605 [29: 265]. Disbursements and allowances.

On the other side shall be stated the disbursements by him made, namely: First. Funeral expenses, to be allowed at the discretion of the court, according to the condition and circumstances of the deceased, not exceeding three hundred dollars: *Provided,* That for special cause shown the court may make such additional allowance not exceeding three hundred dollars as such special circumstances may warrant. Second. The debts of the deceased proved or passed as herein directed, and paid or retained. Third. The allowance for things lost, or which have perished without the party's fault, which allowance shall be according to the appraisement. Fourth. His commissions, which shall be at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventory or inventories, excluding what is lost or perished. Fifth. His allowance for costs, attorneys' fees, and extraordinary expenses which the court may think proper to allow. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 365; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

The 1902 amendment changed the allowance from $600 to $300 and added from the proviso in the first sentence.

CROSS REFERENCES

Allowance of attorneys' fees, see notes to § 11–504.
Priority of payment, § 18–520.
See § 20–610 and annotations relative to commission.

NOTES TO DECISIONS

AUTHORITY FOR PAYMENTS

An executor should not make payments to himself on account of commissions until he has been authorized by court to do so. *Doherty* v. *Stoner* (C. A., D. C., 1948, 169 F. 2d 965).

Where it was certain, because of size of inventory and provision of will fixing his compensation at 10% thereof, that executor would ultimately be entitled to commissions largely in excess of advances on commissions which he prematurely paid to himself, and that executor had substantially completed his work, unauthorized withdrawals by executor resulted in no harm to estate, and executor would not be charged with interest on commissions which he withdrew prematurely. *Doherty* v. *Stoner* (C. A., D. C. 1948, 169 F. 2d 965).

COMPENSATION OF EXECUTOR OR ADMINISTRATOR

This section "places a limitation beyond which the court may not go in allowing compensation for the services of an executor or administrator, or executors or administrators, in administering an entire estate." *Brosnan* v. *Fox* (52 App. D. C. 143, 284 Fed. 923).

"In the case of succession the court must make only such allowances * * * to the succeeding executors or administrators within the limitation fixed by the statute." *Brosnan* v. *Fox* (52 App. D. C. 143, 284 Fed. 923).

The court has power to compensate an executor for defending the validity of a contested will, which is finally adjudicated void. *Brosnan* v. *Fox* (52 App. D. C. 143, 284 Fed. 923, citing *Hutchins* v. *Hutchins* 48 App. D. C. 286).

COMPUTATION OF COMMISSIONS

Where executor sold testatrix' realty, executor was entitled to have his commission based on gross sale price rather than net sum received, notwithstanding that debts and charges were taken out of sale price by title insurance company which handled the settlement after sale and that only the net sum was turned over to executor. *Doherty* v. *Stoner* (C. A., D. C. 1948, 169 F. 2d 965).

Where testatrix on date of her death had on deposit in local bank the sum of $44,219.73, and bank held her note for $25,000, and on due date, which was before executor qualified, bank charged testatrix' account with principal of note and accrued interest, so that executor succeeded to a credit of only $19,053.06, entire deposit of $44,219.73 was properly a part of inventory upon which executor's commissions were to be calculated. *Doherty* v. *Stoner* (C. A., D. C. 1948, 169 F. 2d 965).

No case is made for payment to executor in operating decedent's business over and above the amount already permitted by the Code. *Stoner* v. *Doherty* (C. A. D. C. 1950, 182 F. 2d 673, 86 U. S. App. D. C. 368).

DISCRETION OF COURT

Provision in will directing that executor be allowed maximum compensation permitted by law nullified court's discretion under this section as to amount of executor's commissions. *Doherty* v. *Stoner* (C. A., D. C. 1948, 169 F. 2d 965).

EFFECT OF SETTLEMENT OF FINAL ACCOUNTS

Settlement of administrator's first and final accounts held not to be given the effect of an adjudication of distributee's rights. *Claudy* v. *Duvall* (55 App. D. C. 319, 5 Fed. (2d) 381).

FUNERAL EXPENSES

A child's guardian would be granted permission to pay funeral expenses of child's mother in a reasonable amount out of estate received by child and where such allowances out of a decedent's estate were limited by this section to a maximum of $600, payment would be authorized in that amount instead of the sum of $821 prayed for. *In re Fitzwater's Guardianship* (App. D. C. 1947, 69 F. Supp. 866).

This section placing a limit of $600 on disbursements by executor or administrator for funeral expenses means $600 for a funeral within the District of Columbia, so that where a body has been transported from the District of Columbia for burial elsewhere executor or administrator may disburse not more than $600 for expenses in the District of Columbia and not more than $600 for expenses outside of the District of Columbia. *In re Tunison's Estate* (D. C., D. C. 1948, 75 F. Supp. 573).

INVENTORY ITEMS

Disbursements for payroll, operating and miscellaneous expenses incurred in continuing a business until its sale are not inventory items within the meaning of the section authorizing commissions. *Stoner* v. *Doherty* (C. A. D. C. 1950, 182 F. 2d 673, 86 U. S. App. D. C. 368).

NO ALLOWANCE PRIOR TO FINAL SETTLEMENT

"An executor, prior to final settlement of the estate, or the termination of his services in connection with the estate, is not entitled to an allowance of commissions." *Brosnan* v. *Fox* (52 App. D. C. 143, 284 Fed. 923).

An executor is not entitled to commission prior to final settlement of estate or termination of his services, but such rule should not be applied in such a way as to create unnecessary hardship. *Doherty* v. *Stoner* (C. A., D. C. 1948, 169 F. 2d 965).

§ 20–606 [29: 266]. Bequests to executors.

If anything be bequeathed to an executor by way of compensation, no allowance of commission shall be made unless the said compensation shall appear to the court to be insufficient; and if so, it shall be reckoned in the commission to be allowed by the court. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 366.)

CROSS REFERENCE

See § 20–610 and annotations as to allowance of commission.

§ 20–607 [29: 267]. Executor of deceased executor or administrator to render account.

The executor or administrator of a deceased executor or administrator who shall die before an account of his administration hath been rendered shall render an account showing the amount of the assets received and the payments made by his decedent, and the account shall, if found by the court to be correct, be admitted to record as other administration accounts. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 370.)

CROSS REFERENCE

Other provisions concerning accounting for deceased executor or administrator, § 20–110.

§ 20–608 [29: 268]. Accounts of deceased executrix or administratrix.

The husband of an executrix or administratrix who shall die before a final account of her administration shall have been settled shall render such account, if required by the court, showing thereby the amount of money and property received and of payments and disbursements made by such executrix or administratrix, or that may have been received or paid by him, and not before accounted for with the court; and the account so rendered shall, if found by the court to be correct, be admitted to record as other administration accounts in cases where the executrix or administratrix rendered them in person; and in case of refusal of the husband to render such account, the court may proceed against him by attachment, and may commit him until he shall render such account. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 371.)

§ 20–609 [29: 269]. Lost property.

The probate court shall have power to make allowance to any executor, administrator, or collector for property of the decedent which hath perished or been lost without the fault of the party; and no profit shall be made and no loss sustained by an executor or administrator in the increase or decrease of the estate under his management; but he shall return an inventory and account for such increase, and may be allowed for such decrease on the settlement of the final or other account. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 372.)

§ 20–610 [29: 270]. Executor or administrator of deceased executor or administrator entitled to commission—To render accounts.

The executor or administrator of the deceased executor or administrator shall return, on oath, to the court, on or before the day named as provided in section 20–111, a list of the bonds, notes, accounts, and money provided in section 20–110, and shall be entitled to retain out of the money such commission as the court shall allow, not exceeding ten per centum on the principal inventory, and the personal estate and money turned over by him shall be assets in the hands of the administrator de bonis non, to be accounted for by him as such. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 303.)

NOTES TO DECISIONS

AGREEMENTS AS TO COMPENSATION

"An executor or administrator may agree to serve for less than the compensation fixed in the statute, and if he does so the agreement will be enforced." *Washington Loan & Trust Co.* v. *Convention of Protestant Episcopal Church* (54 App. D. C. 14, 293 Fed. 833, 34 A. L. R. 913).

COMPENSATION FIXED BY WILL

Executor qualifying under will fixing commission at 3 per cent. can not subsequently claim a larger sum, although it acted on advice of counsel that the limitation was void and stated in its petition that it based its application on that advice. *Washington Loan & Trust Co.* v. *Convention of Protestant Episcopal Church* (54 App. D. C. 14, 293 Fed. 833, 34 A. L. R. 913, citing *McIntire* v. *McIntire,* 14 App. D. C. 337, affd. 192 U. S. 116, 48 L. Ed. 369, 24 Sup. Ct. 196). As to allowance of commission, see also *Sinnott* v. *Kenaday* (14 App. D. C. 1); *Marfield* v. *McCurdy* (25 App. D. C. 342); *Howard* v. *Howard* (38 App. D. C. 575); *Brosnan* v. *Fox* (52 App. D. C. 143, 284 Fed. 923).

TIME FOR PAYMENT

Generally, an executor's commissions should be withheld until final settlement of the estate or termination of his services, but this rule is one of caution and should not be applied so as to create unnecessary hardship. *Maloney* v. *Foundry M. E. Church,* 1944 (139 F. 2d 388, 78 U. S. App. D. C. 263).

Where the bulk of an estate had been collected and the balance appeared to be dependent on the results of long litigation, the executor, claiming a commission of 5 percent of the principal assets converted to cash, should be given an opportunity to show that postponement of payment would be an unreasonable hardship not necessary

to protect the estate against his resignation or disqualification. *Maloney* v. *Foundry M. E. Church,* 1944 (139 F. 2d 388, 78 U. S. App. D. C. 263).

In its discretion, after hearing evidence, the court may allow advance payment of an executor's commissions if it finds that otherwise unavoidable delay in final settlement will cause an unreasonable hardship and there is no reasonable probability that the remaining amount will be insufficient to satisfy claims of a possible successor. *Maloney* v. *Foundry M. E. Church,* 1944 (139 F. 2d 388, 78 U. S. App. D. C. 263).

Chapter 7.—ESTATES OF ABSENTEES AND ABSCONDERS

Sec.
20–701. Petition for appointment of receiver, where absentees interested in property—United States Attorney necessary party.
20–702. Warrant to United States marshal—Fees of marshal.
20–703. Notice of hearing to absentee and interested parties.
20–704. Time of hearing—Publication and posting of notice.
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20–707. Receiver may take possession of additional property of and debts due absentee—Appointment of receiver.
20–708. Procedure where absentee left only debts due him—Appointment of receiver.
20–709. Care, custody, sale of property.
20–710. Support of absentee's wife and minor children.
20–711. Receiver may adjust claims of or against estate.
20–712. Compensation of receiver—Interest of absentee in property to cease after fourteen years.
20–713. Distribution after fourteen years as if absentee had died intestate.
20–714. Time for distribution and accounting when receiver not appointed within thirteen years.
20–715. Sections 14–501, 14–502 not affected.

§ 20–701 [29: 304]. Petition for appointment of receiver, where absentees interested in property—United States Attorney necessary party.

If a person entitled to or having an interest in property in the District of Columbia has disappeared or absconded from the District of Columbia, and it is not known where he is, or if such person, having a wife or minor child, dependent to any extent upon him for support, has disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or if his whereabouts is known and he has been without the District of Columbia continuously for two years or longer, anyone who would under the law of the District of Columbia be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, any suitable person, or such wife, or someone in her or such minor's behalf, may file a petition under oath in the District Court of the United States for the District of Columbia, sitting in equity, stating the name, age, occupation, and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residence of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of his property, real and personal, so far as known, within the District of Columbia, and praying that such property may be taken possession of and a receiver thereof appointed under the provisions of sections 20–701 to 20–715. The United States attorney in and for the District of Columbia shall be made a party to every such petition and shall be given due notice of all subsequent proceedings under said sections. (Apr. 8, 1935, 49 Stat. 111, ch. 46, § 1; June 25, 1936, 49 Stat. 1921, ch. 804.)

AMENDMENT

The 1936 act changed the name of the Supreme Court to the District Court of the United States for the District of Columbia.

CROSS REFERENCES

Conveyances of real estate acquired after absence of wife for seven years not subject to dower, § 18–204.

Jurisdiction, pleading, and practice in probate court, §§ 11–501 to 11–520.

Presumption of death after seven years, § 14–501.

NOTES TO DECISIONS

"WITHOUT THE DISTRICT" DEFINED

To be "without the District of Columbia continuously for two years or longer" must be held to mean to be uninterruptedly and physically beyond the confines of the District, and not merely to establish residence outside of the District. *De Ruiz* v. *De Ruiz* (66 App. D. C. 370, 88 Fed. (2d) 752).

§ 20–702 [29: 305]. Warrant to United States marshal—Fees of marshal.

The court may thereupon issue a warrant directed to the United States marshal in and for the District of Columbia, commanding him to take possession of the property named in said schedule and hold it subject to the order of the court and make return of said warrant as soon as may be, with a statement of his actions thereon and a schedule of the property so taken. The marshal shall post a copy of the warrant upon each parcel of land named in the schedule and cause so much of the warrant as relates to land to be recorded with the recorder of deeds of the District of Columbia. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. If the petition is dismissed, said fees and the cost of publishing and serving the notice hereinafter provided shall be paid by the petitioner; but if a receiver is appointed, they shall be paid by the receiver and allowed in his account. (Apr. 8, 1935, 49 Stat. 111, ch. 46, § 2.)

§ 20–703 [29: 306]. Notice of hearing to absentee and interested parties.

Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, the warrant, and the marshal's return, which shall be addressed to such absentee and to all persons who claim of record an interest in said property, or who are known to petitioner to claim an interest in said property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the marshal's schedule should not be appointed and said property held and disposed of under the provisions of sections 20–701 to 20–714. (Apr. 8, 1935, 49 Stat. 111, ch. 46, § 3.)

§ 20–704 [29: 307]. Time of hearing—Publication and posting of notice.

The return day of said notice shall be not less than thirty nor more than sixty days after its date unless

otherwise ordered by the court. The court shall order said notice to be published not less than once in each of three successive weeks in one or more newspapers within the District of Columbia, and a copy to be posted in a conspicuous place and upon each parcel of land named in the marshal's schedule, and a copy to be mailed to the last known address of such absentee. The court may order other and further notice to be given within or without the District of Columbia. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 4.)

§ 20–705 [29: 308]. Appointment of receiver—Bond—Finding of date of disappearance.

The absentee or any person who claims an interest in any of the property may appear and show cause why the prayer of the petition should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the marshal to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the marshal and named in his schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee; and such receiver shall give bond to said court in such sum and with such condition as the court orders, with a corporate surety thereon approved by the court. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 5.)

§ 20–706 [29: 309]. Transfer of property to receiver—Schedule of property.

After the approval of such bond the court may order the marshal to transfer and deliver to such receiver the possession of the property under the aforesaid warrant, and the receiver shall file in said court a schedule of the property received by him. (Apr. 8, 1935, 49 Stat. 112; ch. 46, § 6.)

§ 20–707 [29: 310]. Receiver may take possession of additional property of and debts due absentee—Appointment of receiver.

Such receiver upon petition filed by him may be authorized and directed by the court to take possession of any additional property within the District of Columbia which belongs to such absentee and to demand and collect all debts due such absentee from any person within the District of Columbia, and hold the same as if it had been transferred and delivered to him by the marshal. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 7.)

§ 20–708 [29: 311]. Procedure where absentee left only debts due him—Appointment of receiver.

If such absentee has left no corporeal property within the District of Columbia, but there are debts and obligations due or owing to him from persons within the District of Columbia, a petition may be filed as provided in section 20–701, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice as above provided, without issuing a warrant, and may, upon the return of said notice and after a summary hearing, dismiss the petition or appoint a receiver and authorize and direct him to demand and collect the debts and obligations specified in said petition. The receiver shall give bond as provided in section 20–705, and shall hold the proceeds of such debts and obligations and all property received by him, and distribute the same as hereinafter provided. The court may confer upon the receiver such further authority as may be conferred under section 20–707. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 8.)

§ 20–709 [29: 312]. Care, custody, sale of property.

The court may make orders for the care, custody, leasing, and investing of all property and its proceeds in the possession of the receiver. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of said property, including the rights of the absentee in land, to be mortgaged, or sold at public or private sale, to supply money for payments authorized by sections 20–701 to 20–714 or for reinvestment approved by the court. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 9.)

§ 20–710 [29: 313]. Support of absentee's wife and minor children.

The court may order said property or its proceeds acquired by mortgage, lease, or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's wife and minor children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 10.)

§ 20–711 [29: 314]. Receiver may adjust claims of or against estate.

The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of such absentee. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 11.)

§ 20–712 [29: 315]. Compensation of receiver—Interest of absentee in property to cease after fourteen years.

The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of said property or proceeds. If within fourteen years after the date of the disappearance and absconding as found and recorded by the court, such absentee appears, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of such absentee is appointed, such receiver shall account for, deliver, and pay over to him the remainder of said property. If such absentee does not appear and claim said property within such fourteen years, all his right, title, and interest in said property, real or personal, or the proceeds thereof shall cease, and no action shall be brought by him on account thereof. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 12.)

§ 20–713 [29: 316]. Distribution after fourteen years as if absentee had died intestate.

If at the expiration of such fourteen years said property has not been accounted for, delivered, or paid over under the provisions of section 20–712, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if

such absentee had died intestate within the District of Columbia on the day fourteen years after the date of the disappearance or absconding as found and recorded by the court. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 13.)

§ 20–714 [29: 317]. Time for distribution and accounting when receiver not appointed within 13 years.

If such receiver is not appointed within thirteen years after the date found by the court under section 20–705, the time limited for accounting for, or fixed for distributing, said property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the fourteen years provided in sections 20–712, 20–713; except that the time limited for accounting for, or fixed for distributing, any additional property or its proceeds within the District of Columbia coming into the possession of such receiver during such one year period, or for barring actions relative thereto, shall be one year after the date possession is taken by such receiver. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 14.)

§ 20–715 [29: 318]. Sections 14–501, 14–502 not affected.

Nothing contained in sections 20–701 to 20–714 shall be construed as repealing or modifying sections 14–501 or 14–502. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 15.)

COMPILER'S NOTE

Sections 14–501, 14–502 provide for a presumption of death after absence of seven years.

TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

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2.	Property of infants and persons non compos mentis	21–201
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4.	Drunkards and drug addicts	21–401

Chapter 1.—INFANTS AND OTHER INCOMPETENTS

Sec.
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21–102. Testamentary guardians.
21–103. Appointment by court—Limitation of number of wards.
21–104. Enlistment of indigent boys—Appointment of guardians.
21–105. Enlistment of indigent boys—Preparation of guardianship papers.
21–106. Bond required from parents of child entitled to property.
21–107. Husband, parent, or testamentary guardian may be enjoined from interfering with minor's estate.
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21–128. Sale of realty.
21–129. When guardianship ceases.
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§ 21–101 [15: 31]. Natural guardians.

The father and mother shall be the natural guardians of the person of their minor children. If either dies or is incapable of acting, the natural guardianship of the person shall devolve upon the other. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1123.)

COMPILER'S NOTE

This section and section 21–108 were originally section 1123 of the code of 1901 and probably should be read together.

CROSS REFERENCES

Adoption, § 16–201 et seq.

Ancillary guardian for nonresident infants and persons non compos mentis, §§ 21–115, 21–116.

Application of chapter to drunkards and drug addicts, § 21–401.

Application of chapter to persons non compos mentis, § 21–303.

Appointment of guardian for infant owners of buildings sought to be condemned by Board for Condemnation of Insanitary Buildings, § 5–609.

General provisions concerning feeble-minded persons, including inquests, commitments and discharges, §§ 32–603 to 32–629.

General provisions concerning management and control of infant and estate, § 21–126.

Guardian ad litem for persons under disabilities in condemnation proceedings to obtain land for streets, § 7–204.

Guardian ad litem for persons under disabilities in proceedings to condemn lands for public parks and playgrounds, § 8–102.

Guardian ad litem in condemnation proceedings, § 16–604.

Guardian ad litem in proceedings to condemn land for United States, § 16–627.

Guardian ad litem in proceedings to probate will, § 19–303.

Guardian ad litem in proceedings to sell infant's real estate, § 21–205.

Guardian ad litem in proceedings to sell real estate held by tenant for life with a contingent limitation, § 45–1102.

Trust companies authorized to act, §§ 26–309 to 26–312, 26–316, 26–333, 26–334.

STATUTORY REFERENCE

In proceedings for acquisition of lands in District of Columbia for public use, appointment of guardian ad litem, U. S. C., title 40, § 120.

NOTES TO DECISIONS

CUSTODY OF CHILD

Custody of child awarded to mother notwithstanding that after divorce she committed adultery with the man she subsequently married, the father of child having died and left the child in the possession of grandfather. *Sardo* v. *Villapiano* (65 App. D C. 121, 81 Fed. (2d) 255).

It is established both by statute and common law that as between the grandfather and the mother the child should be entrusted to the mother, unless such a course is inconsistent with the child's welfare. *Sardo* v. *Villapiano* (65 App. D. C. 121, 81 Fed. (2d) 255).

A child of parties to divorce proceeding is a "ward of court" and the court has power to change the custody of the child, to enforce parental obligations to provide for maintenance, and if necessary to remove the child from the custody of both parents. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

A reservation in original divorce decree is not necessary for the exercise of court's continuing jurisdiction concerning custody and maintenance of minor child. *Emrich* v. *McNeil,* 1942 (126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

Where husband established a separate domicile in the District of Columbia, the wife remaining in North Carolina with the minor children by agreement, in granting husband a divorce the District of Columbia court was without jurisdiction to make an award of custody of children, since their domicile remained in North Carolina. *Oxley* v. *Oxley* (App. D. C. 1946, 159 F. 2d 10).

§ 21–102 [15: 32]. Testamentary guardians.

Every father or mother, whether of full age or not, when the other parent does not survive, may,

by last will and testament, appoint a guardian of the person to have the care, custody, and tuition of his or her infant child, not being a married female; and if the person so appointed shall refuse the trust, the probate court may appoint another person in his place. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1124.)

§ 21–103 [15: 33]. Appointment by court—Limitation of number of wards.

If any infant shall have neither natural nor testamentary guardian, a guardian of the person may be appointed by the probate court in its own discretion or on the application of any next friend of such infant: *Provided, however,* That no person, except trust companies, shall act as guardian of the person for more than five infants at one and the same time, unless said infants be members of one family. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1125; Mar. 3, 1927, 44 Stat. 1383, ch. 350.)

AMENDMENT

The 1927 act added the proviso.

CROSS REFERENCES

Appointment by juvenile court, § 11–917.
Guardians generally, see notes to § 21–101.
Jurisdiction, pleading, and practice in probate court, §§ 11–501 to 11–520.

§ 21–104 [15: 34]. Enlistment of indigent boys—Appointment of guardians.

The probate court shall have power to appoint guardians to indigent boys for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of all costs on account of such proceeding. (Mar. 3, 1901, 31 Stat. 1217, ch. 854, § 166.)

§ 21–105 [15: 34a]. Enlistment of indigent boys—Preparation of guardianship papers.

The register of wills shall prepare papers in connection with appointment of guardians to enable indigent boys to enlist in the United States Navy as provided by law, without making any charge therefor. (July 14, 1892, 27 Stat. 154, ch. 171.)

COMPILER'S NOTE

This section, omitted from the 1929 Code, appears to be still in force.

§ 21–106 [15: 35]. Bond required from parents of child entitled to property.

When any infant whose father or mother may be living shall, by gift, or otherwise, be entitled to any property, the probate court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 152.)

§ 21–107 [15: 36]. Husband, parent, or testamentary guardian may be enjoined from interfering with minor's estate.

On application of any friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin any parent or husband or testamentary guardian of such infant from interfering with said infant's estate without being appointed and giving bond as guardian of such estate. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1129.)

NOTES TO DECISIONS

FELONIES

Under this section prescribing fine not exceeding $1,000 or imprisonment for not more than five years, or both, as punishment for any offense not specifically covered by sections of this code, all common-law misdemeanors, not embodied in any act of Congress, became felonies in District of Columbia, since any offense potentially punishable by imprisonment for more than one year is a "felony." *U. S.* v. *Davis* (App. D. C. 1947, 71 F. Supp. 749).

§ 21–108 [15: 37]. Appointment by deed or will for child inheriting property from parent.

In case of the death of either parent from whom his or her minor children shall inherit or take by devise or bequest, such parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia: *And provided further,* That nothing herein contained shall be held to limit or affect the power of a court of equity to appoint some other person guardian of such children when it shall be made to appear to said court that the welfare of said children requires it. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1123.)

COMPILER'S NOTE

This section and section 21–101 were originally section 1123 of 1901 Code and probably should be read together.

NOTES TO DECISIONS

IN GENERAL

By this provision the power of equity to guard the welfare of the child is preserved. *Church* v. *Church* (50 App. D. C. 237, 270 Fed. 359).

§ 21–109 [15: 38]. Appointment by court of guardian for infant entitled to property.

The probate court shall have power to appoint a guardian or guardians to any infant orphan entitled to any property, real, personal, or mixed, within the District, or whose person and residence may be within the District, except where such orphan may have a testamentary guardian. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 150.)

CROSS REFERENCE

Guardians generally, see notes to § 21–101.

NOTES TO DECISIONS

LAW TO BE APPLIED

A guardian of the estate should be appointed "in accordance with the laws of the place in which the property is found." *Lehmer* v. *Hardy* (54 App. D. C. 51, 294 Fed. 407).

NONRESIDENT INFANTS

"The courts of the District of Columbia have no authority to appoint guardians of the persons of infants who do not reside and are not domiciled within their territorial jurisdiction." *Lehmer* v. *Hardy* (54 App. D. C. 51, 294 Fed. 407).

§ 21–110 [15: 39]. When guardian of estate is appointed by court.

Subject to the provisions of sections 21–101 to 21–103, 21–108, 21–129, whenever land shall descend or be devised to any infant under twenty-one years of age, or such infant shall be entitled to a distributive share of the personal estate of an intestate, or to a legacy or bequest under a last will, or shall ac-

quire any real or personal property by gift or purchase, the probate court may appoint a guardian of said infant's estate; and if there shall be a guardian of the person of such infant the guardian of the estate so appointed may be the same or a different person: *Provided, however,* That no person, except trust companies, shall act as guardian of the estate of more than five infants at one and the same time unless the infants are entitled to shares of the same estate. The said appointment may be made at any time after the probate of the will or the grant of administration where the infant is entitled as a devisee, legatee, or next of kin. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1127; Mar. 3, 1927, 44 Stat. 1383, ch. 350.)

AMENDMENT

The 1927 amendment changed "the said court" to "the probate court" and added the proviso to the first sentence.

CROSS REFERENCES

Guardians generally, see notes to § 21–101.

Majority of female who is beneficiary under a will, § 18–722.

§ 21–111 [15: 40]. Consent of infant.

When it shall be necessary to appoint a guardian, either of the person or the estate, of an infant, the infant shall, if practicable, be brought before the court, and, if over the age of fourteen years, shall be entitled to select and nominate his or her guardian; and if a guardian shall have been appointed before the infant has attained the age of fourteen years, the said infant, upon arriving at said age, may select a new guardian, notwithstanding the appointment before made: *Provided, however,* That the court shall, in all cases, approve the character and competency of the guardian selected by the infant, and such guardian shall be under the same obligations and discharge the same duties as if selected by the court; and whenever, after a guardian of the estate has been previously appointed, the infant shall select a new guardian upon arriving at the age of fourteen years, and said new selection is approved by the court, and the person so selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1130.)

§ 21–112 [15: 41]. Preferences in appointment of guardian.

Whenever it shall be necessary for the court to appoint a guardian of the infant's estate, as aforesaid, the father, if living, or, if he be dead, then the mother, if living, or, if the infant be a married female her husband, shall have the preference over other persons, unless the infant be over fourteen years of age, as hereinafter directed: *Provided,* That in the judgment of the court the parent or husband so entitled shall be a suitable person to have the management of the infant's estate. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1128.)

COMPILER'S NOTE

The word "hereinafter" refers to the remainder of the sections of chapter 31 of the 1901 act, they being §§ 1129–1142. These sections appear in this code as §§ 21–107, 21–111, 21–114 to 21–116, 21–119, 21–120, 21–123 to 21–128, and 21–130.

§ 21–113 [15: 42]. Election of guardian by ward.

Every orphan or other infant to whom the probate court is authorized to appoint a guardian shall be entitled, on arriving at the age of fourteen years, notwithstanding any appointment of guardian before made by the court, to elect a guardian for himself; but such guardian must be approved by the court and shall be required to give bond as in other cases, and be subject to the control of the court as other guardians are. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 155.)

§ 21–114 [15: 43]. Husband as guardian.

Whenever any female infant, to whom a guardian of her estate has been appointed, shall marry she may select her husband as the guardian of her said estate, with the approval of the court, and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to her husband, agreeably to the order and directions of the court. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1140.)

§ 21–115 [15: 44]. Ancillary guardian of nonresident infant or lunatic—Petition.

Whenever an infant or lunatic residing without the District is entitled to a property in the District or to maintain any action therein, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the state or territory where said infant or lunatic resides, or any person at the request of said guardian or committee, may apply to the court by petition for ancillary letters as such guardian or committee. Said petition must be under oath and be accompanied with duly certified copies of so much of the record and proceedings as shows the appointment of such guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority hereby conferred. The court may thereupon issue to such guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it may think proper to show cause why the said application should be refused; and the said court shall require from such person or persons the security required by law in like cases from a resident guardian or committee. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1141; June 30, 1902, 32 Stat. 542, ch. 1329; Mar. 3, 1905, 33 Stat. 1006, ch. 1441.)

AMENDMENTS

Act of 1901 was amended by act of 1902 by adding to the caption the words "or lunatic" and by inserting after the word "copies" in the second sentence the words "of so much"; also by striking out the word "showing" in the second sentence and inserting in lieu thereof the words "as shows."

The 1905 amendment added the provisions as to committees, and added that part of the last sentence following the semicolon.

CROSS REFERENCE

Guardians generally, see notes to § 21–101.

NOTES TO DECISIONS

VETERANS' LEGISLATION

Sections 44 and 45, D. C. 1929 (this section and § 21–116), are of local application and must give way to laws of Congress relating to veterans' affairs. *First Nat. Bank* v. *United States* ((D. C.-D. C.), 30 Fed. Supp. 730).

Colorado bank may sue in the courts of the District of Columbia, as conservator, for the recovery of monthly payments of a veteran's government insurance, and is not required to have an ancillary guardian appointed. *First Nat. Bank* v. *United States* ((D. C.-D. C.), 30 Fed. Supp. 730).

§ 21–116 [15: 45]. Suits by ancillary guardian.

Upon the granting of said ancillary letters the said guardian shall be entitled to institute and prosecute to judgment any action in the courts of the District, to take possession of all property of his said ward, and collect and receive all moneys belonging and due to him therein, to give full receipt and acquittances for debts and to release all claims, liens, and mortgages to him belonging, on property in said District, in the same manner as if his authority had been originally conferred by the District Court of the United States for the District of Columbia: *Provided,* That said guardian shall be required to give security for the costs which may accrue in any action brought by him, in the same manner as other nonresidents bringing suit in the courts of said District. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1142.)

CROSS REFERENCE

See notes to § 21–115.

NOTES TO DECISIONS

ANCILLARY PROCEEDINGS

Word "ancillary" as used differentiates between original jurisdiction and proceedings which are subordinate and auxiliary thereto. *First Nat. Bank* v. *United States* ((D. C.-D. C.), 30 Fed. Supp. 730).

SUIT UNDER ORIGINAL APPOINTMENT

One who had been appointed guardian of her two minor children by courts of Virginia, and who also had been appointed ancillary guardian by the United States District Court for District of Columbia, could bring suit in Municipal Court under her original appointment and was not required to sue as ancillary guardian. *De Bobula* v. *Coppedge* (D. C. Mun. App. 1944, 40 A. 2d 255).

§ 21–117 [15: 46]. Suits by next friend.

In every case whereas such as be within age may sue if such within age be eloined, so that they can not sue personally, their next friends shall be admitted to sue for them. (13 Edw. 1, ch. 15, § 1, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 121; Comp. Stat. D. C., p. 446, § 31.)

COMPILER'S NOTE

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

§ 21–118 [15: 47]. Bond.

The court shall require of guardians so appointed (as provided in section 21–109), and of testamentary guardians, unless it be otherwise directed by the will appointing them, bond, with sufficient security, conditioned for the due discharge of their duties. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 151.)

CROSS REFERENCE

Bonds required of trust companies, §§ 26–333, 26–334.

§ 21–119 [15: 48]. Bond of guardians.

Every guardian appointed by the court, except corporations authorized to act as guardians, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond to the United States in such penalty and with such surety or sureties as the court shall approve, to be recorded and to be liable to be put in suit for the use of any person interested, with the following condition:

The condition of the above obligation is such that if the above bounden ———, as guardian to ———, shall faithfully account to the court, as required by law, for the management of the property and estate of the infant under his care, and shall also deliver up said property agreeably to the order of the court or the directions of law, and shall in all respects perform the duty of guardian to the said ——— according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1131.)

§ 21–120 [15: 49]. One bond for several wards.

Where the same person is guardian to any number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and said bond shall be liable to be put in suit for the use of all or either of the wards as fully as separate bonds might be. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1132.)

§ 21–121 [15: 50]. Additional bond.

The court may at any time require any guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct him to bring suit upon the bond of his predecessor. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 153.)

§ 21–122 [15: 51]. Counter security—Petition by surety.

If any surety of a guardian shall by petition set forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and shall pray the court that he may be relieved, the court, after summoning the guardian to answer said petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of some other person; in either of which cases the court shall require sufficient security to be given by the person into whose hands said estate shall be delivered, and make such other order as may seem just. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 154.)

§ 21–123 [15: 52]. Surety.

If any surety of a guardian, setting forth by petition that he apprehends himself to be in danger of

suffering by said suretyship, shall pray to be relieved, the court, after service of a summons on the guardian to answer the petition, may order him to give counter security for the indemnity of the original surety, or to deliver the ward's estate into the hands of the surety or of some other person; in either of which cases the person into whose hands the ward's estate shall be delivered shall be required to give sufficient security for the proper management and application of the same, and such further order may be passed for the relief of the petitioner as may seem just. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1138.)

§ 21–124 [15: 53]. Guardian to have possession of property.

On the execution of his bond, as required as aforesaid, the guardian shall be entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all legacies and distributive shares to which the ward may be entitled to be paid or delivered to him whenever they shall be properly payable or distributable according to law. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1133.)

CROSS REFERENCE

Voting at corporation meetings, § 29–221.

§ 21–125 [15: 54]. Inventory.

Every guardian, within three months after the execution and approval of his bond, shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the said estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisement and finding under oath. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1134.)

CROSS REFERENCES

Other provisions concerning property of infants, § 21–201 et seq.

Provisions concerning separate estate of infant married women, § 30–201 et seq.

§ 21–126 [15: 55]. Accounts—Maintenance and education—Sales—Compensation.

It shall be the duty of the guardian to manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and shall not be answerable for any loss or decrease sustained without his fault; and the court shall determine the amounts to be annually expended in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and the court, if it shall deem it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell the same or part thereof, under its order, as provided in sections 21–201 to 21–213; but no guardian shall sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected if and when disbursed. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1135; Feb. 10, 1927, 44 Stat. 1067, ch. 101.)

COMPILER'S NOTES

The provision for exceeding the income of the estate and making use of the principal under certain circumstances is set out in §§ 21–201 to 21–213.

The original wording of this section in the 1901 act was "as provided in subchapter three of chapter one." This subchapter contained §§ 60–220 of the said 1901 edition of the Code, which sections are contained herein as follows: §§ 11–301, 11–307, 11–308, 11–311 to 11–322, 11–324 to 11–330, 11–401, 11–402, 11–501 to 11–505, 11–507, 11–509 to 11–520, 11–1001, 11–1002, 11–1101 to 11–1103, 11–1201 to 11–1208, 11–1301 to 11–1304, 11–1401 to 11–1420, 11–1505 to 11–1507, 11–1515, 13–104 to 13–113, 15–110, 16–1301 to 16–1305, 16–1501, 18–607 to 18–612, 19–301 to 19–313, 20–107, 20–109, 20–116, 20–504, 21–103 to 21–105, 21–109, 21–113, 21–118, 21–121, 21–122, 21–201 to 21–213, 21–301 to 21–305, 22–1414, 32–101 to 32–104, 36–103, and 45–616.

AMENDMENT

The 1927 act amended this section by striking out the words "not exceeding ten per centum of the principal of the personal estate and on the annual income of the estate" which followed the word "commissions" in the second sentence, and adding the last sentence.

CROSS REFERENCES

Capacity to contract for life insurance, § 35–430.

Child labor and work permits, § 36–201 et seq.

Criminal liability for failure to provide and care for minor children, § 22–901 et seq.

Duty to file income tax returns, § 47–1515.

Duty to file schedule of personal property for taxation, distraint of property for nonpayment, §§ 47–1203, 47–1301.

Guardians generally, see notes to § 21–101.

Indorsement of negotiable instrument passes title, § 28–123.

Liability as stockholder of business corporation, § 29–220.

Liability for income taxes, § 47–1524.

Liability for necessaries, § 28–1102.

Marriage, consent of parents or guardian, § 30–111.

May redeem from tax sales within one year after majority, § 47–1003.

Minimum wages for minors, § 36–401 et seq.

Rights under real estate leases, §§ 45–927 to 45–930.

Suits to annul marriage, § 30–104.

NOTES TO DECISIONS

LIMITATION OF COMPENSATION

Limitation of compensation of committee of insane person to five per cent. of amount received and disbursed precludes allowance of additional fees. *Hines* v. *Paregol* (64 App. D. C. 306, 77 Fed. (2d) 953).

Committee who has wisely and judiciously preserved the estate of a lunatic should not be denied reasonable compensation merely because he had preserved the estate instead of expending it. *In re Gallen* ((D. C.-D. C.), 18 Fed. Supp. 683).

§ 21–127 [15: 56]. Allowances made before bond was given.

Any allowance which may be made to a guardian for the clothing, support, maintenance, education, or other expenses incurred for the ward or his estate, before said guardian shall have given bond or been appointed, shall have the same effect and operation in law as if the same had been made subsequently to the appointment of said guardian and his giving bond. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1137.)

§ 21–128 [15: 57]. Sale of realty.

Whenever any guardian shall think that the interests of his ward will be promoted by a sale of his real estate for the purpose of reinvesting the proceeds in other property or securities, he may make application therefor to the probate court, and such proceedings shall be had thereupon as directed in sections 21–201 to 21–213. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1136.)

COMPILER'S NOTE

See Compiler's Note to § 21–126.

§ 21–129 [15: 58]. When guardianship ceases.

The natural guardianship or the appointive guardianship of the person aforesaid shall cease, in the case of a male infant when he is twenty-one years of age, and in the case of a female infant when she is eighteen years of age or marries. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1126.)

NOTES TO DECISIONS

MAJORITY OF FEMALE INFANTS

There is no statute in force in the District of Columbia which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years; exceptions to the common-law rule have been provided by statute, but these recognize the continued existence of the general rule of the common law. *Jones* v. *Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

MARRIAGE OF INFANT

A 13-year-old girl, legally married, was committed to the Board of Children's Guardians two years later as destitute and homeless, and later committed to the Reform School as incorrigible. The court held she was not entitled to release on habeas corpus, on the ground of her marriage. *Richardson* v. *Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 21–130 [15: 59]. Final account.

On the arrival of any ward at the age of twenty-one years the guardian shall exhibit a final account of his trust to the court, and shall deliver up, agreeably to the court's order, to the ward all the property of said ward in his hands, including bonds and other securities, and on his failure so to do his bond may be put in suit in the name of the United States for the use of the party interested, and he may be attached, as herein elsewhere provided. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1139.)

COMPILER'S NOTE

The words "as herein elsewhere provided" presumably refer to chapter 31 of the 1901 act from which this section is derived. This chapter is contained in this code as §§ 21–101 to 21–103, 21–107, 21–108, 21–110 to 21–112, 21–114 to 21–116, 21–119, 21–120, 21–123 to 21–130.

Chapter 2.—PROPERTY OF INFANTS AND PERSONS NON COMPOS MENTIS

Sec.

21–201. Sale of infant's principal for maintenance or education.
21–202. Property of infants and persons non compos mentis subject to liens.
21–203. Property of infants and persons non compos mentis subject to executory contract.
21–204. Sale or exchange of infant's real estate.
21–205. Sale or exchange of infant's real estate—Parties.
21–206. Sale or exchange of infant's real estate—Proof.
21–207. Sale or exchange of infant's real estate—Decree of sale—Costs.
21–208. Sale or exchange of infant's real estate—Terms of sale—Disposition of proceeds.
21–209. Exchanges—Equality—Appointment of trustee.
21–210. Sale of particular estate or remainder—Death while infant—Conversion of proceeds.
21–211. Lease of infant's estate—Where consent necessary.
21–212. Mortgage of infant's estate.
21–213. Contract for sale by adult in behalf of himself and infant or non compos mentis.

§ 21–201 [15: 61]. Sale of infant's principal for maintenance or education.

Wherever it shall appear, upon the petition of the infant by next friend or of the guardian of an infant, and the appearance and answer of such infant by guardian to be appointed by the court, and proof by depositions of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of some part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the probate court may decree such sale on such terms as to it may seem proper. (Mar. 3, 1901, 31 Stat. 1217, ch. 854, § 165.)

CROSS REFERENCES

Ancillary guardian for nonresident infants and persons non compos mentis, §§ 21–115, 21–116.

Application of chapter to drunkards and drug addicts, § 21–401.

Application of chapter to persons non compos mentis, § 21–303.

Contesting will after majority, § 19–309.

General provisions concerning rights, liabilities, and property of infants, § 21–126.

Guardians generally, see notes to § 21–101.

Jurisdiction, pleading and practice in probate court, §§ 11–501 to 11–520.

New promise after majority, § 12–306.

Provisions concerning property of persons non compos mentis, §§ 21–202, 21–203, 21–213, 21–301 et seq.

See notes to § 21–211.

§ 21–202 [15: 62]. Property of infants and persons non compos mentis subject to liens.

If any infant or person non compos mentis be entitled to any real or personal estate in the District which shall be liable to any mortgage, trust, or lien, or in any way charged with the payment of money, the court shall have the same power to decree in such case as if the infant were of full age or such person non compos mentis were of sound mind. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 91.)

CROSS REFERENCES

Other provisions concerning rights and duties of non compos mentis under real estate mortgage, § 45–620.

Other provisions concerning rights of infants under mortgages, §§ 45–608, 45–609.

See notes to § 21–201.

§ 21–203 [15: 63]. Property of infants and persons non compos mentis subject to executory contract.

Where an infant or person non compos mentis is entitled to any real or personal estate in the District bound by any executory contract entered into by the person or persons from whom said infant or person non compos mentis has derived title, or where an infant or person non compos mentis claims any right or interest in such property under and in virtue of any such contract, the court in either case shall have the same power to decree the execution

of such contract or to pass any just and proper decree that the court would have if the parties were of full age and sound mind. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 92.)

CROSS REFERENCE

See notes to § 21–201.

§ 21–204 [15: 64]. Sale or exchange of infant's real estate.

Whenever the guardian or, in case of his refusal to act, a next friend of any infant shall deem that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property, or by an exchange of his said property for other property, he may file a bill in said court, verified by his oath, setting forth all the estate of said infant, real and personal, and all the facts which, in his opinion, tend to show whether the infant's interest will be promoted by said sale or exchange or not. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 156.)

CROSS REFERENCES

Exempted from operation of law requiring license to deal in real estate, § 45–1402.

Guardians generally, see notes to § 21–101.

NOTES TO DECISIONS

HISTORICAL

Prior to enactment of the Code, orphan's court of the District had jurisdiction to decree sale of infant's real estate for his support or education. *Thaw* v. *Ritchie* (136 U. S. 519, 34 L. Ed. 531, 10 Sup. Ct. 1037).

SALE FOR REINVESTMENT

Decree of District Court of the United States for the District of Columbia for sale of infant's property for purpose of reinvestment is not subject to collateral attack. *United States ex rel. Hine* v. *Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg. 29 App. D. C. 433).

§ 21–205 [15: 65]. Sale or exchange of infant's real estate—Parties.

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant; and it shall be the duty of the court to appoint some fit and disinterested person to be guardian ad litem for the infant, who shall answer the bill under oath. The infant also, if above the age of fourteen, shall answer the bill in proper person, under oath. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 157.)

CROSS REFERENCE

Guardians generally, see notes to § 21–101.

§ 21–206 [15: 66]. Sale or exchange of infant's real estate—Proof.

Every fact material to determine the propriety of such sale or exchange shall be clearly proved by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 158.)

§ 21–207 [15: 67]. Sale or exchange of infant's real estate—Decree of sale—Costs.

If the court shall be satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, such sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 159.)

§ 21–208 [15: 68]. Sale or exchange of infant's real estate—Terms of sale—Disposition of proceeds.

Any such sale may be made upon such terms as to cash and credit as the court may direct, and a lien shall be retained on the property sold for the purchase money; and the proceeds of such sale shall be invested for the infant's benefit in other real estate or in such other manner as the court may direct; and if the infant, after any such sale, shall die intestate or under twenty-one years of age, the proceeds of such sale, or so much thereof as may remain at his death, if not reinvested in other real estate, shall be considered as real estate, and shall pass accordingly to such persons as would have been entitled to the estate if it had not been sold. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 160.)

§ 21–209 [15: 69]. Exchanges—Equality—Appointment of trustee.

In decreeing an exchange of the infant's estate for other property the court shall not be bound to require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry such exchange into effect. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 161.)

§ 21–210 [15: 70]. Sale of particular estate or remainder—Death while infant—Conversion of proceeds.

Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion or executory devise in the same property, or such other person is entitled to the particular estate and the infant is entitled in remainder or reversion or by way of executory devise, the court shall have the same power to decree a sale or exchange as aforesaid, having reference solely to the interests of the infant: *Provided,* The other person so interested will consent to such sale or exchange and execute the conveyances necessary to carry the same into effect. And the court shall direct the annual income from the fund or property acquired by such sale or exchange to be applied according to the interests of the respective parties. And in case of the death of said infant under twenty-one years of age the proceeds of any such sale not invested in real estate shall be deemed real estate and pass to those who would be entitled if the property had not been sold. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 162; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

Act of 1901 was amended by inserting after the word "reversion" in the first sentence the words "or executory devise."

CROSS REFERENCE

See note to § 21–204. *United States ex rel. Hine* v. *Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg. 29 App. D. C. 433).

§ 21–211 [15: 71]. Lease of infant's estate—Where consent necessary.

In cases where it shall appear to the court that it will be to the advantage of the infant that his real estate shall be demised, the said court shall have the power to decree that the same be so demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court may direct: *Provided,* That where the infant is entitled to only a part of the estate as tenant in common, joint tenant, tenant of the particular estate, or remainderman, or otherwise, all the owners of the other interests assent to the passing of such decree. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 163; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

The 1902 Act amended the 1901 Act by striking out after the word "court" in the first sentence the words "by proof taken in a similar proceeding to that provided for in the foregoing sections," and by inserting in the proviso the words "tenant in common, joint tenant."

NOTES TO DECISIONS

MORTGAGE OF MINOR'S REALTY

Orphans court had power to authorize sale of minor's realty for his support, and hence power to authorize a mortgage. *Middleton* v. *Parke* (3 App. D. C. 149).

§ 21–212 [15: 72]. Mortgage of infant's estate.

In cases where it shall appear to the court by proof that it would be for the benefit and advantage of the infant to raise money by mortgage for his maintenance or to improve his real property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of said property, by mortgage or deed of trust, to be executed by the guardian, on such terms as may seem to the court expedient; and this section shall apply to cases where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in remainder or reversion: *Provided,* That the other owners interested, all being of full age, will consent to such decree and unite in said mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 164; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

Act of 1901 was amended by striking out the words "as provided in the foregoing section" and by inserting after the word "mortgage," the words "for his maintenance or."

CROSS REFERENCES

Mortgages, see notes to § 21–202.

See note to § 21–211. *Middleton* v. *Parke* (3 App. D. C. 149).

§ 21–213 [15: 73]. Contract for sale by adult in behalf of himself and infant or non compos mentis.

If any contract has been made for the sale of the lands, tenements, or hereditaments by any person or persons interested therein jointly or in common with any infant, idiot, or person non compos mentis, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of all the circumstances, shall consider to be for the interest and advantage both of such infant, idiot, or person non compos mentis and of the other person or persons interested therein to be confirmed, the court may confirm such contract and order a deed to be executed according to the same; and all sales and deeds made in pursuance of such order shall be sufficient in law to transfer the estate and interest of such infant, idiot, or person non compos mentis in such lands, tenements, or hereditaments. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 93.)

COMPILER'S NOTE

This section and § 16–1301 were originally § 93 of the code of 1901 and probably should be read together.

CROSS REFERENCE

See notes to § 21–201.

Chapter 3.—INSANE PERSONS, INQUESTS

Sec.

21–301. Estates of lunatics—Accounting—Compensation—Dower.
21–302. No committee to be appointed for more than five wards.
21–303. Power of court over lunatics' estates—Conversion of proceeds of sale.
21–304. Sale of estate for maintenance or to pay judgment—Mortgage.
21–305. Sales to be ratified by court.
21–306. Proceedings to determine mental condition.
21–307. Jury in lunacy proceedings—Appointment of committee or trustee—Costs and expense of maintenance—Payment.
21–308. Commission on Mental Health.
21–309. Salary of executive secretary of commission.
21–310. Insanity proceedings—Application for writ de lunatico inquirendo, and for observation.
21–311. Issuance of attachment—Examination.
21–312. Report to be served—Demand for jury trial—Trial.
21–313. Jury.
21–314. Procedure if no jury trial demanded.
21–315. Commitment after trial.
21–316. Recommendations of commission.
21–317. Transfer of nonresident insane—Confinement of residents—Custody of harmless insane.
21–318. Liability of relatives for costs of maintenance and treatment.
21–319. Insane persons having property—Inquiry by board—Charge for care.
21–320. Hearing to restore status of paroled person—Petition—Trial—Decision.
21–321. Witness fees.
21–322. Undertaking.
21–323. Applications and certificates for commitment and confinement.
21–324. Penalty for false petition or affidavit.
21–325. Existing remedies preserved.
21–326. Apprehension and detention by police, without warrant, of insane persons found in public places.
21–327. Arrest at other than public places.
21–328. Temporary detention of alleged insane persons.
21–329. Temporary commitment of persons to other hospital, or detention in police station—Discharge of person certified not insane.
21–330. Certificate by physician as to sanity or insanity—Qualifications of physician.
21–331. Making false affidavit or certificate—Penalty.
21–332. Discharge of patients on bond.
21–333. Insane persons not to be confined in jail.

§ 21–301 [16: 2]. Estates of lunatics — Accounting — Compensation—Dower.

The equity court shall have full power and authority to superintend and direct the affairs of persons non compos mentis, and to appoint a committee or

trustees for such persons after hearing the nearest relatives of such person, or some of them if residing within the jurisdiction of the court, and to make such orders and decrees for the care of their persons and the management and preservation of their estates, including the collection, sale, exchange, and reinvestment of their personal estate, as to the court may seem proper. In the event that the person has no known relative residing within the jurisdiction of the court, then the court shall appoint some disinterested person to act as guardian ad litem for such person in the proceedings for the appointment of a committee or trustee. The committee or trustee shall account for all profit and increase of the estate of such person and the annual value thereof and shall be credited for taxes, repairs, improvements, expenses. The court shall allow a reasonable compensation for services rendered by the committee not exceeding a commission of 5 per centum of the amounts collected if and when disbursed. The court may, upon such terms as under the circumstances of the case it may deem proper, decree the conveyance and release of any right of dower of a person non compos mentis, whether the same be inchoate or otherwise. (Mar. 3, 1901, ch. 854, § 115b, as added June 30, 1902, 32 Stat. 524, ch. 1329; Feb. 10, 1927, 44 Stat. 1067, ch. 100.)

Amendment

The 1927 amendment changed "the said court" in the first line of this section to "the equity court," and inserted the second, third, and fourth sentences.

Cross References

Ancillary guardian for nonresident infants and persons non compos mentis, §§ 21–115, 21–116.

Appointment of guardian for non compos mentis owners of buildings sought to be condemned by board for condemnation of insanitary buildings, § 5–609.

Drunkards and drug addicts, § 21–401.

Duty to file income tax returns, § 47–1515.

Duty to file schedule of personal property for taxation, distraint of property for nonpayment, §§ 47–1203, 47–1301.

Exemption from military service, § 39–101.

Guardian ad litem for persons under disabilities in condemnation proceedings to obtain land for streets, § 7–204.

Guardian ad litem for persons under disabilities in proceedings to condemn lands for public parks and playgrounds, § 8–102.

Guardian ad litem in condemnation proceedings, § 16–604.

Guardian ad litem in proceedings before commission on mental health, § 21–308.

Guardian ad litem in proceedings to condemn land for United States, § 16–627.

Guardian ad litem in proceedings to probate will, § 19–303.

Liability for income taxes, § 47–1524.

May redeem from tax sales within one year after removal of disability, § 47–1003.

Other provisions concerning property and estates of persons non compos mentis, §§ 21–202, 21–203, 21–213.

Release of dower generally, § 30–216.

Release of dower when wife is insane, § 18–204.

Rights under real estate leases, §§ 45–924 to 45–930.

Suits to annul marriage, § 30–104.

Statutory Reference

In proceedings for acquisition of lands in the District of Columbia for public use, appointment of guardian ad litem, U. S. C., title 40, § 120.

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NOTES TO DECISIONS

Adjudication as Necessary

This section is not operative until a person has been adjudged non compos mentis except in case of application for an ancillary committee. *Cooper* v. *Burton,* 1942 (127 F. 2d 741, 75 U. S. App. D. C. 298).

A general or domiciliary committee for an allegedly insane person in New Jersey could not be appointed by District of Columbia courts without an adjudication of insanity, and there could not be an adjudication of insanity in absence of personal jurisdiction over the person. *Cooper* v. *Burton,* 1942 (127 F. 2d 741, 75 U. S. App. D. C. 298).

This section relates solely to appointment of committees or trustees for persons who have been adjudged non compos mentis, and it could not be relied on in support of a petition to obtain an adjudication to that effect. *Cooper* v. *Burton,* 1942 (127 F. 2d 741, 75 U. S. App. D. C. 298).

Costs and Maintenance of Ward Committed to Government Hospital

District of Columbia has an action against the committee of an insane person with homicidal tendencies, who has been committed to Government Hospital for the Insane, to recover from his estate for costs and maintenance. *DePue* v. *District of Columbia* (45 App. D. C. 54).

Hearing To Be Allowed Relatives

Appointment before hearing relatives is voidable and not void. *Coleman* v. *Schwartz* (50 App. D. C. 111, 268 Fed. 701).

Lunatic's Suit for Annulment of Marriage

Lunatic may file suit for annulment of marriage, through next friend, but committee should be joined as party defendant. *Mackey* v. *Peters* (22 App. D. C. 341).

Property, Jurisdiction Over

District of Columbia courts have power to grant protection to property of insane persons wherever they may be at a particular time, if the property itself is located in the District. *Cooper* v. *Burton,* 1942 (127 F. 2d 741, 75 U. S. App. D. C. 298).

Reimbursement

Provision that the committee or trustee of insane person shall reimburse the District for care and expenses up to the time of the appointment of such committee or trustee was intended to relate back to the date of the passage of the act and no further. *Baker* v. *District of Columbia* (39 App. D. C. 42).

Residence

The United States District Court for the District of Columbia has no power to adjudicate the mental condition of a lunatic in New Jersey because she formerly lived in the District. *Cooper* v. *Burton,* 1942 (127 F. 2d 741, 75 U. S. App. D. C. 298).

Selection of Committee

Court has discretion in selection of committee. *Coleman* v. *Schwartz* (50 App. D. C. 111, 268 Fed. 701).

§ 21–302 [16: 3]. No committee to be appointed for more than five wards.

No person shall be appointed by any court of the District of Columbia as committee or trustee if such person is serving as committee or trustee of as many as five non compos mentis persons. (Mar. 3, 1927, 44 Stat. 1383, ch. 349.)

Cross Reference

See notes to § 21–301.

§ 21–303 [16: 4]. Power of court over lunatics' estates—Conversion of proceeds of sale.

The equity court shall have the same power in respect of the freehold or leasehold estates of such

persons as is provided for in relation to the estates of infants, to be exercised upon the application of the guardian, trustee, or committee of such person; and upon the death of any such person non compos mentis the proceeds of any sale of his estate which may have been invested otherwise than in real estate shall be deemed real estate, and shall descend as the property or estate would if it had not been sold. (Mar. 3, 1901, ch. 854, § 115c, as added June 30, 1902, 32 Stat. 524, ch. 1329.)

CROSS REFERENCE

See note to § 21–301.

NOTES TO DECISIONS

JURISDICTION OF COURT

Courts of equity have no inherent jurisdiction to decree sale of lunatic's property for better investment. *Clark* v. *Mathewson* (7 App. D. C. 382).

§ 21–304 [16: 5]. Sale of estate for maintenance or to pay judgment—Mortgage.

The said court may order any part of the estate of a person non compos mentis, for whom a committee, guardian, or trustee has been appointed, to be sold, when necessary for his maintenance, upon application of said committee, guardian, or trustee, and full proof of the necessity of such sale. Upon the application of any judgment creditor or mortgagee of a person non compos mentis the court may decree a sale of the real or personal estate of such non compos mentis, or such part thereof as may be necessary to pay the claim of such creditor, upon being satisfied that such claim is just and there are no other means of paying the same. (Mar. 3, 1901, ch. 854, § 115d, as added June 30, 1902, 32 Stat. 524, ch. 1329.)

CROSS REFERENCES

Liability of relatives or committee for costs of maintenance and treatment, § 21–318.

See notes to § 21–301.

NOTES TO DECISIONS

PAYMENT OF EXPENSES OF INCOMPETENT

It is the duty of the committee or trustee to pay maintenance charges up to the date of appointment, and the expense thereafter becomes a liability of the lunatic's estate, to be enforced under the general statutes for the administration of lunatic's property. *Fitzhugh* v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

St. Elizabeths Hospital is a United States Government institution, but insane persons residing in the District of Columbia are admitted and the expense of their support and treatment is chargeable to the District of Columbia. *Fitzhugh* v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 21–305 [16: 6]. Sales to be ratified by court.

No sales of the property of infants or persons non compos mentis made by authority of sections 21–301 to 21–304 shall be valid and effectual to pass title to the property sold until they have been reported to and ratified by the court. (Mar. 3, 1901, ch. 854, § 115e, as added June 30, 1902, 32 Stat. 524, ch. 1329.)

COMPILER'S NOTE

In addition to the sections enumerated in the text of this section, see §§ 115a, 115b, 115c, and 115d of the 1902 act. Section 115a has been superseded (see Compiler's Note to § 21–310).

CROSS REFERENCE

See notes to § 21–301.

§ 21–306 [16: 18]. Proceedings to determine mental condition.

Proceedings instituted upon petition of the commissioners of the District of Columbia to determine the mental condition of alleged indigent insane persons and persons alleged to be insane, with homicidal or otherwise dangerous tendencies shall be instituted upon petition of the commissioners of the District of Columbia, shall be in the equity court of said District and shall be according to the provisions of section 21–310. (Mar. 3, 1903, 32 Stat. 1043, ch. 1006, § 1; Feb. 23, 1905, 33 Stat. 740, ch. 738, § 1.)

COMPILER'S NOTE

This section may be superseded by § 21–310.

AMENDMENT

The 1903 act provided that "hereafter proceedings by the commissioners of the District of Columbia to commit indigent insane persons, and insane persons having violent or dangerous tendencies, to the Government Hospital for the Insane shall be taken in the equity court of said District, and shall be in conformity with the law in force in said District on the thirtieth day of January, 1899."

CITED

Fitzhugh v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

NOTES TO DECISIONS

HABEAS CORPUS PROCEEDINGS

The trial judge may request the expert assistance of the commission on mental health in considering habeas corpus proceedings, if that course be thought desirable, but court is not required to do so. *Overholser* v. *Boddie* (C. A. D. C. 1950, 184 F. 2d 240).

NATURE OF PROCEEDING

The text of this section when considered with the title clearly indicates that a proceeding in equity is contemplated for determination of insanity and necessity of confinement. Habeas corpus in respect to lunacy is one of relief and not original adjudication. *Barry* v. *Hall* (68 App. D. C. 350, 98 Fed. (2d) 222).

In a lunacy proceeding, the court sits as a court of equity to determine whether a person is sane or insane and in doing so is, or should be, assisted by administrative officers and experts appropriate to such a court and to such a determination. *Overholser* v. *Treibly*, 1945 (147 F. 2d 705, 79 U. S. App. D. C. 389, certiorari denied 66 S. Ct. 38, 90 L. Ed. 434).

§ 21–307 [16: 19]. Jury in lunacy proceedings—Appointment of committee or trustee—Costs and expense of maintenance—Payment.

The jury to be used in case the commissioners of the District of Columbia are the petitioners shall be impaneled by the United States marshal for said District, upon order of the court, from the jurors in attendance upon the criminal courts of said District, who shall perform such services in addition to and as part of their duties in said criminal courts: *Provided,* That during such time as jurors are not in attendance upon said criminal courts the court may direct the said marshal to impanel the jurors in attendance upon the police court of said District, who shall perform such duties in addition to and as part of their duties in said police court; or the said court may direct a special jury to be summoned for such inquisitions. In case any such person adjudged to be of unsound mind has property, real or personal, the equity court of said District

shall have full power in the same cause to appoint a committee or trustee of the person and estate of such person, according to the provisions of section 21–301, and such committee or trustee shall reimburse, out of the funds of the lunatic, the District of Columbia for all court costs expended or incurred by it and for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment. (Feb. 23, 1905, 33 Stat. 740, ch. 738, § 1.)

CROSS REFERENCES

Jury in lunacy proceedings when instituted by persons other than commissioners of district, § 21–313.
Liability of relatives for cost of maintenance, § 21–318.

§ 21–308 [16: 42]. Commission on Mental Health.

There is hereby established a Commission on Mental Health (hereinafter referred to as the commission), which shall examine alleged insane persons, inquire into the affairs of such persons, and the affairs of those persons legally liable as hereinafter provided for the support of said alleged insane persons, and make reports and recommendations to the court as to the necessity of treatment, the commitment, and payment of the expense of maintenance and treatment of such insane persons. The said commission shall be drawn from a panel of nine, who shall be appointed by the judges of the United States District Court for the District of Columbia.

Eight members of said panel shall be physicians who have been practicing medicine in the District of Columbia, and who have had not less than five years' experience in the diagnosis and treatment of mental diseases, none of whom is financially interested in the hospital in which the alleged insane person is to be confined, and the ninth member shall be a member of the bar of the District Court of the United States for the District of Columbia who has been engaged in the general active practice of law in the District of Columbia for a period of at least five years prior to his appointment. Each physician member of the panel shall be assigned by the Chief Justice of the District Court of the United States for the District of Columbia to active service on the commission for three months in each calendar year, and the Chief Justice may change such assignments at any time at his discretion. The two physician members on active service and the lawyer member shall constitute the commission for the purposes of this section. The members to whom any case is referred shall continue to act in respect to that case until its final disposition, unless the court shall otherwise order. Physician members of the commission may practice their profession during their tenure of office. The lawyer member of the commission shall be chairman thereof, and it shall be his duty, and he shall have authority to direct the proceedings and hearings in such a manner as to insure dependable ascertainment of the facts, by relevant, competent, and material evidence, and so as to insure a fair and lawful conduct and disposition of the case. The lawyer member shall devote his entire time to the work of the commission. The judges shall also appoint an alternate lawyer member of the commission, who shall have the same qualifications as that member, and who may be designated by the Chief Justice to act as a member of the commission in absence of the lawyer member; for such service the alternate shall receive for each day of actual service the same compensation as fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., tit. 5, ch. 13), for the lawyer member of the commission. Original appointments of physicians shall be two each for one, two, three, and four years, respectively, the lawyer member to be appointed for four years. Thereafter appointments shall be for four years each. The salaries of the members of the commission and of employees shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., tit. 5, ch. 13).

The said commission shall act in all respects under the direction of the equity court. The court may compel, by subpena, the appearance of alleged insane persons before the commission for examination, and may compel the attendance of witnesses before the commission. If it shall appear to the satisfaction of the commission that the appearance before it of any alleged insane person is prevented by reason of the mental or physical condition of such person, the commission may, in its discretion, examine such person at the hospital in which such person may be confined, or, with the consent of the relatives, or of the person with whom such person may reside, at the residence of the alleged insane person.

The court may in its discretion appoint an attorney or guardian ad litem to represent the alleged insane person at any hearing before the commission or before the court, or before the court and jury, and shall allow the attorney or guardian ad litem so appointed a reasonable fee for his services. Such fees may be charged against the estate or property, if any, of the alleged insane person, or taxed as costs against the petitioner in the proceedings, or, in the case of an indigent person, charged against the funds of the commission, as the court, in its discretion may direct.

The office and records of the sanitary officer, District of Columbia, are hereby transferred from the Metropolitan Police Department to the commission and the sanitary officer shall be secretary of the commission. Suitable quarters shall be provided for the commission by the commissioners of the District of Columbia. (June 8, 1938, 52 Stat. 625, ch. 326, § 2; Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 16; Aug. 2, 1949, 63 Stat. 889, ch. 383, § 8; Oct. 25, 1949, 63 Stat. ch. 710.)

AMENDMENTS

The act of Aug. 2, 1949, cited to text, amended the second paragraph by repealing the last sentence thereof which read: "The commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized."

The act of Oct. 25, 1949, cited to text, amended the first paragraph by striking out, after the words "panel of nine" the words "bona fide residents of the District of Columbia who have resided in said District for a continuous period of three years immediately preceding their

appointment" and changed "District Court of the United States" to "United States District Court."

The 1939 act amended this section by deleting the words "for such service the alternate shall receive $10 for each day of actual service" and inserting in lieu thereof the following: "For such service the alternate shall receive, for each day of actual service, the same compensation as fixed in accordance with the provisions of the Classification Act of 1923, as amended, for the lawyer member of the Commission."

Cross References

Compensation of executive secretary and physician-members, § 21–308.

Drunkards and drug addicts, § 21–401.

See notes to §§ 19–401, 19–404, 21–310.

Annual estimates of expenditures, § 47–213.

NOTES TO DECISIONS

Habeas Corpus Proceeding

Where petitioner seeks writ of habeas corpus to obtain release from confinement in mental hospital on ground that his mental health is restored, and petitioner demands an examination by independent experts, or in a doubtful case, even in absence of such a demand, it is the right of court to seek assistance of Commission on Mental Health in determining sanity of petitioner. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

This section establishing the Commission of Mental Health vests a discretion in court to require the Commission's expert assistance in a habeas corpus proceeding in which by reason of his poverty petitioner is unable to secure the testimony of other professional witnesses. *De Marcos v. Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

In habeas corpus proceeding where petitioner sought release from confinement on ground that his mental health was restored, and requested that court provide expert witnesses in petitioner's behalf, not members of Commission on Mental Health, court denying request should have offered petitioner an examination by the Commission, but defect was cured by petitioner's insistence in appellate court that such relief if offered would be refused. *De Marcos* v. *Overholser,* 1943 (137 F. 2d 698, 78 U. S. App. D. C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to this chapter, the record raised sufficient doubt as to petitioner's insanity at present time to require a re-examination of his mental condition by the Commission on Mental Health in accordance with this chapter, under which he was committed. *Ex parte De Marcos* (D. C., D. C. 1946, 65 F. Supp. 231).

Where evidence of petitioner seeking release from detention and of doctor-psychiatrist in charge of petitioner was insufficient to create doubt on judgment of those detaining petitioner as insane, trial judge did not abuse his discretion in failing to submit without request, question of petitioner's mental condition to the Commission on Mental Health. *Appel* v. *Overholser* (App. D. C. 1948, 164 F. 2d 511).

§ 21–309 [16: 42a]. Salary of executive secretary of commission.

The salary of the executive secretary of the Commission on Mental Health shall be at the rate of $3,000 per annum and the salary of each physician-member shall be at the rate of $3,800 per annum. (July 15, 1939, 53 Stat. 1007, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

§ 21–310 [16: 58]. Insanity proceedings — Application for writ de lunatico inquirendo, and for observation.

Any person with whom an alleged insane person may reside, or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of lawful age of any such person, or the nearest relative or friend available, or the committee of such person, or an officer of any charitable institution, home, or hospital in which such person may be, or any duly accredited officer or agent of the Board of Public Welfare, or any officer authorized to make arrests in the District of Columbia who has arrested any alleged insane person under the provisions of sections 21–326 to 21–331, may apply for a writ de lunatico inquirendo and an order of commitment, or either thereof, for any alleged insane person in the District of Columbia, by filing in the District Court of the United States for the District of Columbia a verified petition therefor, containing a statement of the facts upon which the allegation of insanity is based.

Any person believing he has, or is about to, become mentally ill may, upon his own written application, in the discretion of the chief psychiatrist of Gallinger Municipal Hospital, enter Gallinger Municipal Hospital for observation and place himself subject to examination and commitment as hereinafter provided. (Aug. 9, 1939, 53 Stat. 1293, ch. 620, § 1.)

Compiler's Note

Section 1 of title 16 of the 1929 code provided as follows: "All writs de lunatico inquirendo shall issue from the equity court, and a justice holding said court shall preside at all inquisitions of lunacy, and may impanel a jury from among the petit jurors in attendance in the Supreme Court of the District of Columbia. (June 30, 1902, 32 Stat. 524, ch. 1329, § 115a; Apr. 19, 1920, 41 Stat. 556, ch. 153.)"

It has been suggested that the following proviso to section 34 of the act of Congress of October 1, 1890, 26 Stat. 632, ch. 1246, remains in force: "The courts of the District of Columbia shall not have power to appoint any trustee, trustees, guardians, receivers, or other trustee of a fund or property located outside of the District of Columbia, or belonging to a corporation or person having a legal residence or location outside of said District."

Cross References

Commitment of feeble-minded persons, § 32–622.

General provisions concerning feeble-minded person, including inquests, commitment, and discharge, §§ 32–603 to 32–629.

Other provisions concerning insane persons, criminally insane, inquests, commitment, payment of expenses, §§ 24–301 to 24–303, 32–401 to 32–407.

Rules of Civil Procedure

The rules do not apply to lunacy proceedings, see Rule 81 (a) (1).

NOTES TO DECISIONS

Decision Under Former Law

The United States District Court is not shown to have lost jurisdiction over either the subject matter of the criminal prosecution or the person of petitioner, by reason of the proceedings to determine his sanity, or those connected therewith or consequent thereon (D. C. 1901 Edit. § 927 (§ 24–301 herein). *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

Construction

Where aunt was of unsound mind, she could not care for herself and her property, niece was interested in her welfare, and suitable committee had been appointed after proceedings in which all relatives took part and to which

none objected, the description under this section of the person who may file petition for appointment of committee should be liberally construed. *Duvall* v. *Humphrey* (App. D. C. 1946, 153 F. 2d 798).

NEAREST RELATIVE AVAILABLE

Under this section authorizing "nearest relative available" to file petition for writ of de lunatico inquirendo and for appointment of committee, the quoted phrase is an elastic term, and is not intended to require an aged relative, who might make himself available, if no one else were available, to bear the burden of starting a proceeding, but it is intended to exclude officious intermeddling. *Duvall* v. *Humphrey* (App. D. C. 1946, 153 F. 2d 798).

Niece was "nearest relative available" entitled to file petition for writ of de lunatico inquirendo and for appointment of committee for aunt, where her 81-year-old brother and her 84-year-old sister joined with other relatives in requesting appointment of a committee. *Duvall* v. *Humphrey* (App. D. C. 1946, 153 F. 2d 798).

§ 21–311 [16: 59]. Issuance of attachment—Examination.

Upon the filing with the court of a verified petition as hereinabove provided, accompanied by the affidavits of two or more responsible residents of the District of Columbia setting forth that they believe the person therein named to be insane or of unsound mind, the length of time they have known such person, that they believe such person to be incapable of managing his own affairs, and that such person is not fit to be at large or go unrestrained, and that if such person be permitted to remain at liberty the rights of persons and property will be jeopardized or the preservation of public peace imperiled or the commission of crime rendered probable, and that such person is a fit subject for treatment by reason of his or her mental condition, the court, or any judge thereof in vacation, may, in its or his discretion, issue an attachment for the immediate apprehension and detention, for preliminary examination, of such person in Saint Elizabeths Hospital and, unless found by the staff of Saint Elizabeths Hospital to be of sound mind, therein for a period not exceeding thirty days. Any person so apprehended and detained shall be given an examination within five days of his admission into Saint Elizabeths Hospital by the staff of Saint Elizabeths Hospital. The Superintendent of Saint Elizabeths Hospital is hereby authorized to receive and detain such persons, at the expense of the District of Columbia.

If any person while a patient in Gallinger Municipal Hospital being observed for his or her mental condition can not be cared for or treated adequately in said hospital or if such person be in need of treatment which can not be given properly in said hospital, then the superintendent of Gallinger Municipal Hospital may effect the transfer and temporary commitment of such person to Saint Elizabeths Hospital by executing a petition as provided by section 21–310, accompanied by the certificate of the chief psychiatrist of Gallinger Municipal Hospital setting forth that said patient is of unsound mind, can not be cared for or treated adequately in Gallinger Municipal Hospital, should not be allowed to remain at liberty and go unrestrained, and that said patient is a fit subject for treatment in Saint Elizabeths Hospital on account of his mental condition. The superintendent of Saint Elizabeths Hospital is authorized to receive and detain any patient so transferred from Gallinger Municipal Hospital at the expense of the District of Columbia pending his formal commitment or other order of the court.

Persons arrested under the provisions of sections 21–326 to 21–331 shall be detained in Gallinger Municipal Hospital pending the filing of a petition as provided in section 21–310. Such petition shall be filed within forty-eight hours after such person shall have been admitted into Gallinger Municipal Hospital, or, if such forty-eight-hour period shall expire on a Sunday or legal holiday, then not later than noon of the next succeeding day which is not a Sunday or legal holiday. The court, or any judge thereof in vacation, may, upon being satisfied of the sufficiency of the petition, sign an order authorizing the continued detention of said person in Gallinger Municipal Hospital and, unless found by the staff of Gallinger Municipal Hospital to be of sound mind, in Saint Elizabeths Hospital for a period not exceeding thirty days from the time of his apprehension and detention. If such petition be not filed, and such order of court obtained within the aforementioned period, the person shall be discharged forthwith. If said staff shall find that such person is of unsound mind and suitable for treatment by reason of mental illness, the superintendent of said hospital may immediately transfer such person to Saint Elizabeths Hospital, and shall report the fact of such transfer to the Commission. The superintendent of Saint Elizabeths Hospital is hereby authorized to receive and detain persons so transferred, at the expense of the District of Columbia.

If as a result of examination, the staff of Gallinger Municipal Hospital or Saint Elizabeths Hospital shall find that any person detained in Gallinger Municipal Hospital or Saint Elizabeths Hospital pursuant to the provisions of this section is of sound mind, he shall be discharged forthwith by said Gallinger Municipal Hospital or Saint Elizabeths Hospital, and the petition, if any, shall be dismissed.

Any petition filed in the equity court for a writ de lunatico inquirendo or for an order of commitment of any alleged insane person, shall be referred by the court to the Commission for report and recommendation within such time as the court may designate, not exceeding seven days, which time may be extended by the court for good cause shown, and in such event the period of temporary commitment in Saint Elizabeths Hospital may be extended by the court for such additional time as the court shall deem necessary. The Commission shall examine the alleged insane person and any other person, including any suggested by the alleged insane person, his relatives, friends, or representatives, whose testimony may be relevant, competent, and material upon the issue of insanity; and the Commission shall afford opportunity for hearing to any alleged insane person, his relatives, friends, or representatives. At all hearings the alleged insane person shall have the right to be represented by counsel.

The Commission is hereby authorized to conduct its examination and hearings of cases elsewhere than

at the offices of said Commission in its discretion, according to the circumstances of the case.

If in the determination of the Commission he be found not to be sane, then it shall be the duty of the Commission to apply to the court for a date for a hearing. In all cases before said hearing, the said Commission shall cause to be served personally upon the patient a written notice of the time and place of final hearing at least five days before the date fixed. Five days' notice of the time and place of the hearing shall in all cases be mailed to or served upon the applicant, but in case the applicant is not the husband, wife, or nearest relative, the notice shall be mailed to or served upon the husband, wife, or nearest relative, if possible. The notice shall contain a statement that if the patient desires to oppose the application for a final order of commitment, he may appear personally or by attorney at the time and place fixed for the hearing. Proof of service shall be made at the hearing. The court may in its discretion appoint an attorney or guardian ad litem to represent the alleged insane person at any hearing before the court, or before the court and jury, and shall allow the attorney or guardian ad litem so appointed a reasonable fee for his services. Such fees may be charged against the estate or property, if any, of the alleged insane person.

If a demand is made for a jury trial, the superintendent of Gallinger Municipal Hospital or Saint Elizabeths Hospital shall see that the patient has been given opportunity to appear personally or by attorney at the hearing and assist him in communicating with his friends, relatives, or attorney. If the superintendent shall certify that in his opinion it would be prejudicial to the health of the patient or unsafe to produce the patient at the inquiry, then such patient shall not be required to be produced.

Proof of service of the required notices shall be made at the hearing. (Aug. 9, 1939, 53 Stat. 1294, ch. 620, § 2; June 30, 1948, 62 Stat. 1195, ch. 774, §§ 1, 2.)

COMPILER'S NOTE

As enacted, the beginning of this section read: "Upon the filing with the court of a verified petition as provided in section 1 of the act approved June 8, 1938." It referred to D. C. Code, 1929 edit., Supp. V, title 16, § 41, which has now been superseded by § 1 of ch. 620 of the act of August 9, 1939 (53 Stat. 1293), which appears in this code as § 21–310.

AMENDMENTS

Section 1 of act June 30, 1948, amended first paragraph of this section, providing that any person so apprehended be examined by the staff of Saint Elizabeths Hospital rather than by the staff of Gallinger Municipal Hospital. Section 2 of act June 30, 1948, amended fourth paragraph, providing for the release of such person if found to be of sound mind.

CROSS REFERENCE

Other provisions concerning care and commitment of insane persons to St. Elizabeths Hospital, § 32–401 et seq.

§ 21–312 [16: 60]. Report to be served—Demand for jury trial—Trial.

Upon the receipt of the report and recommendation of the commission, a copy shall be served personally upon the alleged insane person, his guardian ad litem, or his attorney, if he has one, together with notice that he has five days within which to demand a jury trial. A demand for hearing by the court, or a demand for jury trial for the purpose of determining the sanity or insanity of the alleged insane person may be made by the said alleged insane person or by anyone in his behalf, or a jury trial may be ordered by the court upon its own motion. If demand be made for a jury trial, or such trial be ordered by the court on its own motion, the case shall be calendared for trial not more than ten days after demand for hearing by the court for a jury trial, unless the time is extended by the court. The commission, or any of the members thereof, shall be competent and compellable witnesses at any trial or hearing of an alleged insane person. In any case in which a commitment at public expense, in whole or in part, is sought, the corporation counsel or one of his assistants shall represent the petitioner unless said petitioner shall be represented by counsel of his or her own choice. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 3.)

NOTES TO DECISIONS

CONFINEMENT WITHOUT TRIAL

Where petitioner, seeking writ of habeas corpus, was under indictment for an assault but court found that he was of unsound mind and dangerous, his confinement without criminal trial in ward of hospital which resembled a prison did not deprive him of constitutional rights, since confinement was not due to the indictment. *Knighton* v. *Overholser,* 1944 (145 F. 2d 860, 79 U. S. App. D. C. 294).

HABEAS CORPUS

Where question arose regarding whether procedure in lunacy proceedings was proper but order of adjudication and commitment was set aside and procedure thereafter adopted conformed to legal requirements and resulted in order of adjudication of insanity and of commitment, the allegedly insane person was not entitled to writ of habeas corpus. *Wrobel* v. *Overholser,* 1944 (145 F. 2d 859, 79 U. S. App. D. C. 293, certiorari denied 65 S. Ct. 712, 324 U. S. 854, 89 L. Ed. 1413).

PRESUMPTIONS

Adjudication of insanity, as long as not rescinded, creates rebuttable presumption that mental incapacity of person continues thereafter, and strength of such presumption is affected by character and causes of the mental disturbance, possibility of lucid intervals, and various other considerations. *Life Ins. Co. of Virginia* v. *Herrmann* (D. C. Mun. App. 1944, 35 A. 2d 828).

§ 21–313 [16: 61]. Jury.

The jury to be used in lunacy inquisitions in those cases where a jury trial shall be demanded or ordered shall be empaneled, upon order of the court, from the jurors in attendance upon other branches of the District Court of the United States for the District of Columbia, who shall perform such services in addition to and as part of their duties in said court. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 4.)

COMPILER'S NOTE

This section may supersede § 21–307, in part.

§ 21–314 [16: 62]. Procedure if no jury trial demanded.

If no demand be made for a jury trial, the judge holding court shall determine the sanity or insanity of said alleged insane person, but such judge may, in his discretion, require other proofs, in addition to the petition and report of the commission, or such judge may order the temporary commitment of said

alleged insane person for observation or treatment for an additional period of not more than thirty days. The judge may, in his discretion, dismiss the petition notwithstanding the recommendation of the commission. If the judge be satisfied that the alleged insane person is of sound mind, he shall forthwith discharge such person and dismiss the petition. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 5.)

NOTES TO DECISIONS

In General

The statute as a whole makes clear that a proceeding in equity is contemplated for initial determination of insanity, and not the writ of habeas corpus. *Barry* v. *Hall* (68 App. D. C. 350, 98 Fed. (2d) 222).

§ 21–315 [16: 63]. Commitment after trial.

If the judge be satisfied that the alleged insane person is insane, or if a jury shall so find, the judge may commit the insane person as he in his discretion shall find to be for the best interests of the public and of the insane person. In case of a temporary commitment, the court may make additional temporary commitments upon further examination by, and recommendation of, the commission.

The judge may commit the insane person to the custody of the Veterans' Administration for care and treatment in a Veterans' Administration facility, if there has been filed with the court or the Commission on Mental Health, acting under the direction of the court, a certificate executed by the Administrator of Veterans' Affairs, or his duly authorized representative, showing said insane person to be entitled to such care and treatment, and that facilities therefor are available. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 6.)

NOTES TO DECISIONS

Findings of Court

Appointment of committee was not invalid because of absence of finding that ward was dangerous, unfit to be at large, and in need of treatment, where ward was not arrested and detained pending trial. *Duvall* v. *Humphrey* (App. D. C. 1946, 153 F. 2d 798).

Habeas Corpus

The issue of sanity or insanity cannot be determined on merits on habeas corpus proceeding instituted by person confined in a hospital for insane, but, if petitioner makes a sufficient showing that he was committed improperly, the judge may enter an order providing for discharge of petitioner unless within a reasonable time a proper proceeding is initiated. *Overholser* v. *Treibly,* 1945 (147 F. 2d 705, 79 U. S. App. D. C. 389, certiorari denied 66 S. Ct. 38, 90 L. Ed. 434).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the only question before court was whether record raised sufficient doubt as to petitioner's insanity at present time to justify reopening commitment proceeding. *Ex parte De Marcos* (D. C., D. C. 1946, 65 F. Supp. 231).

The trial court still has the authority which it has always had to order the immediate discharge of a patient if, after a hearing on habeas corpus proceeding, it be of the opinion that the patient is of sound mind. such remedy is expressly reserved to it by § 21–325. Prior cases to the contrary are overruled. *Overholser* v. *Boddie* (C. A. D. C. 1950, 184 F. 2d 240).

§ 21–316 [16: 64]. Recommendations of commission.

Recommendations of the commission must be made by the unanimous recommendation of the three members acting upon the case. If the three members of the commission be unable to agree upon the recommendation to be made in any case, they shall immediately file with the court a report setting forth the fact that they are unable to agree on the case, and in that event the court shall hear and determine the case, unless the alleged insane person, or someone in his behalf, shall demand a jury trial, in which event the case shall be heard and determined by the court and a jury.

If the commission shall agree upon a recommendation, it shall file with the court a report setting forth its findings of fact and conclusions of law and its recommendation based thereon which recommendation shall be in one of the following forms:

(A) That the person is of sound mind and should be discharged forthwith and the petition dismissed.

(B) That the mental condition of the alleged insane person is such that a definite diagnosis can not be made without further study, or that the mental incapacity of said person will probably be of short duration, and that said person should be further detained and committed in Saint Elizabeths Hospital as hereinbefore provided for, or in any other hospital in the District of Columbia as provided in sections 21–326 to 21–331, for further observation or treatment for such period of time as the court may determine, during which said time the commission shall from time to time examine said person and make a recommendation to the court as to the final disposition of the case.

(C) That the person is of unsound mind and (1) should be committed to Saint Elizabeths Hospital, or any other hospital provided by section 21–329, (a) at public expense, or (b) at the expense of those persons who are required by law, or who will agree to pay for the maintenance and treatment of said insane person, or (c) that the relatives of said insane person, mentioned in section 21–321 are able to pay a specified sum per month toward the support and maintenance of said insane person; (2) is harmless and may safely be committed to the care of his relatives or friends (naming them) who are willing to accept the custody, care, and maintenance of said insane person under conditions specified by the commission; (3) should be committed to the Administrator of Veterans' Affairs for care and treatment in a Veterans' Administration facility: *Provided,* That there shall be filed with the court or commission a certificate executed by said administrator or his duly authorized representative, showing said person is entitled to such care and treatment and that facilities therefor are available. (Aug. 9, 1939, 53 Stat. 1297, ch. 620, § 7.)

NOTES TO DECISIONS

Indigent Insane

In contemplation of the law, the public health service is a friend of the indigent insane. *Barry* v. *Hall* (68 App. D. C. 350, 98 Fed. (2d) 222).

§ 21–317 [16: 65]. Transfer of nonresident insane—Confinement of residents—Custody of harmless insane.

If an insane person be found by the commission, subject to the review of the court, not to be a resi-

dent of the District of Columbia, he may be committed by the court to Saint Elizabeths Hospital as a District of Columbia patient until such time as his residence shall have been ascertained. Upon the ascertainment of such insane person's residence in some other jurisdiction, he shall be transferred to the state of such residence. The expense of transferring such patient, including the traveling expenses of necessary attendants to insure his safe transfer, shall be borne by the District of Columbia only if the patient be indigent.

Any insane person found by the commission to have been a resident of the District of Columbia for more than one year prior to the filing of the petition, and any person found within the District of Columbia whose residence can not be ascertained, who is not in confinement on a criminal charge, may be committed by the court to, and confined in, said Saint Elizabeths Hospital, or any other hospital in said District, which, in the judgment of the commission of said District, is properly constructed and equipped for the reception and care of such persons, and the official in charge of which, for the time being, is willing to receive such persons.

"Resident of the District of Columbia," as used in this section, means a person who has maintained his principal place of abode in the District of Columbia for more than one year prior to the filing of the petition provided for in section 21–310.

If it appears that a person found to be insane is harmless and his or her relatives or committee of his or her person are willing and able properly to care for such insane person at some place or institution other than Saint Elizabeths Hospital, the judge may order that such insane person be placed in the care and custody of such relatives or such committee upon their entering into an undertaking to provide for such insane person as the court may direct. (Aug. 9, 1939, 53 Stat. 1297, ch. 620, § 8.)

NOTES TO DECISIONS

GENERALLY

This section providing for commitment of an insane person found not to be a resident of the District of Columbia and for transfer to the state of his residence does not purport to confer the right of transfer on persons found to be resident in the District or whose residence cannot be ascertained, and the finding referred to is the one made in the commitment proceedings. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

This section providing for commitment of an insane person found not to be a resident of the District of Columbia and for transfer to the state of his residence does not contemplate that a committed insane person shall be transferred in any case to the state of his residence without regard to its willingness to receive him, and it is intended that the person shall be delivered into the hands of state officials charged with custody of insane residents. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

BURDEN OF PROOF

A committed insane person to establish and enforce his right to be transferred to Colorado as the state of his residence was required to show either that Colorado was willing to receive him into its custody or that there was means of enforcing his right to be received as against the state and its officials. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

COMMISSION'S REPORT

Where petitioner made no demand for a jury trial or a further hearing by the court under this section after Commission on Mental Health adjudged him of unsound mind and ordered his commitment, the District Court, in habeas corpus proceeding brought to effect petitioner's transfer to Colorado, was authorized to act on commission's report and recommendations without more, except to examine them and find them sufficient. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

EVIDENCE

In habeas corpus proceeding brought to effect transfer of petitioner, a committed insane person, to Colorado as the state of his residence, petitioner was not entitled to relief in absence of evidence that Colorado was willing to receive him as a legal resident entitled to admission into the custody of Colorado officials having charge of insane persons. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

Where an inmate of National Soldiers' Home in Togus, Maine, shot and killed one of the physicians of the home and was thereafter committed to St. Elizabeths Hospital in the District of Columbia on finding that he was insane, such person was not entitled to be transferred to Maine on ground that he was a citizen and resident of the State of Maine and not a resident of the District of Columbia in absence of proof that State of Maine was willing to receive and care for him, or to be discharged without proper provision for his care and restraint. *Williams* v. *Overholser,* 1943 (137 F. 2d 545, 78 U. S. App. D. C. 95).

JURISDICTION

In habeas corpus proceeding brought to effect transfer of committed insane person to Colorado as the state of his residence under this section, District of Columbia courts had no power or jurisdiction to enforce Colorado's obligation, even if section obligated Colorado to receive person on showing of residence made, where neither Colorado nor its officials were made parties to proceeding. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

PETITION, SUFFICIENCY OF

Where petition for writ of habeas corpus to effect transfer of petitioner, a committed insane person, to Colorado did not state a cause of action in that respect, petitioner was not prejudiced by inadequacy of hearing conducted by petitioner in his own behalf with regard to the admission of evidence and other action which competent counsel would have taken, except in a procedural sense, and that was not sufficient to require another hearing. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

WAIVER

Where committed insane person was ably represented on appeal from judgment dismissing habeas corpus petition by counsel who raised no issue concerning sanity and conceded at argument that a hearing on question of sanity could result only in remand to custody, and adequacy of hearing was questioned only in respect to alleged right of transfer of person to Colorado, counsel's action constituted a "waiver" of any right to further hearing on question of sanity. *Howard* v. *Overholser,* 1942 (130 F. 2d 429, 76 U. S. App. D. C. 166).

§ 21–318 [16: 66]. Liability of relatives for costs of maintenance and treatment.

The father, mother, husband, wife, and adult children of an insane person, if of sufficient ability, and the committee or guardian of his or her person and estate, if his or her estate is sufficient for the purpose, shall pay the cost to the District of Columbia of his or her maintenance, including treatment in Saint Elizabeths Hospital or in any other hospital to which the insane person may be committed. It shall be the further duty of said commission, to examine under oath, the father, mother, husband, wife, adult children, and committee, if any, of any alleged insane

person whenever such relatives live within the District of Columbia, and to ascertain the ability of such relatives or committee, if any, to maintain or contribute toward the maintenance of such alleged insane person: *Provided,* That in no case shall said relatives or committee be required to pay more than the actual cost to the District of Columbia of maintenance of such alleged insane person.

If any person hereinabove made liable for the maintenance of an insane person shall fail so to provide or pay for such maintenance, the court shall issue to such person a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of such patient. The citation shall be served at least ten days before the hearing thereon. If, upon such hearing, it shall appear to the court that the insane person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degrees hereinabove mentioned who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by such relatives of such sum or sums as it may find they are reasonably able to pay and as may be necessary to provide for the maintenance of such insane person. Said order shall require the payment of such sums to the Board of Public Welfare annually, semiannually, or quarterly as the court may direct. It shall be the duty of the board to collect the said sums due under this section, and to turn the same into the treasury of the United States to the credit of the District of Columbia. Any such order may be enforced against any property of the insane person or of the person liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case. (Aug. 9, 1939, 53 Stat. 1298, ch. 620, § 9.)

CROSS REFERENCE

Payment of hospitalization expense of criminally insane, § 24–301.

NOTES TO DECISIONS

LIABILITY FOR EXPENSES OF INCOMPETENT

The question of a husband's liability for the maintenance of an insane wife in a public institution, "when it shall arise in the future, will be settled" under the act of June 8, 1938, ch. 326, since superseded by the above section insofar as this annotation is concerned. *Fitzhugh* v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 21–319 [16: 15]. Insane persons having property—Inquiry by board—Charge for care.

Whenever it appears in the case of any insane person whose insanity commenced while he was a resident of the District of Columbia that he is able to defray a portion, but not the whole of the expenses of his support and treatment in Saint Elizabeths Hospital, the board of visitors of the hospital is authorized to inquire into the facts of the case; and if it appears to the board, upon such inquiry, that such insane person has property and no family, or has more property than is required for the support of his family, then, as a condition upon which such insane person, admitted or to be admitted upon the order of the Secretary of the Interior, shall receive or continue to receive the benefits of the hospital, there shall be paid to the superintendent from the income, property, or estate of such insane person such portion of his expenses in the hospital as a majority of the board shall determine to be just and reasonable, under all the circumstances. (R. S. § 4849; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

AMENDMENT

The 1916 act changed the name of the Government Hospital for the Insane to Saint Elizabeths Hospital.

NOTES TO DECISIONS

IN GENERAL

The effect of the 1905 act requiring the committee or trustee of an incompetent to reimburse the District for care and expenses up to time of appointment of committee was to prevent the running of the statute of limitations. *Fitzhugh* v. *District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 21–320 [16: 67]. Hearing to restore status of paroled person—Petition—Trial—Decision.

Any insane person who has been committed to Saint Elizabeths Hospital or any other hospital, and who shall have been released from such hospital as improved, or who shall have been paroled from such hospital (but who shall not have been discharged as cured), and who shall have been absent from the hospital on release or parole for a period of six months or longer, shall have the right to appear before the District Court of the United States for the District of Columbia for a hearing to determine the sanity and right to restoration to the status of a person of sound mind of said insane person by filing a petition therefor with the court upon a form to be provided by the commission for that purpose. It shall be the duty of the commission to make an examination of the records of Saint Elizabeths Hospital of the insane person as may be necessary to determine such questions, and if necessary have the person examined by the members of the staff of Saint Elizabeths Hospital and to make a report and recommendation to the court. In the event the commission shall find from the records and examination that the said person is of sound mind and shall recommend to the court the restoration of said person to the status of a person of sound mind such recommendation shall be sufficient to authorize the court to enter an order declaring such person to be restored to his or her former legal status as a person of sound mind. In the event the commission shall find such person to be of unsound mind, it shall report that finding to the court. Upon the filing by the commission of a report finding such person to be of unsound mind, the insane person shall have the right to a hearing by the court or by the court and a jury. For the purpose of making the examination and observations required by this section, the commission shall have the right to examine the records and to interrogate the physicians and attendants at Saint Elizabeths Hospital or any other hospital in which such patient shall have been confined, who have had the insane person under their care, and the commission may recommend to the court the temporary recommitment of such person for said purpose. At such trial

by the court or by the court and jury, an adjudication shall be made as to whether the person is of sound mind or is still of unsound mind. (Aug. 9, 1939, 53 Stat. 1298, ch. 620, § 10.)

NOTES TO DECISIONS

COMMITMENT BY SECRETARY OF NAVY

Where retired officer in military service had been committed on order of Secretary of Navy to hospital for insane and statutes made no provision for reexamination of person committed on order of Secretary, or for initiation, by the person committed of a proceeeding to secure such reexamination, procedure of habeas corpus was available for the latter purpose. *Overholser* v. *Treibly,* 1945 (147 F. 2d 705, 79 U. S. App. D. C. 389, certiorari denied 66 S. Ct. 38, 90 L. Ed. 434).

HABEAS CORPUS PROCEEDINGS

Where a petition for writ of habeas corpus has been presented, legally sufficient on its face to start the court's machinery in motion, the judge should appoint either a guardian or counsel to represent the petitioner in the further stages of the proceeding. *Overholser* v. *Treibly,* 1945 (147 F. 2d 705, 79 U. S. App. D. C. 389, certiorari denied 66 S. Ct. 38, 90 L. Ed. 434).

§ 21–321 [16: 68]. Witness fees.

The same fees and mileage as are paid in the courts of the United States shall be paid in the case of witnesses subpenaed under the provisions of sections 21–310 to 21–318, 21–320 to 21–325. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 11.)

§ 21–322 [16: 69]. Undertaking.

The court in its discretion may require the petitioner to file an undertaking with surety to be approved by the court in such amount as the court may deem proper, conditioned to save harmless the respondent by reason of costs incurred, including attorneys' fees, if any, and damages suffered by the respondent as a result of any such action. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 12.)

§ 21–323 [16: 70]. Applications and certificates for commitment and confinement.

All applications and certificates for commitment and confinement of any patient to any hospital in the District of Columbia for the care and the treatment of the insane must be made on forms approved by the commission and furnished by it. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 13.)

§ 21–324 [16: 71]. Penalty for false petition or affidavit.

Any person who executes a verified petition or affidavit as provided in sections 21–310 to 21–318, 21–320 to 21–325, by which he or she secures or attempts to secure the apprehension, detention, or restraint of any other person in the District of Columbia without probable cause for believing such person to be insane or of unsound mind, or any physician who knowingly makes any false certificate or affidavit as to the sanity or insanity of any other person, shall, upon conviction thereof, be fined not more than $500 or imprisoned not more than three years, or both. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 14.)

§ 21–325 [16: 72]. Existing remedies preserved.

Nothing contained in sections 21–310 to 21–318, 21–320 to 21–325 shall deprive the alleged insane person of the benefit of existing remedies to secure his release or to prove his sanity, or of any other legal remedies he may have. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 15.)

COMPILER'S NOTES

Section 16 of the act of August 9, 1939, appears as § 21–308 herein.

Sections 17 and 18 of the act of August 9, 1939, provided:

"All acts or parts of acts in conflict herewith are hereby repealed.

"If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

§ 21–326 [16: 31]. Apprehension and detention by police, without warrant, of insane persons found in public places.

Any member of the Metropolitan police of the District of Columbia or any other officer in said District authorized to make arrests is authorized and empowered to apprehend and detain, without warrant, any insane person or person of unsound mind found on any street, avenue, alley, or other public highway, or found in any public building or other public place within the District of Columbia; and it shall be the duty of the policeman or officer so apprehending or detaining any such person to immediately file his affidavit with the major and superintendent of said Metropolitan police that he believes said person to be insane or of unsound mind, incapable of taking care of himself or herself or his or her property, and if permitted to remain at large or to go unrestrained in the District of Columbia the rights of persons and of property will be jeopardized or the preservation of public peace imperiled and the commission of crime rendered probable: *Provided, however,* That it shall be the duty of the major and superintendent of the said Metropolitan police to forthwith notify the husband or wife or some near relative or friend of the person so apprehended and detained whose address may be known to the said major and superintendent or whose address can by reasonable inquiry be ascertained by him. (Apr. 27, 1904, 33 Stat. 316, ch. 1618, § 1.)

NOTES TO DECISIONS

ARREST

A policeman may not make, without the superintendent's order, an arrest which he may not make with such order. *Jillson* v. *Caprio* (C. A. D. C. 1950, 181 F. 2d 523, 86 U. S. App. D. C. 168).

FALSE IMPRISONMENT

Where the basis in action for false imprisonment was an arrest made at the request of appellee physician, the arrest was unlawful since such arrests of alleged insane persons have been permitted by Congress in only two sorts of circumstances, both absent here. *Jillson* v. *Caprio* (C. A. D. C. 1950, 181 F. 2d 523, 86 U. S. App. D. C. 168).

§ 21–327 [16: 32]. Arrest at other than public places.

The major and superintendent of said Metropolitan police is authorized to order the apprehension and detention, without warrant, of any indigent person alleged to be insane or of unsound mind or any alleged insane person of homicidal or otherwise dangerous tendencies found elsewhere in the District of Columbia than in the places mentioned in section 21–326 whenever two or more responsible residents of the District of Columbia shall make and file affidavits with said major and superintendent of the Metropolitan police setting forth that they believe the person therein named to be insane or of unsound mind, the length of time they have known such person, that they believe such person to be incapable of managing his or her own affairs, and that such person is not fit to be at large or to go unrestrained, and if such person is permitted to remain at liberty in the District of Columbia the rights of persons and of property will be jeopardized or the preservation of public peace imperiled and the commission of crime rendered probable, and that such person is a fit subject for treatment on account of his or her mental condition: *Provided, however,* That before the major and superintendent of the said Metropolitan police shall order the apprehension and detention of any person upon the affidavits of the aforesaid residents or in case of arrest as provided in section 21–326, he shall, in addition thereto, require the certificate of at least two physicians who shall certify that they have examined the person alleged to be insane or of unsound mind, and that such person should not be allowed to remain at liberty and go unrestrained, and that such person is a fit subject for treatment on account of his or her mental condition. (Apr. 27, 1904, 33 Stat. 317, ch. 1618, § 2.)

NOTES TO DECISIONS

ARREST

A policeman may not make, without the superintendent's order, an arrest which he may not make with such order. *Jillson* v. *Caprio* (C. A. D. C. 1950, 181 F. 2d 523, 86 U. S. App. U. C. 168).

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§ 21–328 [16: 33]. Temporary detention of alleged insane persons.

The commissioners of the District of Columbia are authorized to place in Saint Elizabeths Hospital in said District, and the superintendent of said hospital is authorized to receive, upon the written request of the said commissioners, for a period of time not exceeding thirty days, indigent persons alleged to be insane or of unsound mind, residents of or found within the District of Columbia, and alleged insane persons of homicidal or otherwise dangerous tendencies, residents of or found within the said District, so apprehended and detained as provided in sections 21–326, 21–327, pending the formal commitment of such persons to said hospital as provided by law, or their transportation to their homes when their places of residence are ascertained by the proper officials charged by law with that duty. (Apr. 27, 1904, 33 Stat. 317, ch. 1618, § 3; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

AMENDMENT

The 1916 act changed the name of the Government Hospital for the Insane to St. Elizabeths Hospital.

NOTES TO DECISIONS

DISCRETIONARY POWERS OF COMMISSIONERS

In sanity proceedings the Commissioners exercise a discretion which the law vests in them and they are not liable in damages even though they make a mistake. *Brown* v. *Rudolph* (58 App. D. C. 116, 25 Fed. (2d) 540).

§ 21–329 [16: 34]. Temporary commitment of persons to other hospital, or detention in police station—Discharge of person certified not insane.

The commissioners of the District of Columbia may authorize the temporary commitment of any of the insane persons or persons of unsound mind mentioned in sections 21–326 to 21–328, and apprehended and detained as provided in sections 21–326, 21–327 (for a period of time not exceeding thirty days) in any other hospital in said District which, in the judgment of the health officer of said District, is properly constructed and equipped for the reception and care of such persons, and the official in charge of which, for the time being, is willing to receive such persons pending the temporary commitment or the formal commitment of such persons, as provided by law, to Saint Elizabeths Hospital or to any other hospital or insane asylum; or any such alleged insane person or person of unsound mind apprehended under sections 21–326, 21–327 may be detained in any police station or house of detention in said District pending the completion of arrangements for his or her temporary detention in Saint Elizabeths Hospital or any other hospital or insane asylum; and such persons may be detained in any police station or house of detention in said District until formally committed to Saint Elizabeths Hospital or any other hospital or asylum, in the manner provided by law, in case he or she can not be provided for by the said Saint Elizabeths Hospital and no arrangement can be made for his or her temporary detention in any other hospital or asylum: *Provided, however,* That if, pending the formal commitment of such alleged insane person or person of unsound mind to Saint Elizabeths Hospital or to any other hospital or asylum, the superintendent of said Saint Elizabeths Hospital, in the case of the commitment of a person to said hospital under the provisions of sections 21–326 to 21–331, or if two or more physicians in regular attendance at any other hospital or asylum where any person is committed under the provisions of sections 21–326 to 21–331, or if two or more surgeons of the police and fire departments, in the case of any person detained at any police station house or house of detention under the provisions of sections 21–326 to 21–331, shall certify in writing to the commissioners of the District of Columbia that such person is not insane or that he or she has recovered his or her reason,

the official in charge of Saint Elizabeths Hospital, or the hospital or asylum in which such person is confined, or the major and superintendent of said Metropolitan police, if such person be confined in a police station house or in a house of detention, shall discharge such alleged insane person or person of unsound mind forthwith and immediately report such action to the commissioners of the District of Columbia. (Apr. 27, 1904, 33 Stat. 317, ch. 1618, § 4; July 1, 1916, 39 Stat. 309, ch. 209.)

AMENDMENT

The 1916 act changed the name of the Government Hospital for the Insane to St. Elizabeths Hospital.

§ 21–330 [16: 35]. Certificate by physician as to sanity or insanity—Qualifications of physician.

For the purposes of sections 21–326 to 21–331, no certificate as to the sanity or the insanity of any person shall be valid which has been issued (a) by a physician who has not been regularly licensed to practice medicine in the District of Columbia, unless he be a commissioned surgeon of the United States Army, Navy, or Public Health Service; or (b) by a physician who is not a permanent resident of the District of Columbia; or (c) by a physician who has not been actively engaged in the practice of his profession for at least three years; or (d) by a physician who is related by blood or by marriage to the person whose mental condition is in question. Nor shall any certificate alleging the insanity of any person be valid which has been issued by a physician who is financially interested in the hospital or asylum in which the alleged insane person is to be confined, or who is professionally or officially connected therewith. (Apr. 27, 1904, 33 Stat. 318, ch. 1618, § 5; Aug. 14, 1912, 37 Stat. 309, ch. 288, § 1.)

AMENDMENT

Act of 1912 changed the name of the Public Health and Marine-Hospital Service to the Public Health Service.

REPEALS

Act July 1, 1944, ch. 373, title VI, § 611, 58 Stat. 714, repealed the act of Aug. 14, 1912, cited to text, which changed the name Public Health and Marine Hospital Service to Public Health Service. Said act July 1, 1944, retained name as Public Health Service.

§ 21–331 [16: 36]. Making false affidavit or certificate—Penalty.

Any person who makes an affidavit, as required by sections 21–326 or 21–327, by which he or she secures or attempts to secure the apprehension, detention, or restraint of any other person in the District of Columbia without probable cause for believing such person to be insane or of unsound mind, or any physician who knowingly makes any false certificate as to the sanity or insanity of any other person shall, upon conviction thereof, be fined not more than $500 or imprisoned not more than three years, or both. (Apr. 27, 1904, 33 Stat. 318, ch. 1618, § 6.)

§ 21–332 [16: 37]. Discharge of patients on bond.

If any person will give bond with sufficient security, to be approved by the District Court of the United States for the District of Columbia, or by any judge thereof in vacation, payable to the United States, with condition to restrain and take care of any independent or indigent insane person not charged with a breach of the peace, whether in the hospital or not, until the insane person is restored to sanity, such court or judge thereof may deliver such insane person to the party giving such bond. (R. S., § 4856.)

§ 21–333 [16: 38]. Insane persons not to be confined in jail.

No insane person not charged with any breach of the peace shall ever be confined in the United States jail in the District of Columbia. (R. S., § 4857.)

Chapter 4.—DRUNKARDS AND DRUG ADDICTS

Sec.
21–401. Appointment of committee—Petition—Petitioners—Determination—Jury—Bond—Powers—Duties—Discharge.

§ 21–401 [19: 141]. Appointment of committee—Petition—Petitioners—Determination—Jury—Bond—Powers—Duties—Discharge.

Whenever any person residing in said District, and owning any estate, real or personal, situate therein, is unfit from the habitual use of intoxicating liquors, or from the habitual use of opium, cocaine, or any similar substance, or any compound or derivative thereof, to properly manage or control the same, the equity court, on the petition of any creditor or relative of such person, or if there be no creditor or relative, upon the petition of any person living in said District, and upon summons being regularly served upon such person so alleged to be unfit to manage or control his property as aforesaid, commanding him to appear and answer such petition, may order a jury to be summoned to ascertain whether such person be an habitual drunkard or addicted to the habitual use of opium, cocaine, or any similar substance or any compound or derivative thereof and unfit from any of these causes to manage and control his property, and if the jury shall find that such person is an habitual drunkard or an habitual user of opium, cocaine, or any similar substance or any compound or derivative thereof and unfit to manage or control his property, such finding, when confirmed by the court, shall be entered of record in said cause, and it shall be the duty of the court thereupon to appoint some fit person to be committee of the person so declared unfit to manage or control his property as aforesaid.

Such committee before entering upon the discharge of his duties shall execute a bond, with surety, to be approved by the said court or one of the justices thereof, to the United States in a penalty equal to the amount of the personal property and the yearly rents to be derived from the real estate of such person, conditioned for the faithful performance of his duties as such committee; and he shall have control of the said estate, real and personal, with power to collect all debts due said drunkard, and to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply the annual income of the estate of such habitual drunkard to the support of said person, and the maintenance of his family and education of his children; and shall in all other respects perform the

same duties and have the same rights as pertain to committees of lunatics and idiots.

When any person for whom a committee has been appointed under the provisions of this section shall become competent to manage his property on account of reformation in his habits, he may apply to said court to have said committee discharged and the care and control of his property restored to him; and if it shall appear by the verdict of a jury summoned therefor, or by affidavits, or other evidence to the satisfaction of the court, that said applicant is a fit person to have the care or control of his property, an order shall be entered restoring such person to all the rights and privileges enjoyed before said committee was appointed. And as to the property of any person for whom a committee has been so appointed the court shall have the same powers that are herein given to it in respect of the property of infants. (June 30, 1902, 32 Stat. 524, ch. 1329, § 115f.)

CROSS REFERENCE

Exemption from military service, § 39–101.

NOTES TO DECISIONS

UNFITNESS TO MANAGE PROPERTY

Finding of unfitness to manage property in a proceeding under this section is conclusive of condition on date of rendition; "it is not so as of a date prior thereto, but at the same time it has the tendency to raise some inference that the helpless condition must have existed for some space of time." *Knott* v. *Giles* (27 App. D. C. 581).

PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22.—CRIMINAL OFFENSES

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Chapter 1.—GENERAL PROVISIONS

Sec.
22–101. "Writing" and "paper" defined.
22–102. "Anything of value" defined.
22–103. Attempts to commit crime.
22–104. Second conviction.
22–105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.
22–106. Accessories after the fact.
22–107. Punishment for offenses not covered by provisions of code.
22–108. Offenses committed beyond District of Columbia.
22–109. Prosecutions.

§ 22–101 [6: 1]. "Writing" and "paper" defined.

Except where such a construction would be unreasonable, the words "writing" and "paper," wherever mentioned in this title, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 904.)

§ 22–102 [6: 2]. "Anything of value" defined.

The words "anything of value," wherever they occur in this title, shall be held to include not only things possessing intrinsic value, but bank notes and other forms of paper money, and commercial paper and other writings which represent value. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 905.)

§ 22–103 [6: 3]. Attempts to commit crime.

Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by this title, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 906.)

NOTES TO DECISIONS

ASSAULT NOT ATTEMPT

One who assaults a female under 16 years of age, with intent to carnally know her, is punishable under 1901 Code, § 803 (§ 22–501) and not 1901 Code, § 906 (§ 22–103), *Sanselo* v. *United States* (44 App. D. C. 508).

§ 22–104 [6: 4]. Second conviction.

Every person upon his second conviction of any criminal offense punishable by fine or imprisonment or both may be sentenced to pay a fine not exceeding fifty per centum greater, and to suffer imprisonment for a period not more than one half longer than the maximum fine and imprisonment for the first offense. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 907.)

NOTES TO DECISIONS

ATTACK ON FORMER INDICTMENT

When defendant appeared and pleaded to an information for petit larceny, and was tried in the police court without objection, he admits the validity of the information, and, if convicted, can not afterwards, when indicted for petit larceny as a second offense, deny the legal sufficiency of the information as not being sworn to, or claim that his first arrest was illegal. *Latney* v. *United States* (18 App. D. C. 265).

§ 22–105 [6: 5]. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories

before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 908.)

CROSS REFERENCE

See note under § 22–2205 of this title. *Weisberg* v. *United States* (49 App. D. C. 28, 258 Fed. 284).

NOTES TO DECISIONS

ACCESSORY BEFORE THE FACT

Under this section a person shown to be an accessory before the fact is chargeable and criminally responsible as a principal. *Williams* v. *United States* (55 App. D. C. 239, 4 Fed. (2d) 432).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where there was sufficient evidence to justify the jury's conclusion that doctor was an accessory before the fact to the attempt at bribery by his wife, he was properly found guilty as a principal. *Ladrey* v. *U. S.* (App. D. C. 1946, 155 F. 2d 417).

ACCOMPLICE

In cases of carnal knowledge, the prosecutrix is not an accomplice of the defendant. "An accomplice is one who is associated with another, or others, in the commission of a crime. Liability to indictment, under ordinary conditions, is a reasonable test of the legal relation of the party to the crime and its perpetrator." *Yeager* v. *United States* (16 App. D. C. 356).

Woman upon whom a miscarriage is produced in violation of 1901 Code, § 809 (§ 22–201) is not an accomplice of the person who produces it. *Thompson* v. *United States* (30 App. D. C. 352).

"Persons engaged in wagering contests are not accomplices." *Paylor* v. *United States* (42 App. D. C. 428, cert. den. 235 U. S. 704, 59 L. Ed. 434, 35 Sup. Ct. 209).

The giver of a bribe is an accomplice of the person bribed. *Egan* v. *United States* (52 App. D. C. 384, 287 Fed. 958).

"Anyone knowingly and voluntarily co-operating with, aiding, assisting, advising, or encouraging another in the commission of a crime is an accomplice; and this is true, regardless of the degree of his guilt." *Egan* v. *United States* (52 App. D. C. 384, 287 Fed. 958). *Tomlinson* v. *United States* (68 App. D. C. 106, 93 Fed. (2d) 652).

AID AND ABET

Without determining whether each of defendants was then displaying a placard in front of embassy, all are guilty under provisions of the local law making it an offense to aid and abet in a violation of a law. *Frend* v. *United States* (69 App. D. C. 281, 100 Fed. (2d) 691).

CHARGED AS PRINCIPAL

"One who procures, commands, advises, instigates, or incites the commission of an offense, though not personally present at its commission, is, by the common law, an accessory before the fact. * * * The section of the code above quoted (§ 22–105) makes all such persons principals. And it is not essential that any specific time or mode of committing the offense shall have been advised or commanded, or, if so, that it shall have been committed in the particular way instigated. * * * Nor is it necessary that there shall have been any direct communication between the actual perpetrator and the accessory, who, under the code, is now a principal." *Maxey* v. *United States* (30 App. D. C. 63).

Indictment charging that A, B, and C made an assault on X with a brick held in the hand of B is not defective as charging A and C with an impossible act. "The defendants were charged as principals. They were acting together and the act of one was the act of each. The question is set at rest by section 908 of the code (this section)." *Polen* v. *United States* (41 App. D. C. 4).

In an indictment charging defendants with engaging in unlawful prize fight, for which appellant charged an admission fee, the appellant was rightly indicted as a principal. *Dane* v. *United States* (57 App. D. C. 161, 18 Fed. (2d) 811).

One who procures, commands, advises, instigates or incites the commission of an offense, though not personally present at its commission is by the common law an accessory before the fact, and by this section all such persons are made principals. *Ladrey* v. *U. S.* (App. D. C. 1946, 155 F. 2d 417, certiorari denied 67 S. Ct. 68, 329 U. S. 723, 91 L. Ed. 627).

Where tenant of premises, wherein gaming tables were kept, was an incorporated club, but there was evidence that defendants took part in carrying on its gambling activities, defendants were responsible as principals. *Warde* v. *U. S.* (App. D. C. 1946, 158 F. 2d 651).

INSTRUCTIONS TO JURY

In action against two defendants for murder a requested instruction was properly refused which stated that "if no force of arms was contemplated, then defendant was not liable for the consequences of the shot by the codefendant," for the testimony and instruction must show that before the crime has been done he honestly and in good faith withdraws and tries to get away and does not take any part in the offense. *Marcus* v. *United States* (66 App. D. C. 298, 86 Fed. (2d) 854).

Fact that there was evidence that one of the three defendants jointly indicted on charge of murder in perpetration of robbery threw away the gun and bullets after the murder did not require an instruction that jury could find such defendant guilty as accessory after the fact, where such defendant's testimony and other circumstances stamped him as an accessory before the fact and therefore guilty as a principal. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U. S. 839, 93 L. Ed. 391).

LENDER OF AUTOMOBILE

"If the owner of a dangerous instrumentality like an automobile knowingly puts that instrumentality in the immediate control of a careless and reckless driver, sits by his side, and permits him without protest so carelessly and negligently to operate the car as to cause the death of another, he is as much responsible as the man at the wheel." *Story* v. *United States* (57 App. D. C. 3, 16 Fed. (2d) 342, 53 A. L. R. 246).

PRESENCE AT COMMISSION

When defendant was not present when the actual conversion took place, he was a mere artificial principal and not an actual one; that is, he was subject to the same punishment as though he actually had assisted in the final act of larceny. But that does not prevent his prosecution for the distinct offense of receiving stolen goods. *Weisberg* v. *United States* (49 App. D. C. 28, 258 Fed. 284).

TESTIMONY OF ACCOMPLICE

There may be a conviction on the uncorroborated testimony of an accomplice, "provided the jury is admonished by the court that the testimony of an accomplice 'ought to be received with suspicion, and with the very greatest care and caution.'" *Egan* v. *United States* (52 App. D. C. 384, 287 Fed. 958).

§ 22–106 [6: 6]. Accessories after the fact.

Whoever shall be convicted of being an accessory after the fact to any crime punishable by death shall be punished by imprisonment for not more than twenty years. Whoever shall be convicted of being accessory after the fact to any crime punishable by imprisonment shall be punished by a fine or imprisonment, or both, as the case may be, not more than one-half the maximum fine or imprisonment, or both, to which the principal offender may be subjected. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 909.)

CROSS REFERENCE

See notes to § 22–105.

§ 22–107 [6: 7]. Punishment for offenses not covered by provisions of code.

Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than five years, or both. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 910.)

NOTES TO DECISIONS

In General

"This section obviously was enacted to cover offenses not embraced in any other section of the District Code or of any general law of the United States not locally inapplicable. It was enacted out of abundant caution, and to cover any offense for which no other provision had been made. * * * A prosecution under this section, when the facts show that the offense is covered by some specific statute, is clearly unauthorized. In other words, this section was intended to supplement, and not supersede or modify, specific statutory provisions." *Fletcher* v. *United States* (42 App. D. C. 53).

Conspiracy

Defendant convicted of common-law conspiracy was properly sentenced under this section. No overt act being charged, the indictment was not under § 37 of the federal penal code, and the rule that there are no common-law offenses against the United States is not applicable in the District of Columbia. *Harrison* v. *Moyer* ((D. C.-Ga.), 224 Fed. 224).

Disorderly House

Offense of keeping a disorderly house being punishable under this section of the Code by imprisonment, its prosecution is exclusively within jurisdiction of the District Court, and a conviction therefor in the police court is void. *Palmer* v. *Lenovitz* (35 App. D. C. 303).

Negligent Escape

Under this section prescribing fine not exceeding $1,000 or imprisonment for not more than five years or both as punishment for any offense not specifically covered by statute, conviction of negligent escape, punishment for which is not specifically prescribed, invokes the punishment of a felony, although it was apparently classified as a misdemeanor at common law. *U. S.* v. *Davis* (App. D. C. 1948, 167 F. 2d 228).

§ 22–108 [6: 8]. Offenses committed beyond District of Columbia.

Any person who by the commission outside of the District of Columbia of any act which, if committed within the District of Columbia, would be a criminal offense under the laws of said District, thereby obtains any property or other thing of value, and is afterwards found with any such property or other such thing of value in his possession in said District, or who brings any such property or other such thing of value into said District, shall, upon conviction, be punished in the same manner as if said act had been committed wholly within said District. (Dec. 21, 1911, 37 Stat. 45, ch. 2, § 836a.)

NOTES TO DECISIONS

Stolen Goods

District Court for the District of Columbia has jurisdiction of case involving conspiracy to bring stolen stock into the District, as such court is a District Court of the United States. *Arnstein* v. *United States* (54 App. D. C. 199, 296 Fed. 946).

§ 22–109 [6: 296]. Prosecutions.

All prosecutions for violations of any of the provisions of sections 22–1107 to 22–1110, 22–1112 to 22–1114, 22–1117, 22–1118, 22–2701, 22–3110 to 22–3113, 22–3301 shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of any of the provisions of sections 22–1107 to 22–1110, 22–1112 to 22–1114, 22–1117, 22–1118, 22–2701, 22–3110 to 22–3113, 22–3301, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse of the District of Columbia for a term not exceeding six months for each and every offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 18.)

Cross References

Fines and penalties accruing to United States under laws of State of Maryland, § 13–222.

CROSS REFERENCES TO ACTS NOT IN THIS TITLE WHICH ARE LARGELY PENAL IN THEIR NATURE AND OPERATION:

Adulteration of food and drugs, § 33–101 et seq.
Alcoholic Beverage Control Act, § 25–101 et seq.
Criminal offenses relating to public utilities, §§ 43–901 to 43–913.
Criminal offenses under Warehouse Receipts Act, §§ 28–2101 to 28–2106.
Penal provisions concerning public utilities, § 43–901 et seq.
Traffic Act, penalties, § 40–601 et seq.
Uniform Narcotic Drug Act, § 33–401 et seq.
Violation of laws governing institutions of learning, § 29–419.

Chapter 2.—ABORTION

Sec.
22–201. Definition and penalty.

§ 22–201 [6: 33]. Definition and penalty.

Whoever, with intent to procure the miscarriage of any woman, prescribes or administers to her any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or if the woman or her child dies in consequence of such act, by imprisonment for not less than three nor more than twenty years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 809.)

Statutory Reference

See section 211, United States Criminal Code, 35 Stat. 1129 (U. S. C., title, 18, § 334), making it an offense to send through the mails information as to the procuring of an abortion. *Kemp* v. *United States* (41 App. D. C 539, cert. den. 234 U. S. 756, 58 L. Ed. 1579, 34 Sup. Ct. 675).

NOTES TO DECISIONS

Attempt Sufficient

Crime as denounced by the statute and charged by the indictment does not necessarily contemplate an actual miscarriage by the woman, but is complete when an attempt to procure a miscarriage by such means is made, regardless of whether it results in an actual miscarriage of the pregnant woman or not. *Crichton* v. *United States* (67 App. D. C. 300, 92 Fed. (2d) 224).

Evidence

It was not error to admit evidence concerning three treatments by defendant when only one was charged in

the indictment, as the three treatments, taken together, and their joint result, constituted the crime with which the defendant was charged. *Harrod* v. *United States* (58 App. D. C. 254, 29 Fed. (2d) 454).

Evidence held sufficient to sustain conviction. *Harrod* v. *United States* (58 App. D. C. 254, 29 Fed. (2d) 454); *Hart* v. *United States* (70 App. D. C. 269, 105 Fed. (2d) 792)

Evidence supported conviction of criminal abortion as against defendant's claim that there was no evidence that the crime had been committed in the District of Columbia. *Miller* v. *U. S.* (C. A., D. C. 1948, 169 F. 2d 967).

SENTENCE

Where defendant was indicted on two charges and plead guilty to both, and the court inadvertently pronounced the sentences to run concurrently, the court had power to amend the sentences to run consecutively where defendant was still in the custody of the officers of the court. *Rowley* v. *Welch* (72 App. D. C. 351, 114 Fed. (2d) 499).

WOMAN NOT ACCOMPLICE

"This section applies to the person or persons committing the act which produces the miscarriage, and not to the person upon whom it is committed, notwithstanding it may be done with her knowledge and consent. Not being liable to indictment thereunder, she is not an accomplice in the legal sense." *Maxey* v. *United States* (30 App. D. C. 63); *Thompson* v. *United States* (30 App. D. C. 352).

Chapter 3.—ADULTERY

Sec.
22–301. Definition and penalty.

§ 22–301 [6: 175]. Definition and penalty.

Whoever commits adultery in the District shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both; and when the act is committed between a married woman and a man who is unmarried both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man only shall be deemed guilty of adultery. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 874.)

NOTES TO DECISIONS

BURDEN OF PROOF

In abortion prosecution brought under this section and containing exception in case abortion is performed to preserve life or health, the burden of proving that act was justified on therapeutic grounds was on defendants and the prosecution was not required as part of its case to negative application of the exception. *Williams* v. *U. S.*, 1943 (138 F. 2d 81, 78 U. S. App. D. C. 147, 153 A. L. R. 1213).

CREDIBILITY OF TESTIMONY

Where two women who later became witnesses for prosecution first told police sergeant they knew nothing about the case and gave unsworn statements to that effect but later each gave a second statement in which full story was told, after which sergeant destroyed first statements in belief that they had become valueless, officer's act in destroying first statement did not afford basis for instruction that jury might disregard all or any portion of officer's testimony. *Miller* v. *U. S.* (C. A., D. C. 1948, 169 F. 2d 967).

Where two women who testified as witnesses for prosecution did not admit having falsified as to any issue but merely stated that they had first refrained from giving any information because they did not want to become publicly involved in a scandalous situation, defendant was not entitled to an instruction requiring jury to give careful scrutiny to testimony of the two women on ground that they had admitted swearing falsely. *Miller* v. *U. S.* (C. A., D. C. 1948, 169 F. 2d 967).

INDICTMENT

Two charges of adultery with the same person may be joined under R. S., § 1024 (U. S. C., title 18, § 557). *Kleindienst* v. *United States* (48 App. D. C. 190).

LAW APPLICABLE

One convicted of adultery should be sentenced under this section and not under section 316 of the Penal Code (U. S. C., title 18, § 516). *Kleindienst* v. *United States* (48 App. D. C. 190).

On an indictment for adultery, which under the District Code is a misdemeanor and under the Federal Penal Code a felony, the accused on his conviction should be sentenced under the former and not the latter. *O'Brien* v. *United States* (69 App. D. C. 135, 99 Fed. (2d) 368).

PROOF

When indictment charges two specific acts of adultery, and the proof shows "repeated offenses of adultery" extending over a period of more than a year, it is error to refuse to require the government to specify, at the close of its case, the specific acts for which the government asks a conviction. *Kleindienst* v. *United States* (48 App. D. C. 190).

SENTENCE

To same effect as original annotation, see *Rowley* v. *Welch*, 1940 (114 F. 2d 499, 72 App. D. C. 351).

UNMARRIED WOMAN

If committed by her while unmarried, the act would not have been indictable; but such act would have been indictable if committed by her while married. *O'Neil* v. *O'Neil* (55 App. D. C. 40, 299 Fed. 914).

Chapter 4.—ARSON

Sec.
22–401. Definition and penalty.
22–402. Burning one's own property with intent to defraud or injure another.
22–403. Malicious burning, destruction or injury of another's movable property.
22–404. Malicious burning of fences, woods, crops.

§ 22–401 [6: 51]. Definition and penalty.

Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other watercraft, or any railroad car, the property, in whole or in part, of another person, or any church, meetinghouse, schoolhouse, or any of the public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 820.)

CROSS REFERENCE

Kindling bonfires, § 22–1113.

NOTES TO DECISIONS

INDICTMENT

Counts are properly joined in the same indictment which charge defendant with setting fire to his own property and with attempt to burn another person's property. *Posey* v. *United States* (26 App. D. C. 302).

ON APPEAL

Errors in trial of charge of arson require reversal. *Parlton* v. *United States* (64 App. D. C. 169, 75 Fed. (2d) 772).

PART OWNER

One burning a dwelling-house occupied in part by him and in part by another, with intent to defraud an insurance company, is guilty of arson. *Posey* v. *United States* (26 App. D. C. 302).

TENANT

"It is not to be presumed that Congress intended to exempt from liability a tenant who should maliciously burn, or attempt to burn, a building belonging to another, though temporarily occupied by him." *Posey* v. *United States* (26 App. D. C. 302).

§ 22–402 [6: 52]. Burning one's own property with intent to defraud or injure another.

Whoever maliciously burns or sets fire to any dwelling, shop, barn, stable, store, or warehouse or other building, or any steamboat, vessel, canal boat, or other watercraft, or any goods, wares, or merchandise, the same being his own property, in whole or in part, with intent to defraud or injure any other person, shall be imprisoned for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 821.)

§ 22–403 [6: 53]. Malicious burning, destruction, or injury of another's movable property.

Whoever maliciously injures or destroys, or attempts to injure or destroy, by fire or otherwise, any movable property not his own, of the value of $50 or more, shall be imprisoned for not less than one year and not more than ten years, and if the value of the property be less than $50 by a fine not exceeding $200 or by imprisonment not exceeding one year, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 848; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

AMENDMENT

The act of 1937 substituted $50 for $35 where it occurs.

CROSS REFERENCE

See notes to § 22–401.

NOTES TO DECISIONS

INDICTMENT

Quaere: Whether prosecution can be in the name of the District of Columbia, if value of property is more than $35, not decided by appellate court, but it did say, it is very doubtful under Code of 1929, title 6, § 351 (§ 23–101) which provides that prosecutions of "all penal regulations, where the maximum punishment is a fine only or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia, and by the city solicitor or his assistants." *Nation* v. *District of Columbia* (34 App. D. C. 453).

Indictment or information must allege value of property injured. *Nation* v. *District of Columbia* (34 App. D. C. 453).

SUPERSEDENCE

Insofar as § 22–3112 may have applied to movable property, it has been superseded by this section. *Nation* v. *District of Columbia* (34 App. D. C. 453).

§ 22–404 [6: 54]. Malicious burning of fences, woods, crops.

Whoever shall maliciously burn or set fire to any fences, woods, stacks of hay, grain, or straw, or growing crops, the property, in whole or in part, of another, shall be imprisoned for not more than thirty days or be fined not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 822.)

Chapter 5.—ASSAULT — MAYHEM — THREAT OF BODILY HARM

Sec.
22–501. Assault with intent to kill, rob, rape, or poison.
22–502. Assault with intent to commit mayhem or with dangerous weapon.
22–503. Assault with intent to commit any other offense.
22–504. Assault or threatened assault in a menacing manner.
22–505. Assault on member of police force.
22–506. Mayhem or maliciously disfiguring.
22–507. Threats to do bodily harm.

§ 22–501 [6: 26]. Assault with intent to kill, rob, rape, or poison.

Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 803.)

CROSS REFERENCES

Assaults because of gaming losses, § 16–705.

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE

Conviction for assault may be based upon uncorroborated statement of victim, a child too young to qualify as a witness. *Brown* v. *U. S.* (D. C. Mun. App. 1945, 40 A. 2d 832).

In prosecution for assault upon a girl three years and eight months of age, the mother's testimony recounting the child's statements made three or more hours after the occurrence was admissible, since the reasonable presumption was that the child's statement was spontaneous utterance of thoughts prompted solely by unusual act and that it was not influenced by reflection, premeditation or design. *Brown* v. *U. S.* (D. C. Mun. App. 1945, 40 A. 2d 832).

In prosecution for assault on a girl three years and eight months of age, the mother's testimony repeating the child's story to mother more than three hours after the alleged occurrence was hearsay and was not within doctrine of spontaneous statements. *Brown* v. *U. S.* (App. D. C. 1945, 152 F. 2d 138).

In prosecution for assault on a girl three years and eight months of age, testimony of police officers regarding what the child had said a day or two after the alleged assault and an officer's belief as to what defendant had done was inadmissible. *Brown* v. *U. S.* (App. D. C. 1945, 152 F. 2d 138).

EVIDENCE

In prosecution for assault with intent to commit rape, evidence was sufficient for jury. *Robinson* v. *U. S.*, 1943 (136 F. 2d 283, 78 U. S. App. D. C. 63).

The evidence must show beyond reasonable doubt an assault, an intent to have carnal knowledge of a female. and a purpose to carry out the intent with force and against the will of the female, to make out a case of "assault with intent to commit rape". *Robinson* v. *U. S.*, 1943 (136 F. 2d 283, 78 U. S. App. D. C. 63).

To make out a case of "assault with intent to commit rape," the evidence must show beyond a reasonable doubt an assault, and an intent to have carnal knowledge of the female and a purpose to carry into effect the intent with force and against the consent of the female. *Hammond* v. *U. S.*, 1942 (127 F. 2d 752, 75 U. S. App. D. C. 397).

Evidence that defendant went to the home of his mother-in-law, with whom his wife and baby were living, went to the bedroom of his 17-year-old sister-in-law, pulled off the covers and touched her private parts with his hand, that she awakened and screamed, and that defendant ran from the house was insufficient to sustain conviction for "assault with intent to commit rape." *Hammond* v. *U. S.*, 1942 (127 F. 2d 752, 75 U. S. App. D. C. 397).

INDICTMENT

In an indictment for assault with intent to kill "it is not required that in the indictment it should be alleged

and set forth with what means or instrument the killing was attempted to be perpetrated." *Davis* v. *United States* (16 App. D. C. 442). Otherwise, if attempt was by poisoning or drowning. *Coratola* v. *United States* (24 App. D. C. 229).

INSTRUCTIONS

Crimes of a revolting nature, especially where victim is a young child, arouse a strong feeling of disgust and hostility toward an accused, requiring court to exercise utmost care in giving its instructions to the end that justice may not miscarry. *Brown* v. *U. S.* (D. C. Mun. App. 1945, 40 A. 2d 832).

INTENT TO RAPE

Assault on a female under the age of 16 years, with intent to carnally know her, is punishable under this section as an assault with intent to rape. *Sanselo* v. *United States* (44 App. D. C. 508).

ON APPEAL

The rule in criminal as in civil cases is that a basis for an assignment of error must be laid in the trial court, but the court will sometimes in the exercise of a sound discretion notice error in a criminal case where the question was not properly raised at the trial. *Miller* v. *United States* (57 App. D. C. 228, 19 Fed. (2d) 702).

PRESUMPTIONS

In prosecution for assault with intent to commit rape a legal presumption exists that defendant was innocent until proved guilty beyond a reasonable doubt. *Hammond* v. *U. S.*, 1942 (127 F. 2d 752, 75 U. S. App. D. C. 397).

SUBMISSION OR RESISTANCE

An assault may be committed upon a child irrespective of whether there is submission or resistance thereto. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

§ 22–502 [6: 27]. Assault with intent to commit mayhem or with dangerous weapon.

Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not more than ten years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 804.)

CROSS REFERENCE

Possession of firearm additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

ARGUMENT OF COUNSEL

In prosecution for assault with a dangerous weapon, district attorney's argument to jury that "from the testimony of the doctor, the wound was a serious one and if it had been an inch lower the defendant might be here for murder" was permissible on question whether the weapon, a razor blade, was a dangerous one and whether it was likely to produce death or great bodily harm. *Josey* v. *U. S.*, 1943 (135 F. 2d 809, 77 U. S. App. D. C. 321).

"DANGEROUS WEAPON"

Lye is a "dangerous weapon" within meaning of statute. *Tatum* v. *United States* (71 App. D. C. 393, 110 Fed. (2d) 555).

EVIDENCE

In prosecution for assault with a dangerous weapon, permitting district attorney to cross-examine defendant as to why defendant didn't run into house to avoid trouble if she believed complaining witness was going to do defendant some harm was proper, since the cross-examination was calculated to search for nature of defendent's belief and was proper to determine whether defendant went further than she was justified in doing. *Josey* v. *U. S.*, 1943 (135 F. 2d 809, 77 U. S. App. D. C. 321).

INJURY SUFFERED

Threat or danger of physical suffering or injury in the ordinary sense is not necessary. The injury suffered by the innocent victim may be the fear, shame, humiliation, and mental anguish caused by the assault. Neither is it necessary that such a victim should be aware of the nature of the act or of the danger. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

INSTRUCTIONS

In prosecution for assault with a dangerous weapon, requested instruction that if defendant had reasonable grounds to believe that complaining witness was about to inflict violence on her and was coming at her with a knife in a menacing manner, defendant was justified in defending herself and didn't have to retreat was fatally defective and was properly refused. *Josey* v. *U. S.*, 1943 (135 F. 2d 809, 77 U. S. App. D. C. 321).

SENTENCES

Consecutive penitentiary sentences on four counts, and concurrent sentence on fifth count does not violate the Indeterminate Sentence law. *United States ex rel. Bracey* v. *Hill* ((C. C. A. 3), 77 Fed. (2d) 970).

As maximum sentence imposed on each count was ten years and as none exceeded the maximum of ten years fixed by the statute, and as the minimum sentence on each count was two years and none exceeded one-fifth of the maximum of ten years fixed by the statute, the sentences are, therefore, in accord with the Indeterminate Sentence and Parole Act. *Bracey* v. *Zerbst* ((C. C. A. 10), 93 Fed. (2d) 8).

§ 22–503 [6: 28]. Assault with intent to commit any other offense.

Whoever assaults another with intent to commit any other offense which may be punished by imprisonment in the penitentiary shall be imprisoned not more than five years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 805.)

CROSS REFERENCES

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

See note to § 22–501. *Sanselo* v. *United States* (44 App. D. C. 508).

NOTES TO DECISIONS

BURDEN OF PROOF

In prosecution for unlawfully assaulting 15-year-old girl, burden was on the government to prove not only the touching, but that such touching was unlawful, or, in other words that the touching was not accidental or innocent. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 226).

EVIDENCE

In prosecution for assault of an indecent nature on a ten-year-old boy, evidence of what occurred between boy and defendant in defendant's apartment on date preceding and day after date charged in the information was admissible as an exception to general rule. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

In prosecution for assault of an indecent nature on a ten-year-old boy, where record showed that what transpired between defendant and the boy on three consecutive days in defendant's apartment was so closely connected as to constitute composite parts of a single picture, evidence of what occurred on day preceding and day after the date charged in the information was relevant even though it revealed separate offenses on those days. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

INDICTMENT

"It is not necessary to the charge of a joint assault by several persons that they be specifically charged as acting 'together and with each other.'" *Polen* v. *United States* (41 App. D. C. 4).

INDIRECT FORCE

Application of force, or threat of application thereof, in an assault may be made indirectly as well as directly. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

INSTRUCTIONS

In prosecution for assaulting a 15-year-old girl, defendant was entitled to an instruction that, if jury had any reasonable doubt about any material point or question in the case, they must resolve such doubt in favor of defendant, and an instruction that, if jury had any reasonable doubt finally after considering evidence both for and against defendant as to defendant's guilt, jury must bring verdict of not guilty, was error. *Davenport* v. *U. S.* (D. C. Mun. App. 1948, 60 A. 2d 226).

SENTENCES

When sentences imposed were ten years and eight years, respectively, on the first two indictments, and five years on the assault charge, the sentences to run consecutively in the order named, but since the first sentence of ten years has not expired, the application for habeas corpus was premature, as validity of other two sentences is not properly raised. *Johnson* v. *Aderhold* ((C. C. A. 5), 73 Fed. (2d) 102).

§ 22–504 [6: 29]. Assault or threatened assault in a menacing manner.

Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than five hundred dollars or be imprisoned not more than twelve months, or both. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806.)

NOTES TO DECISIONS

ARRESTING OFFICER'S LIABILITY

If the officer has reason to believe that the person he is about to arrest is a desperate character and acts accordingly, the officer is not to be convicted of assault because it subsequently develops that he was mistaken. *Barrett* v. *United States* (62 App. D. C. 25, 64 Fed. (2d) 148).

EVIDENCE

In prosecution for assault, where government witness admitted on cross-examination that she had waited two weeks after the incident before reporting it to police, testimony on redirect examination that she had not intended to report the incident but later saw defendant commit a similar assault upon another woman and then reported her experience to the police was competent to rebut the issue of delay raised by defendant. *Stitely* v. *U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

INDIRECT FORCE

Application of force, or threat of application thereof, in an assault may be made indirectly as well as directly. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

INJURY SUFFERED

Threat or danger of physical suffering in the ordinary sense is not necessary; the injury suffered by the innocent victim may be the fear, shame, humiliation, and mental anguish caused by the assault. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

INSTRUCTIONS

In prosecution for an assault committed upon a woman in a street car, where woman involved explained her delay in complaining to police by stating that she had not intended to complain until she saw defendant commit the same act upon another woman two weeks later, defendant was entitled, upon a timely request, to have jury instructed that testimony in explanation of delay was to be considered only in respect to delay in making complaint and not as evidence that offense charged was committed but where he failed to do so, no complaint could be made. *Stitely* v. *U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

REVERSIBLE ERROR

In prosecution for simple assault where defendant, a policeman, testified concerning incidents of his patrol, and where government cross-examined and brought on rebuttal evidence of other assaults under the theory of impeachment, and where upon appeal that theory was abandoned and that of identification substituted and both theories were of tenuous application upon the facts, thus affording the trial court no opportunity to rule upon admissibility under the new theory nor to give proper limiting instruction under it, there was reversible error. *Martin* v. *U. S.*, 1942 (127 F. 2d 865, 75 U. S. App. D. C. 399).

Where in a prosecution for assault, defendant's counsel was deprived of the opportunity of examining defendant again on redirect examination and of the opportunity to call additional defense witnesses who had been sworn at the beginning of the trial, it constitutes reversible error, notwithstanding the absence of objection and exception taken at the trial court. *Varrella* v. *United States* (D. C. Mun. App. 1949, 64 A. 2d 310).

RIGHT TO COUNSEL

Where appellant was asked if he wished counsel and each time he stated he did not and was advised of the seriousness of the charge against him but steadfastly retained his position that counsel was not desired, he was not deprived of his constitutional right, since in the exercise of a free and intelligent choice and with the considered approval of the court, a defendant may competently and intelligently waive the right to counsel. *Humphries* v. *United States* (D. C. Mun. App. 1949, 68 A. 2d 803).

§ 22–505 [6: 30]. Assault on member of police force.

If any person, without justifiable and excusable cause, shall use personal violence upon any member of the police force, when in the discharge of his duty, such person shall be deemed guilty of a misdemeanor, and shall be punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding five hundred dollars. (R. S., D. C., § 432.)

CROSS REFERENCE

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

§ 22–506 [6: 31]. Mayhem or maliciously disfiguring.

Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than ten years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 807.)

CROSS REFERENCE

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

§ 22–507 [6: 44]. Threats to do bodily harm.

Any person convicted of threats to do bodily harm shall be required to give bond to keep the peace for a period not exceeding six months, and in default of bond may be sentenced to imprisonment not exceeding six months. (July 16, 1912, 37 Stat. 193, ch. 235, § 2.)

Chapter 6.—BIGAMY

Sec.
22–601 Definition and penalty.

§ 22–601 [6: 171]. Definition and penalty.

Whoever, having a husband or wife living, marries another shall be deemed guilty of bigamy, and on conviction thereof shall suffer imprisonment for not less than two nor more than seven years: *Provided,* That this section shall not apply to any person whose husband or wife has been continually absent for five successive years next before such marriage without being known to such person to be living within that time, or whose marriage to said living husband or wife shall have been dissolved by a valid decree of

a competent court, or shall have been pronounced void by a valid decree of a competent court on the ground of the nullity of the marriage contract. Stat. 346, ch. 428, § 101.)

NOTES TO DECISIONS

Conclusions of Defendant

There must be some honest and effective effort made to ascertain truth before it can be claimed that conclusion of defendant, charged with bigamy, that first wife had obtained divorce had been reached in good faith. *Alexander* v. *U. S.*, 1943 (136 F. 2d 783, 78 U. S. App. D. C. 34).

Evidence

Testimony of police officer in bigamy prosecution concerning admissions made to him by defendant was admissible although defendant was not advised that anything he said might be used against him and that he need not make a statement. *Matz* v. *U. S.* (App. D. C. 1946, 158 F. 2d 190).

In prosecution for bigamy, court did not err in compelling the second wife to testify where the certificate of the prior marriage was in evidence, together with testimony as to defendant's admissions directed toward that certificate, and other testimony that defendant and first wife had lived together as husband and wife. *Matz* v. *U. S.* (App. D. C. 1946, 158 F. 2d 190).

Instructions to Jury

Where defendant, charged with bigamy, testified that he received letter stating that first wife had obtained divorce, but defendant made no effort to ascertain true facts, refusing instruction that defendant must be acquitted if he believed at time of second marriage that his first wife had procured a divorce and giving instruction that if jury believed beyond reasonable doubt that at time of second marriage first wife was living and that marriage had not been dissolved by valid decree jury should find defendant guilty was not prejudicial error. *Alexander* v. *U. S.*, 1943 (136 F. 2d 783, 78 U. S. App. D. C. 34).

Plea of Guilty

The fact that defendant entered a plea of guilty to charge of bigamy without advice of counsel and that not until some time later in the day was counsel, at his request, appointed for him, was not fatal under circumstances. *Alexander* v. *U. S.*, 1943 (136 F. 2d 783, 78 U. S. App. D. C. 34).

Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

Sec.
22–701. Definition and penalty.
22–702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.
22–703. Obstructing justice.
22–704. Corrupt influence—Officials.

§ 22–701 [6: 134]. Definition and penalty.

Whoever promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be imprisoned not more than three years, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 861.)

NOTES TO DECISIONS

Accessory Before the Fact

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where there was sufficient evidence to justify the jury's conclusion that doctor was an accessory before the fact to the attempt at bribery by his wife, he was properly found guilty as a principal. *Ladrey* v. *U. S.* (App. D. C. 1946, 155 F. 2d 417, certiorari denied 67 S. Ct. 68, 329 U. S. 723, 91 L. Ed. 627).

Admissibility of Evidence

In prosecution for attempted bribery of witness in abortion case, admission of evidence tending to show that witness was a material witness in the abortion case, consisting of her testimony that she was the person upon whom the operation had been performed, and statement showing the nature of the operation was proper. *Ladrey* v. *U. S.* (App. D. C. 1946, 155 F. 2d 417, certiorari denied 67 S. Ct. 68, 329, U. S. 823, 91 L. Ed. 627).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where facts, other than the statements and acts of wife, were shown from which it could be concluded that a conspiracy between doctor and his wife in fact existed, the evidence of witness and police sergeant concerning the declarations of wife, including the offer of the bribe, was admissible against the doctor, though the declarations were made out of the doctor's presence. *Ladrey* v. *U. S.* (App. D. C., 1946, 155 F. 2d 417, certiorari denied 67 S. Ct. 68, 329 U. S. 723, 91 L. Ed. 627).

Indictment

Although the act of asking, accepting, or receiving, in violation of § 117 of the Criminal Code may each constitute a separate offense, it is not duplicitous to charge them all in a single count. *Egan* v. *United States* (52 App. D. C. 384, 287 Fed. 958).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, evidence that doctor took his wife to a point near the scene of her attempt at bribery, that after her arrest he was found with his automobile parked at a nearby corner, that he made a statement so incredible as to be prima facie false, as well as conflicting statements, together with fact that doctor had a strong motive to eliminate the witness, tended to show a secret combination or conspiracy between doctor and his wife, notwithstanding that indictment did not specifically charge that they had conspired. *Ladrey* v. *U. S.* (App. D. C. 1946, 155 F. 2d 417, certiorari denied 67 S. Ct. 68, 329 U. S. 723, 91 L. Ed. 627).

Jail Guard

Affirmance of conviction of bribery of jail guard to falsify records to establish alibi. *Siegal* v. *United States* (61 App. D. C. 282, 61 Fed. (2d) 923, cert. den. 288 U. S. 602, 77 L. Ed. 978, 53 Sup. Ct. 386).

Defendant was a person acting in an official function, exercising by delegation a part of the official authority possessed by the superintendent of the jail. If he had corruptly accepted the money, he would have been guilty of accepting a bribe to influence his official conduct. *Siegal* v. *United States* (61 App. D. C. 282, 61 Fed. (2d) 923, cert. den. 288 U. S. 602, 77 L. Ed. 978, 53 Sup. Ct. 386).

Official Act

"There can be no bribery of any official to do a particular act, unless the law requires or imposes upon him the duty of acting." *Thomson* v. *United States* (37 App. D. C. 461), citing *Benson* v. *United States* (27 App. D. C. 331).

§ 22–702 [6: 135]. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

Every person who directly or indirectly takes, receives, or agrees to receive any money, property, or

other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court. (July 1, 1902, 32 Stat. 591, ch. 1352.)

§ 22–703 [6: 136]. Obstructing justice.

Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, shall be fined not more than two hundred dollars or imprisoned not more than three years, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 862.)

§ 22–704 [6: 138]. Corrupt influence—Officials.

Whosoever corruptly, directly or indirectly, gives any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value to any ministerial, administrative, executive, or judicial officer of the District of Columbia or any employee or other person acting in any capacity for the District of Columbia, or any agency thereof, either before or after he is qualified, with intent to influence his action on any matter which is then pending, or may by law come or be brought before him in his official capacity, or to cause him to execute any of the powers in him vested, or to perform any duties of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer being authorized in the line of his duty to contract for any advertising or for the furnishing of any labor or material, shall directly or indirectly arrange to receive or shall receive, or shall withhold from the parties so contracted with, any portion of the contract price, whether that price be fixed by law or by agreement, or in consideration that such officer has nominated or appointed any person to any office or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law; and whosoever, being such an officer, shall receive any such money, bribe, present, or reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid shall be deemed guilty of bribery and upon conviction thereof shall be punished by imprisonment for a term not less than six months nor more than five years.

Whosoever corrupts or attempts, directly or indirectly, to corrupt any special master, auditor, juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion, or influence the decision of such officer, in relation to any matter pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire, or referee has been chosen or appointed, and every official who receives, or offers or agrees to receive, a bribe in any of the cases above mentioned shall be guilty of bribery and upon conviction thereof shall be punished as hereinbefore provided. (Feb. 26, 1936, 49 Stat. 1143, ch. 87.)

Chapter 8.—CRUELTY TO ANIMALS

Sec.
22–801. Definition and penalty.
22–802. Other cruelties to animals.
22–803. Transportation of animals by railroad companies—Rest—Water—Feeding by railroad company—Cost—Penalty.
22–804. Arrests without warrant authorized—Notice to owner.
22–805. Issuance of search warrants.
22–806. Prosecution of offenders—Disposition of fines.
22–807. Impounded animals to be supplied with food and water.
22–808. Relief of impounded animals.
22–809. Keeping or using place for purpose of fighting or baiting of fowls or animals—Arrest without warrant.
22–810. Penalty for engaging in cockfighting—Animal fighting.
22–811. Neglect of sick or disabled animals.
22–812. Abandonment of maimed or diseased animal—Destruction of diseased animals—Disposition of animal or vehicle on arrest of driver—Scientific experiments.
22–813. Definitions.
22–814. Docking tails of horses.

§ 22–801 [6: 275]. Definition and penalty.

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed any animal, and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 1.)

§ 22–802 [6: 276]. Other cruelties to animals.

Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in section 22–801. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 2.)

§ 22–803 [6: 277]. Transportation of animals by railroad companies—Rest—Water—Feeding by railroad company—Cost—Penalty.

No railroad company, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than twenty-four hours, without unloading the same, for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which such animals have been confined without such rest on connecting roads from which they are received shall be included; it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-four hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of said owner or persons in custody thereof. And said company shall, in such case, have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any company, owner, or custodian of such animals who fails to comply with the provisions of this section shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than one or more than five hundred dollars: *Provided, however,* That when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 3.)

COMPILER'S NOTE

This section is probably superseded in part by U. S. C., title 45, § 71–74.

§ 22–804 [6: 278]. Arrests without warrant authorized—Notice to owner.

Any person found violating the laws in relation to cruelty to animals may be arrested and held without a warrant, in the manner provided by section 32–205, and the person making an arrest, with or without a warrant, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for such animals until the owner thereof shall take charge of the same: *Provided,* The owner shall take charge of the same within twenty days from the date of said notice. And the person making such arrest shall have a lien on said animals for the expense of such care and provisions. (Leg. Assem., Aug. 23, 1871, p. 136, ch. 106, § 4.)

COMPILER'S NOTE

Section 32–205 is § 5 of the "Charter of the Association for the Prevention of Cruelty to Animals, granted by an Act of Congress, approved June 21, 1870 (16 Stat. 158, ch. 135)." The quoted words are contained in the original text of this section.

§ 22–805 [6: 279]. Issuance of search warrants.

When complaint is made by any member of the Washington Humane Society on oath or affirmation, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant, authorizing any marshal, deputy marshal, police officer, or any member of the Washington Humane Society to search such building or place. (Leg. Assem., Aug. 23, 1871, p. 136, ch. 106, § 5; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41.)

AMENDMENT

Act of 1901 abolished the office of constable, and all process issued by a justice of the peace shall be served by the United States marshal for the District of Columbia, or, if he is disqualified, by the coroner.

§ 22–806 [6: 280]. Prosecution of offenders—Disposition of fines.

It shall be the duty of all marshals, deputy marshals, police officers, or any member of the Washington Humane Society, to prosecute all violations of the provisions of sections 22–801 to 22–809 and sections 22–811, 22–813, and 22–814, which shall come to their notice or knowledge, and fines and forfeitures collected upon or resulting from the complaint or information of any member of the Washington Humane Society under sections 22–801 to 22–809 and sections 22–811, 22–813, and 22–814 shall inure and be paid over to said association, in aid of the benevolent objects for which it was incorporated. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 6; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41.)

§ 22–807 [6: 281]. Impounded animals to be supplied with food and water.

Any person who shall impound, or cause to be impounded in any pound, any creature, shall supply the same, during such confinement, with a sufficient quantity of good and wholesome food and water; and in default thereof shall, upon conviction, be punished for every such offense in the same manner provided in section 22–801. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 7.)

§ 22–808 [6: 282]. Relief of impounded animals.

In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any officer of the Washington Humane Society, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which such creature shall be so confined, and supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment thereof. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 8; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

§ 22–809 [6: 283]. Keeping or using place for purpose of fighting or baiting of fowls or animals—Arrest without warrant.

Any person or persons who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting of fowls or animals, may be arrested without a warrant, as provided in section 32–205, and for every such offense be punished in the same manner provided in section 22–801. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 9.)

§ 22–810 [6: 284]. Penalty for engaging in cockfighting—Animal fighting.

Any person who sets on foot, instigates, promotes, carries on, or does any act, as assistant, umpire, or principal, or attends or in any way engages in the furtherance of any fight between cocks, fowls, or other birds, or dogs, bulls, bears, or other animals, premeditated by any persons owning or having custody of such birds or animals, is guilty of a misdemeanor, punishable by a fine of not more than two hundred and fifty dollars or by imprisonment in jail not more than one year, or both. (June 25, 1892, 27 Stat. 61, ch. 135, § 6.)

§ 22–811 [6: 285]. Neglect of sick or disabled animals.

If any maimed, sick, infirm, or disabled animal shall fail to receive proper food or shelter from said owner or person in charge of the same for more than five consecutive hours, such person shall, for every such offense, be punished in the same manner provided in section 22–801. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 10; June 25, 1892, 27 Stat. 60, ch. 135, § 4.)

§ 22–812 [6: 286]. Abandonment of maimed or diseased animal—Destruction of diseased animals—Disposition of animal or vehicle on arrest of driver—Scientific experiments.

A person being the owner or possessor or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons such animal, or leaves it to lie in the street or road, or public place, more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than two hundred and fifty dollars, or by imprisonment in jail not more than one year, or both. Any agent or officer of the Washington Humane Society may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured, or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or of any vehicle drawn by any animal, or containing any animal, any agent of said society may take charge of such animal and such vehicle and its contents and deposit the same in a place of safe custody or deliver the same into the possession of the police authorities, who shall assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

Nothing contained in sections 22–801 to 22–809, inclusive, and sections 22–811, 22–1109 shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college, university, or scientific society. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 11; June 25, 1892, 27 Stat. 60, ch. 135, § 4.)

§ 22–813 [6: 287]. Definitions.

In sections 22–801 to 22–809, inclusive, and section 22–811, the word "animals" or "animal" shall be held to include all living and sentient creatures (human beings excepted), and the words "owner," "persons," and "whoever" shall be held to include corporations and incorporated companies as well as individuals. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 12; June 25, 1892, 27 Stat. 60, ch. 135, § 3.)

§ 22–814 [6: 288]. Docking tails of horses.

Whoever cuts the solid part of the tail of any horse in the operation known as docking, and whoever shall cause the same to be done or assist in doing such cutting (unless the same is proved to be of benefit to the horse), shall, upon conviction thereof, be punished by imprisonment in the Washington Asylum and jail not exceeding one year or fine of not less than one hundred nor more than two hundred and fifty dollars. (June 25, 1892, 27 Stat. 61, ch. 135, § 5.)

Chapter 9.—DOMESTIC RELATIONS

Sec.
22–901. Cruelty to children.
22–902. Refusal or neglect of guardian to provide for child under 14 years of age.
22–903. Wilful neglect or refusal to support wife or minor child—Punishment—Order of allowance — Recognizance — Trial under original charge.
22–904. Evidence of marriage—Competency of witnesses—Proof of wilful desertion.
22–905. Weekly payments by superintendent of workhouse for each day's confinement.
22–906. Collections by clerk of court to be deposited with collector of taxes and covered into Treasury.

§ 22–901 [6: 37]. Cruelty to children.

Any person who shall torture, cruelly beat, abuse, or otherwise wilfully maltreat any child under the age of eighteen years; or any person, having the custody and possession of a child under the age of fourteen years, who shall expose, or aid and abet in exposing, such child in any highway, street, field, house, outhouse, or other place, with intent to abandon it; or any person, having in his custody or control a child under the age of fourteen years, who shall in any way dispose of it with a view to its being employed as an acrobat, or a gymnast, or a contortionist, or a circus rider, or a rope-walker, or in any exhibition of like dangerous character, or as a beggar, or mendicant, or pauper, or street singer, or street musician; or any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child of the age last named for any of the

purposes last enumerated, shall be deemed guilty of a misdemeanor, and, when convicted thereof, shall be subject to punishment by a fine of not more than two hundred and fifty dollars, or by imprisonment for a term not exceeding two years, or both. (Feb. 13, 1885, 23 Stat. 303, ch. 58, § 3; Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 814.)

NOTES TO DECISIONS

CHILD AS AGENCY FOR COMMISSION OF CRIME

One may be guilty of a crime where the prohibited act is committed through the agency of mechanical or chemical means, as by instruments, poison or powder, or by an animal, a child, or other innocent agent acting under the direction and compulsion of the accused. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

COMMON LAW

Offense prescribed while not expressed in terms of assault, comes within the common-law concept of that offense. *Beausoliel* v. *United States* (71 App. D. C. 111, 107 Fed. (2d) 292).

§ 22–902 [6: 270]. Refusal or neglect of guardian to provide for child under 14 years of age.

Any person within the District of Columbia, of sufficient financial ability, who shall refuse or neglect to provide for any child under the age of fourteen years, of which he or she shall be the parent or guardian, such food, clothing, and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than one hundred dollars, or by imprisonment in the workhouse of the District of Columbia for not more than three months, or both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 4.)

COMPILER'S NOTE

This section may have been partly superseded by sections 22–903 to 22–906.

§ 22–903 [6: 271]. Wilful neglect or refusal to support wife or minor child—Punishment—Order of allowance — Recognizance — Trial under original charge.

Any person in the District of Columbia who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances, or any person who shall, without just excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her minor children under the age of sixteen years in destitute or necessitous circumstances, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the workhouse of the District of Columbia for not more than twelve months, or by both such fine and imprisonment; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children: *Provided,* That before the trial, with the consent of the defendant, or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly for the space of one year to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee, and to release the defendant from custody on probation for the space of one year upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise of full force and effect.

If the court be satisfied by information and due proof, under oath, that at any time during the year the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife, or to the guardian or custodian of the minor child or children. The juvenile court is hereby given concurrent jurisdiction with the District Court of the United States for the District of Columbia in all cases arising under this section. (Mar. 23, 1906, 34 Stat. 86, ch. 1131, § 1; June 18, 1912, 37 Stat. 136, ch. 171, § 8; June 10, 1926, 44 Stat. 716, ch. 528.)

AMENDMENTS

The 1912 act added the last sentence.

The act of 1926 deleted the words "at hard labor" following the words "workhouse of the District of Columbia."

CROSS REFERENCE

See note to § 22–902.

NOTES TO DECISIONS

CONSTITUTIONALITY

The provisions for punishment under the act not being severable, the act is unconstitutional. *United States* v. *Moreland* (258 U. S. 433, 66 L. Ed. 700, 42 Sup. Ct. 368, 24 A. L. R. 992).

DOMICILE

Under this statute a husband domiciled in another state is not chargeable under this act with refusal to support child. *United States ex rel. Smith* v. *Mathues* ((D. C.-Pa.), 284 Fed. 368).

In proceeding against person indicted under this statute, and who is found in another district, technical objections to indictment are for the court where the indictment is lodged. *In re Parker* ((D. C.-Cal.), 299 Fed. 1006).

Person indicted under this statute may be removed from another district, since a violation of the act is in fact a crime against the United States. *Parker* v. *United States* ((C. C. A. 9), 3 Fed. (2d) 903).

Where husband was not in the District of Columbia at time he allegedly failed to support his children, as charged in indictment, he did not violate this section, and court would deny petition for husband's removal to the District. *U. S.* v. *Johnson* (D. C. Or. 1945, 63 F. Supp. 615).

A resident of the District of Columbia who had not failed to provide support for wife while within the District, and who left the District for Oregon where he was em-

ployed for about two years until he first failed to furnish support, did not violate this section. *U. S.* v. *Johnson* (D. C. Or. 1945, 63 F. Supp. 615).

JURISDICTION

Since the jurisdiction conferred upon the juvenile court for the District of Columbia relates only to cases involving children arising under § 11–902 et seq., the juvenile court exceeded its jurisdiction in attempting to hold defendant for nonsupport of his wife only; the welfare of no children being involved. *In re Wilson* (D. C., D. C. 1948, 79 F. Supp. 816).

NONRESIDENT

Where indictment did not describe the accused as a "person in the District of Columbia," and evidence showed he was not a resident of District of Columbia, denial of a motion for warrant of removal to District of Columbia was proper. *United States ex rel. Smith* v. *Mathues* ((D. C.-Pa.), 284 Fed. 368).

PRESENTMENT OR INDICTMENT

Fact that prisoner receives maximum sentence under this statute, without having been presented or indicted by grand jury, does not of itself render said sentence void. *United States* v. *Moreland* (258 U. S. 433, 66 L. Ed. 700, 42 Sup. Ct. 368, 24 A. L. R. 992).

RIGHT TO COUNSEL

Where petitioner was convicted in the juvenile court upon a plea of guilty of refusing to provide for the support of his minor child, and at the time of his arraignment he was not told that he was waiving his right to counsel and was not represented by counsel and was not advised of his "right to counsel," he did not under these circumstances "waive" his right to counsel. Therefore his constitutional rights to the assistance of counsel were violated with consequent loss of jurisdiction in the juvenile court to convict and sentence him, and he was entitled to discharge on writ of habeas corpus. *Evans* v. *Rives,* 1942 (126 F. 2d 633, 75 U. S. App. D. C. 242).

SENTENCE

The test of infamy is not the sentence imposed but rather that which may be imposed under the statute. *United States* v. *Moreland* (258 U. S. 433, 66 L. Ed. 700, 42 Sup. Ct. 368, 24 A. L. R. 992).

Court has no jurisdiction to impose a sentence involving hard labor where there has been no indictment or presentment by a grand jury. *Moreland* v. *United States* (51 App. D. C. 118, 276 Fed. 640, affd. 258 U. S. 433, 66 L. Ed. 700, 42 Sup. Ct. 368, 24 A. L. R. 992).

WITNESS

Wife is competent witness in proceedings for removal under R. S., § 1014. *Parker* v. *United States* ((C. C. A. 9), 3 Fed. (2d) 903, affg. 299 Fed. 1006).

§ 22–904 [6: 272]. Evidence of marriage—Competency of witnesses—Proof of wilful desertion.

No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under sections 22–903 to 22–905, any provisions of law in force on March 23, 1906, prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent and compellable witnesses to testify to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child, or children in destitute or necessitous circumstances, or of neglect to furnish such wife, child, or children necessary and proper food, clothing, or shelter is prima facie evidence that such desertion or neglect is wilful. (Mar. 23, 1906, 34 Stat. 87, ch. 1131, § 2.)

NOTES TO DECISIONS

WITNESS

State rule as to competency of witnesses does not apply in view of this section. *In re Parker* ((D. C.-Cal.), 299 Fed. 1006, affd. 3 Fed. (2d) 903).

§ 22–905 [6: 273]. Weekly payments by superintendent of workhouse for each day's confinement.

It shall be the duty of the superintendent in charge of the workhouse of the District of Columbia in which any person is confined on account of a sentence under sections 22–903 to 22–905 to pay, out of any funds available, over to the wife, or to the guardian or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child, or children, a sum equal to 50 cents for each day of the sentence served by said person so confined. (Mar. 23, 1906, 34 Stat. 87, ch. 1131, § 3; June 10, 1926, 44 Stat. 716, ch. 528.)

AMENDMENT

The act of 1926 amended the last sentence by substituting the words "each day of the sentence served" for the words "each day's hard labor performed."

§ 22–906 [6: 274]. Collections by clerk of court to be deposited with collector of taxes and covered into Treasury.

All moneys paid by order of the juvenile court under sections 22–903 to 22–905 which are collected and disbursed by the clerk of said court, shall be deposited weekly by said clerk with the collector of taxes of the District of Columbia and covered into the Treasury to the credit of the appropriated trust fund account denominated Miscellaneous Trust Fund Deposits, District of Columbia, and all expenditures therefrom shall be made and accounted for in the manner required by law for other expenditures of the government of the District of Columbia, and the said expenditures shall be made weekly on pay-rolls approved and certified by the juvenile court. (May 18, 1910, 36 Stat. 403, ch. 248.)

Chapter 10.—FORNICATION

Sec.
22–1001. Repealed.

§ 22–1001 [6:176a]. Repealed June 25, 1948, effective September 1, 1948, 62 Stat. 864, ch. 645, § 21.

Section, based on Act Mar. 3, 1887, 24 Stat. 636, Ch. 397, § 5, was made applicable to the District of Columbia by Act Mar. 4, 1909, 35 Stat. 1149, Ch. 321, § 318, and was repealed by the revision of Title 18, U. S. Code.

NOTES TO DECISIONS

JURISDICTION

The offense here denounced does not fall within the category of those offenses defined as within the admiralty and maritime jurisdiction of the United States, and a single act committed between an unmarried man and an unmarried woman, aboard a ship en route to a foreign country, does not bring such act within the punishment of the courts of the United States. *Ex parte Isojoki* ((D. C.-Cal.), 222 Fed. 151).

Chapter 11.—DISORDERLY CONDUCT

Sec.
22–1101. Affrays.
22–1102. Duelling—Challenges.
22–1103. Assault for refusal to accept challenge.
22–1104. Leaving the District to give or receive challenge.

Sec.
22–1105. Prize fights and bull fights.
22–1106. "Pugilistic encounter" defined.
22–1107. Unlawful assembly—Profane and indecent language.
22–1108. Playing games in streets.
22–1109. Throwing stones or other missiles forbidden.
22–1110. Urging dogs to fight—Create disorder.
22–1111. Penalty for allowing fierce and dangerous dogs to go at large.
22–1112. Indecent exposure.
22–1113. Kindling bonfires.
22–1114. Disturbing religious congregation.
22–1115. Interference with foreign diplomatic and consular offices, officers, and property.
22–1116. Penalties for interference with foreign diplomatic and consular offices, officers, and property.
22–1117. Flying kites, balloons, or parachutes forbidden.
22–1118. Driving or riding on footways in public grounds.
22–1119. False alarm of fire—Prosecution.
22–1120. Sale of tobacco to minors under 16 years of age.

§ 22–1101 [6: 43]. Affrays.

Any person convicted of an affray shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year or both. (July 16, 1912, 37 Stat. 192, ch. 235, § 1.)

CROSS REFERENCE

Assaults because of gaming losses, § 16–705.

§ 22–1102 [6: 111]. Duelling—Challenges.

If any person shall in the District challenge another to fight a duel, or send or deliver any written or verbal message purporting or intended to be such challenge, or shall accept any such challenge or message, or shall knowingly carry or deliver an acceptance of such challenge or message to fight a duel in or out of the District, he shall be punished by imprisonment for a term not exceeding ten years. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 852.)

§ 22–1103 [6: 112]. Assault for refusal to accept challenge.

If any person shall assault, beat, or wound, or cause to be assaulted, beaten, or wounded, any person in the District for refusing to accept such challenge, or cause him to be published or posted as a coward, or use other opprobrious language in such publication tending to degrade and disgrace him for so declining or refusing such challenge, he shall be punished by imprisonment for a term not exceeding three years. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 853.)

§ 22–1104 [6: 113]. Leaving the District to give or receive challenge.

If any person, for the purpose of evading the provisions aforesaid, shall leave the District, by previous arrangement or concert within the same, with intent to give or receive any such challenge without the District, and shall give or receive the same accordingly, the person or persons so offending shall be punished in the same manner as if said challenge had been given and received within the District. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 854.)

§ 22–1105. Prize fights and bull fights.

Whoever shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned not more than five years. The provisions of this section shall apply only within the territories of the United States and the District of Columbia. (Feb. 7, 1896, 29 Stat. 5, ch. 12, § 1; Mar. 4, 1909, 35 Stat. 1150, ch. 321, § 320.)

COMPILER'S NOTE

The 1909 act does not repeal the 1896 act either directly or as being inconsistent. The 1896 act contained the words "shall be deemed guilty of a felony, and upon conviction" after the words "indirectly charged."

Act of April 24, 1934, 48 Stat. 608, ch. 161, §§ 2–1201 to 2–1208 herein, authorized boxing in the District of Columbia.

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 520.

NOTES TO DECISIONS

APPLICABILITY

Sections 22–1105 and 22–1106 are applicable to the District of Columbia. *Dane* v. *United States* (57 App. D. C. 161, 18 Fed. (2d) 811, cert. den. 275 U. S. 538, 72 L. Ed. 413, 48 Sup. Ct. 35).

INDICTMENT

Indictment charging promoter of fight between others with "engaging" in fight was not insufficient. *Dane* v *United States* (57 App. D. C. 161, 18 Fed. (2d) 811, cert den. 275 U. S. 538, 72 L. Ed. 413, 48 Sup. Ct. 35).

Acquittal of fighters was not inconsistent with conviction of promoter. *Dane* v. *United States* (57 App. D. C. 161, 18 Fed. (2d) 811, cert. den. 275 U. S. 538, 72 L. Ed. 413, 48 Sup. Ct. 35).

§ 22–1106. "Pugilistic encounter" defined.

By the term "pugilistic encounter," as used in the section 22–1105, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged. (Feb. 7, 1896, 29 Stat. 5, ch. 12, § 2; Mar. 4, 1909, 35 Stat. 1150, ch. 321, § 321; Feb. 8, 1929, 45 Stat. 1156, ch. 163.)

AMENDMENTS

Language of acts 1896 and 1909 are substantially the same.

Act of 1929 amends act of 1909 by adding at the end thereof the following new sentence: "Nothing in this section or in the preceding section shall be held to prohibit any pugilistic encounter in the Territory of Hawaii or the Territory of Alaska, in conformity with the laws of the respective territories."

CROSS REFERENCE

See notes to § 22–1105.

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 521.

§ 22–1107 [6: 117]. Unlawful assembly—Profane and indecent language.

It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure,

or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than twenty-five dollars for each and every such offense. (July 29, 1892, 27 Stat. 323, ch. 320, § 6; July 8, 1898, 30 Stat. 723, ch. 638.)

AMENDMENT

Act of 1892 was substantially the same as this later act but in addition specifically set out names of public buildings as Capitol and Executive Mansion.

CROSS REFERENCES

Disorderly conduct in public buildings and grounds, § 22–3111.
Prosecutions, § 22–109.

NOTES TO DECISIONS

EVIDENCE

Evidence that taxicab driver made certain suggestions to female passenger and repeated the suggestions both en route and on reaching their destination justified finding that such remarks were "indecent" and "obscene" within this section. *Morris* v. *District of Columbia* (D. C. 1943, 31 A. 2d 652).

MATTERS CONSIDERED

In determining whether defendant's remarks were within prohibition of this section, the trial judge was entitled to consider all surrounding circumstances, time of occurrence and manner in which it occurred, repetition of the remarks, as well as lack of previous acquaintance. *Morris* v. *District of Columbia* (D. C. 1943, 31 A. 2d 652).

PRESENCE OF OTHER PERSONS

Under this section making it unlawful for any person to use indecent or obscene language in any public place, the presence of others than offender and person addressed is not necessary to complete the offense. *Morris* v. *District of Columbia* (D. C. 1943, 31 A. 2d 652).

PUBLIC PLACE

A public vehicle, such as a taxicab, plying its business on a public street, is a "public place" within this section making it unlawful for any person to use indecent or obscene words in any public place. *Morris* v. *District of Columbia* (D. C. 1943, 31 A. 2d 652).

§ 22–1108 [6: 295]. Playing games in streets.

It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the city of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the city of Washington, under a penalty of not more than five dollars for each and every such offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 17; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

The word "Georgetown" was deleted by the act of 1895.

CROSS REFERENCE

Prosecutions, § 22–109.

NOTES TO DECISIONS

CIVIL LIABILITY OF PARENT

In absence of evidence that either of two minor boys had previously played with a football on sidewalk in violation of this section or that their conduct had been such that their parents, with closer supervision, would have been aware that boys were engaging in conduct which was unlawful or which might inflict injury upon others, parents of boys were not chargeable with liability for injuries sustained by pedestrian with whom one of the boys collided while attempting to catch football. *Bateman* v. *Crim* (D. C. Mun. App. 1943, 34 A. 2d 257).

§ 22–1109 [6: 289]. Throwing stones or other missiles forbidden.

It shall not be lawful for any person or persons within the District of Columbia to throw any stone or other missile in any street, avenue, alley, road, or highway, or open space, or public square, or inclosure, or to throw any stone or other missile from any place into any street, avenue, road, or highway, alley, open space, public square, or inclosure, under a penalty of not more than five dollars for every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 3.)

CROSS REFERENCES

Does not apply to scientific experiments, § 22–812.
Prosecutions, § 22–109.

§ 22–1110 [6: 118]. Urging dogs to fight—Create disorder.

It shall not be lawful for any person or persons to entice, induce, urge, or cause any dogs to engage in a fight in any street, alley, road, or highway, open space, or public square in the District of Columbia, or to urge, entice, or cause such dogs to continue or prolong such fight, under a penalty of not more than five dollars for each and every offense; and any person or persons who shall induce or cause any animal of the dog kind to run after, bark at, frighten, or bite any person, horse, or horses, cows, cattle of any kind, or other animals lawfully passing along or standing in or on any street, avenue, road, or highway, or alley in the District of Columbia, shall forfeit and pay for such offense a sum not exceeding five dollars. (July 29, 1892, 27 Stat. 324, ch. 320, § 10.)

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–1111 [6: 318]. Penalty for allowing fierce and dangerous dogs to go at large.

If any owner or possessor of a fierce or dangerous dog shall permit the same to go at large, knowing said dog to be fierce or dangerous, to the danger or annoyance of the inhabitants, he shall upon conviction thereof, be punished by a fine not exceeding twenty dollars; and if such animal shall attack or bite any person, the owner or possessor thereof shall,

on conviction, be punished by a fine not exceeding fifty dollars, and in addition to such punishment the court shall adjudge and order that such animal be forthwith delivered to the poundmaster, and said poundmaster is hereby authorized and directed to kill such animal so delivered to him.

If any owner or possessor of a female dog shall permit her to go at large in the District of Columbia while in heat he shall, upon conviction thereof, be punished by a fine not exceeding twenty dollars. (June 19, 1878, 20 Stat. 174, ch. 323, § 9; June 30, 1902, 32 Stat. 547, ch. 1332.)

AMENDMENT

Act of 1878 read as follows: "If any owner or possessor of a fierce or dangerous dog permit the same to go at large in the District of Columbia, to the danger or annoyance of the inhabitants, he shall forfeit and pay, for the first offense, ten dollars; for the second, a sum not exceeding twenty dollars; and upon a third conviction for the same offense, the commissioners shall immediately cause the dog, upon account of which the condition takes place, to be slain and buried."

NOTES TO DECISIONS

KNOWLEDGE OF OWNER

Amendment of 1902 did not modify judicial interpretation of earlier act that owner was not liable for conduct of dog unless he had or was charged with knowledge of its vicious propensities. *Bardwell* v. *Petty* (52 App. D. C. 310, 286 Fed. 772).

§ 22–1112 [6: 292]. Indecent exposure.

(a) It shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person or their persons in any street, avenue, alley, road or highway, open space, public square, or other public place or inclosure, in the District of Columbia, or to make any such obscene or indecent exposure of person in any dwelling or other building or other place wherefrom the same may be seen in any street, avenue, alley, road or highway, open space, public square, or public or private building or inclosure, under penalty of imprisonment for not more than ninety days, or a fine of not more than $250, for each and every such offense.

(b) Any person or persons who shall make any obscene or indecent exposure of his or her person or their persons, as described in subsection (a), knowing he or she or they are in the presence of a child under the age of sixteen years, shall be punished by imprisonment of not more than six months, or fined in amount not to exceed $500. (July 29, 1892, 27 Stat. 324, ch. 320, § 9; July 8, 1898, 30 Stat. 724, ch. 638; Apr. 21, 1906, 34 Stat. 127, ch. 1647; Sept. 26, 1942, 56 Stat. 760, ch. 565; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 101).

CODIFICATION

This section is a composite of credits cited in the history line.

AMENDMENTS

The act of Sept. 26, 1942, cited to text, amended section by adding the penalty of imprisonment for not more than ninety days.

Act June 9, 1948, cited to text, designated first paragraph as "(a)" and added the second paragraph "(b)."

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–1113 [6: 293]. Kindling bonfires.

It shall not be lawful for any person or persons within the limits of the District of Columbia to kindle or set on fire, or be present, aiding, consenting, or causing it to be done, in any street, avenue, road, or highway, alley, open ground, or lot, any box, barrel, straw, shavings, or other combustible, between the setting and rising of the sun; and, any person offending against the provisions of this section shall on conviction thereof, forfeit and pay a sum not exceeding ten dollars for each and every offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 14.)

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–1114 [6: 119]. Disturbing religious congregation.

It shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provisions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense. (July 29, 1892, 27 Stat. 324, ch. 320, § 11.)

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–1115 [6: 120]. Interference with foreign diplomatic and consular offices, officers, and property.

It shall be unlawful to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or any officer or officers thereof, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization, or to intimidate, coerce, harass, or bring into public disrepute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives of any foreign government, within five hundred feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by, and in accordance with, a permit issued by the superintendent of police of the said District; or to congregate within five hundred feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 1.)

NOTES TO DECISIONS

CONSTITUTIONALITY

Congress, in executing power to define and punish offenses against foreign nations, was authorized to prohibit the display, within 500 feet of an embassy, legation, or consulate in District of Columbia, of any flag, banner, placard, or device designed to bring any foreign government into public odium, or to harass any diplomatic or

consular representatives. *Frend* v. *U. S.*, 1938 (100 F. 2d 691, 69 App. D. C. 281, certiorari denied 59 S. Ct. 488, 306 U. S. 640, 83 L. Ed. 1040).

The power of Congress to define and punish offenses against law of nations and to exercise police power of a state in District of Columbia authorized it, in seeking to protect foreign embassies from disturbances, to determine how and to whom it would distribute authority to make detailed regulations, and to delegate that power to superintendent of police of District. Id.

This section did not violate due process clause of Constitution. Id.

This section did not constitute an invalid delegation of authority to superintendent of police to grant permit without establishment of any standard or guide to govern granting of permit. Id.

This section did not violate constitutional provision relating to free speech and free assemblage since no restriction was placed upon speech or assembly except to extent that they might constitute offensive public demonstrations immediately adjacent to buildings used for official purposes by foreign government. Id.

OFFENSES

Where defendants were part of a congregation of people who paraded in streets in front of Austrian or German embassy with banners or placards pursuant to plan to bring German government into contempt, defendants, under provisions of local law making it an offense to aid and abet in violation of the law, were guilty of violation of this section, regardless of whether each of defendants was then displaying one of placards. *Frend* v. *U. S.*, 1938 (100 F. 2d 691, 69 App. D. C. 281, certiorari denied 59 S. Ct. 488, 306 U. S. 640, 83 L. Ed. 1040).

§ 22–1116 [6: 121]. Penalties for interference with foreign diplomatic and consular offices, officers, and property.

The police court of the District of Columbia shall have jurisdiction of offenses committed in violation of sections 22–1115, 22–1116; and any person convicted of violating any of the provisions of said section shall be punished by a fine not exceeding $100 or by imprisonment not exceeding sixty days, or both: *Provided, however,* That nothing contained in said section shall be construed to prohibit picketing, as a result of bona fide labor disputes regarding the alteration, repair, or construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 2.)

§ 22–1117 [6: 290]. Flying kites, balloons, or parachutes forbidden.

It shall not be lawful for any person or persons to set up or fly any kite, or set up or fly any fire balloon or parachute in or upon or over any street, avenue, alley, open space, public enclosure, or square within the limits of the city of Washington, under a penalty of not more than ten dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

Act of 1895 amended this section by striking out "Georgetown."

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–1118 [6: 294]. Driving or riding on footways in public grounds.

If any person shall drive or lead any horse, mule, or other animal, or any cart, wagon, or other carriage whatever on any of the paved or graveled footways in and on any of the public grounds belonging to the United States within the District of Columbia, or shall ride thereon, except at the intersection of streets, alleys, and avenues, each and every such offender shall forfeit and pay for each offense a sum not less than one nor more than five dollars. (July 29, 1892, 27 Stat. 325, ch. 320, § 16.)

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–1119 [6: 299]. False alarm of fire—Prosecution.

It shall be unlawful for any person or persons to wilfully or knowingly give a false alarm of fire within the District of Columbia, and any person or persons violating the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. Prosecutions for violation of the provisions of this section shall be on information filed in the police court by the corporation counsel of the District of Columbia or by any of his assistants. (June 8, 1906, 34 Stat. 220, ch. 3055.)

§ 22–1120 [6: 301]. Sale of tobacco to minors under 16 years of age.

No person shall sell, give, or furnish any cigar, cigarette, or tobacco in any of its forms to any minor under sixteen years of age; and for each and every violation of this section the offender shall, on conviction, be fined not less than two dollars nor more than ten dollars or be imprisoned for not less than five days nor more than twenty days. (Feb. 7, 1891, 26 Stat. 736, ch. 117.)

NOTES TO DECISIONS

REVERSAL

Where a majority of the court did not agree on a specific ground for reversing judgment, conviction of storekeeper for selling cigarettes to minor under 16 years of age was reversed. *Campbell* v. *District of Columbia* (D. C. 1943, 32 A. 2d 394).

Chapter 12.—EMBEZZLEMENT

Sec.

22–1201 Embezzlement of property of District of Columbia.
22–1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.
22–1203. Embezzlement of note not delivered.
22–1204. Receiving embezzled property.
22–1205. Embezzlement by carriers and innkeepers.
22–1206. Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant.
22–1207. Punishment for violations of sections 22–1202 to 22–1206.
22–1208. Conversion by commission merchant, consignee, person selling goods on commission—Auctioneers.
22–1209. Embezzlement by mortgagor of personal property in possession.
22–1210. Embezzlement by executors and other fiduciaries.
22–1211. Taking property without right.

§ 22–1201 [6: 75]. Embezzlement of property of District of Columbia.

Whoever, being charged with the collection, receipt, safe-keeping, transfer, or disbursement of

public money or other property or effects belonging or payable to the District of Columbia or in the custody of the same, fraudulently converts to his own use, or to the use of any other person, body corporate, or association whatever, or uses, by way of investment, in any kind of security, stock, loan, property, or in any other manner or form loans, with or without interest, to any company, corporation, association, or individual, excepting by depositing in bank to said party's own credit, in the usual course of business, any public money, funds, property, bonds, securities, assets, or effects received, controlled, or held by him for safe-keeping or for any other purpose, shall forfeit all right, by way of commissions or compensation, to any part of the said money or other property and shall be deemed guilty of embezzlement of the whole of the money or other property thus converted, used, invested, loaned, deposited, or paid out, and shall be imprisoned for not more than twenty years and fined in a sum not exceeding double the value of the money or property embezzled. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 833.)

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
Joinder of offenses, § 23–201.
See notes to § 22–1202.

§ 22–1202 [6: 76]. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, attorney, agent, clerk, or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make way with, or secrete, with intent to convert to his own use, anything of value which shall come into his possession or under his care by virtue of his employment or office, whether the thing so converted be the property of his master or employer or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than ten years, or both: *Provided, however,* That where the thing, evidence of debt, property, proceeds, or profits be of the value of not more than thirty-five dollars, the punishment shall be by imprisonment for not more than one year or a fine of not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 834; Mar. 3, 1913, 37 Stat. 727, ch. 107, § 851a.)

AMENDMENT

This section is a composite of credits cited in the history line.

CROSS REFERENCES

Failure of life-insurance agent to account for premiums declared to be embezzlement, § 35–429.
Larceny of property held for use and benefit of another, § 22–2203.
Misappropriation of assets of building or homestead association declared to be larceny, § 26–404.
Penalty where value is less than $50, § 22–1207.
Selling or concealing property received under conditional sales contract, § 22–1406.
See notes to §§ 22–2201, 22–1210.

NOTES TO DECISIONS

AGENCY

An agent who converts funds delivered to him on the false representation that they are needed in the principal's business is guilty of embezzlement. *Woodward* v. *United States* (38 App. D. C. 323).

"It is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care, and if he converts it he is guilty of embezzlement." *Henry* v. *United States* (50 App. D. C. 366, 273 Fed. 330, cert. den. 257 U. S. 640, 66 L. Ed. 411, 42 Sup. Ct. 51).

Preexisting agency was not necessary. "If the agency came into existence contemporaneously with the delivery of the certificates, that would be enough." *Henry* v. *United States* (50 App. D. C. 366, 273 Fed. 330, cert. den. 257 U. S. 640, 66 L. Ed. 411, 42 Sup. Ct. 51).

ATTORNEY

Assignment of claim to an attorney for the purpose of collection, and to cover his fee for collection does not create the relation of debtor and creditor, so as to defeat a charge of embezzlement. *Patterson* v. *United States* (39 App. D. C. 84, cert. den. 226 U. S. 609, 57 L. Ed. 380, 33 Sup. Ct. 114).

BROKER

Broker who converts stock certificates delivered to him for sale is guilty of embezzlement. *Henry* v. *United States* (50 App. D. C. 366, 273 Fed. 330), cert. den. 257 U. S. 640, 66 L. Ed. 411, 42 Sup. Ct. 51).

CLASSES OF ACTS

This section "describes two classes of acts, either one of which constitutes embezzlement: The first being the wrongful conversion to his own use, by the accused, of property which has come into his possession by virtue of his employment, and the second being the fraudulent taking, making way with, or secreting with intent to convert, such property to his own use." *Gassenheimer* v. *United States* (26 App. D. C. 432).

Offense of embezzlement is single, which the statute says may be committed by either of two methods or ways, and count which charges that the embezzlement was committed by means of both methods is not bad for duplicity. Proof of either means in the commission of the offense will sustain a conviction. *O'Brien* v. *United States* (27 App. D. C. 263).

DEFINITION

"Generally speaking, it (embezzlement) may be defined as the fraudulent conversion of another's property by one to whom it has been intrusted, with the intent of depriving the owner thereof." *Ambrose* v. *United States* (45 App. D. C. 112), citing *Masters* v. *United States* (42 App. D. C. 350), *Fulton* v. *United States* (45 App. D. C. 27).

DEMAND AS NECESSARY

In embezzlement prosecution, the test as to necessity for demand is not whether the funds were acquired voluntarily, but rather, whether there is either a fixed time for accounting, at which time accused defaulted, or some other convincing proof to uphold the charge of wrongful conversion. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Where funds are voluntarily turned over to accused, a demand and refusal to pay over may be strong evidence going to make out crime of embezzlement, but such a showing is not fundamentally necessary where there is other convincing proof to support conviction for embezzlement. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed 634).

DIRECTED VERDICT

Where indictment sufficiently charged embezzlement and opening statement on behalf of Government set out in considerable detail nature of evidence on which prosecution would rely, prosecutor's failure to state that Government would prove a "wrongful conversion" or "fraudulent taking" did not entitle defendant to a directed verdict at close of Government's opening statement. *Dobbins* v.

U. S. (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Election of Offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Evidence

Defendant's reputation for honesty and integrity is admissible. *Masters* v. *United States* (42 App. D. C. 350).

Evidence by defendant of his financial standing is incompetent. *Masters* v. *United States* (42 App. D. C. 350).

It is competent for the government to prove the financial condition of the guardian at or immediately prior to an alleged offense, but evidence of other similar offenses is inadmissible unless there is some connection between the acts shown and one which accused is charged. *Ambrose* v. *United States* (45 App. D. C. 112).

The fact that defendant hypothecated stock and received $4,000 therefor is not proof that the stock was worth more than $35. *Henry* v. *United States* (49 App. D. C. 207, 263 Fed. 459).

Actual value of stock may be proved by the testimony of persons familiar with the affairs of the company, its assets, and the dividend-earning capacity of the stock, and by individual sales of stock at or near the date when the conversion occurred. Actual value thus established furnishes a proper basis upon which the jury may make a finding. *Henry* v. *United States* (49 App. D. C. 207, 263 Fed. 459).

"Evidence of an intent at the time of the conversion to restore the embezzled money is not admissible. *Henry* v. *United States* (50 App. D. C. 366, 273 Fed. 330, cert. den. 257 U. S. 640, 66 L. Ed. 411, 42 Sup. Ct. 51).

In prosecution for embezzlement, evidence that unpaid bills were found in defendant's possession 38 days after alleged commission of offense was admissible, and its weight regarding defendant's financial condition at time of the offense was for jury. *Lee* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 250).

False Pretenses

Indictment charging that accused had procured a check from woman to invest money with him upon false representation that he had contract with third party, and when such relationship was that of borrower and lender and not principal and agent it sufficiently charged the crime of obtaining value by false pretenses and not embezzlement. *Davis* v. *United States* (37 App. D. C. 126).

Financial Condition

In embezzlement prosecution, the prosecution may show defendant's straitened financial condition only at or immediately prior to the commission of the offense. *Lee* v. *U. S.* (D. C. Mun. App. 1944, 40 A. 2d 250).

Admission of testimony regarding defendant's financial condition reasonably related to dates charged in embezzlement indictment was not error. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Forgery

An employee, who, without authority, indorses his employer's name on a check payable to the latter's order, and cashes it, is guilty of forgery and not embezzlement. *Dowling* v. *United States* (41 App. D. C. 11).

When defendant acting as bookkeeper, salesman, and collector and authorized to indorse the name of the company on the checks, he is guilty of forgery and not embezzlement when he indorsed his own name and appropriated the money. *Yeager* v. *United States* (59 App. D. C. 11, 32 Fed. (2d) 402).

Indictment

It is not necessary to allege the "particular way or means by which the conversion was effected." *Gassenheimer* v. *United States* (26 App. D. C. 432).

A general verdict of guilty on an indictment charging embezzlement and false pretenses will be set aside as inconsistent. *Davis* v. *United States* (37 App. D. C. 126)

In an indictment for wrongful conversion, it is not necessary to allege an intent to defraud. *Patterson* v. *United States* (39 App. D. C. 84, cert. den. 226 U. S. 609. 57 L. Ed. 380, 33 Sup. Ct. 114), citing *Gassenheimer* v. *United States* (26 App. D. C. 432), *O'Brien* v. *United States* (27 App. D. C. 263)

"The stealing or conversion of property belonging to different persons at the same time and place constitutes but a single offense and should be prosecuted as such." *Henry* v. *United States* (49 App. D. C. 207, 263 Fed. 459)

Under this section which describes two classes of acts, either one of which constitutes embezzlement, an indictment charging the commission of both of such acts is not bad for duplicity, and a conviction is warranted upon proof of the commission of either of the acts. *Turner* v. *United States* (57 App. D. C. 39, 16 Fed. (2d) 535)

Intent

To wrongfully convert money is an act in its nature evil, and the statement of the act itself imports the evil intent. *O'Brien* v. *United States* (27 App. D. C. 263)

An agent converting funds of his principal delivered to him in the District of Columbia cannot be convicted of embezzlement if he formed the intent to convert outside of the District. *Woodward* v. *United States* (38 App. D. C. 323)

"The principle is that where a statute prohibits an act under certain circumstances, and a person commits the act not under a mistake of fact, a criminal intention is conclusively presumed." *Patterson* v. *United States* (39 App. D. C. 84, cert. den. 226 U. S. 609, 57 L. Ed. 380, 33 Sup. Ct. 114). Compare *Masters* v. *United States* (42 App. D. C. 350).

"Before there can be a conversion of the property of another there must be an intent on the part of the doer of the act to convert the property to his own use without the consent of the owner. But a wrongful conversion implies a conversion by the doer of the act without color of right, and with the evil intent of converting the property to his own use. The intent to wrongfully convert the property of another implies more than the intent to merely convert. It implies a mind at fault, an evil mind, capable of intentionally committing the offense here defined by the statute." *Fulton* v. *United States* (45 App. D. C. 27), quoting from *Masters* v. *United States* (42 App. D. C. 350)

Larceny

Principal difference between larceny and embezzlement lies in the manner in which possession of the property is acquired. In larceny there is a trespass, accompanied by an intent to steal, while in embezzlement there is a fraudulent conversion of property the possession of which was lawfully acquired. In either case, except under special statutes, evil intent must be shown. *Ambrose* v. *United States* (45 App. D. C. 112).

To sustain a conviction of grand larceny "it must be alleged and proved that the value of the property embezzled is over $35.00." *Henry* v. *United States* (49 App. D. C. 207, 263 Fed. 459).

Bookkeeper of hotel is mere employee and when he absconded with envelopes it constituted larceny, and not embezzlement. *Chanock* v. *United States* (50 App. D. C. 54, 267 Fed. 612, 11 A. L. R. 799).

Promissory Note

A promissory note may be the subject of embezzlement. *Reeves* v. *United States* (56 App. D. C., 376, 15 Fed. (2d) 734).

RAILROAD CONDUCTOR

A railroad conductor who collects and subsequently sells tickets is guilty of embezzlement. *Gassenheimer* v. *United States* (26 App. D. C. 432).

REPAYMENT

Where there has been wrongful conversion, repayment will not serve to clear defendant of charge of embezzlement *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for embezzlement. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

"UNDER HIS CARE"

Phrase "under his care" will cover property merely in his custody, and therefore, under such a statute, it is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care and if he converts it he is guilty of embezzlement. *Henry* v. *United States* (50 App. D. C. 366, 273 Fed. 330).

WRONGFUL CONVERSION

Prosecution must demonstrate beyond reasonable doubt that there was a wrongful conversion by defendant to establish crime of embezzlement, and a mere conversion will not suffice. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

§ 22–1203 [6: 77]. Embezzlement of note not delivered.

Every embezzlement of any evidence of debt negotiable by delivery only, actually executed by the master or employer of any such clerk, attorney, agent, officer, or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of section 22–1202. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 835.)

CROSS REFERENCE

Penalty for violating section. when value is less than $50, § 22–1207.

CITED

Gassenheimer v. *United States* (26 App. D. C. 432).

§ 22–1204 [6: 78]. Receiving embezzled property.

Every person who shall buy or in any way receive anything of value, knowing the same to have been embezzled, taken, or secreted contrary to the provisions of sections 22–1201 to 22–1203, shall be punished in the same manner and to the same extent as prescribed in said sections, respectively. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 836.)

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
Joinder of offenses, § 23–201
Penalty for violating section where value is less than $50, § 22–1207.
Receiving stolen goods, §§ 22–2205 to 22–2208.

NOTES TO DECISIONS

PROPERTY EMBEZZLED

Quaere: Whether this section embraces "the receipt of property that may have been embezzled in another jurisdiction, as embezzlement is defined in our Code, or is limited to that which may have been embezzled in the District of Columbia." *Gassenheimer* v. *United States* (26 App. D. C. 432).

SUFFICIENCY OF PROOF

"To convict the defendant, it was necessary to prove, first, that the property had been embezzled by Barnes in the District of Columbia * * * and second, that the defendant had bought, or in any way received, it from Barnes, 'knowing the same to have been embezzled, etc.,' as provided in section 836" (this section). *Gassenheimer* v. *United States* (26 App. D. C. 432).

§ 22–1205 [6: 79]. Embezzlement by carriers and innkeepers.

Any person intrusted with anything of value, to be carried for hire, or being an innkeeper and intrusted by his guest with anything of value for safe-keeping, who fraudulently converts the same to his own use, shall be deemed guilty of embezzlement and punished as provided in section 22–1202. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 837.)

CROSS REFERENCE

Penalty for violating section where value is less than $50, § 22–1207.

NOTES TO DECISIONS

"INNKEEPER"

Bookkeeper and clerk in hotel is not an "innkeeper" as defined in this section. *Chanock* v. *United States* (50 App. D. C. 54, 267 Fed. 612, 11 A. L. R. 799).

"INNKEEPER AND GUEST"

One who is merely a customer at a bar, restaurant, barbershop, or newsstand operated by hotel does not thereby establish relationship of "innkeeper and guest". *Wallace* v. *Shoreham Hotel Corp.* (D. C. Mun. App. 1946, 49 A. 2d 81).

§ 22–1206 [6: 80]. Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant.

Any warehouseman, factor, storage, forwarding, or commission merchant, or his clerk, agent, or employee, who, with intent to defraud the owner thereof, sells, disposes of, or applies or converts to his own use any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, shall be deemed guilty of embezzlement, and shall suffer imprisonment for not more than ten years: *Provided, however,* That where the thing, evidence of debt, property, proceeds or profits, be of the value of not more than thirty-five dollars the punishment shall be by imprisonment for not more than one year or a fine of not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 838; Mar. 3, 1913, 37 Stat. 727, ch. 107, § 851a.)

CROSS REFERENCES

Embezzlement by auctioneer, § 47–2409.
Penalty where value is less than $50, § 22–1207.
See notes to § 22–1202.

NOTES TO DECISIONS

"FACTOR OR COMMISSION MERCHANT"

One who receives and takes possession of produce as the agent of the owner to sell for them is a factor or commission merchant within the meaning of this section. And this is so, although defendant had no store and was engaged in the brokerage business. *Green* v. *United States* (25 App. D. C. 549).

§ 22–1207 [6: 99]. Punishment for violations of sections 22–1202 to 22–1206.

Whoever shall be guilty of any offense defined in sections 22–1202 to 22–1206, shall, where the thing, evidence of debt, property, proceeds, or profits be of the value of less than fifty dollars, be punished by imprisonment for not more than one year or a

fine of not more than $200 or both. (Mar. 3, 1913, 37 Stat. 727, ch. 107; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

AMENDMENT

The act of 1937 amended the section as enacted by the act of 1913 by striking it out and inserting in lieu thereof the above.

§ 22–1208 [6: 81]. Conversion by commission merchant, consignee, person selling goods on commission—Auctioneers.

If any factor, commission merchant, consignee, or any person selling goods on commission, or the agent, clerk, or servant of such person, shall convert to his own use in the District of Columbia any provisions, fruits, flour, meat, butter, cheese, or any other goods, merchandise, or property, or the proceeds of the same, and shall fail to pay over the avails or proceeds, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods or produce, and after demand made therefor by the person entitled to receive the same, or his or her duly-authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the police court of the District of Columbia shall be fined not more than one thousand dollars or be imprisoned not exceeding six months, or both, in the discretion of the court. The provisions of this section shall be applicable to all licensed auctioneers, their agents and employees. (Mar. 21, 1892, 27 Stat. 10, ch. 19; July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 8.)

AMENDMENT

The act of 1902 provided that the act of 1892 should hereafter be applicable to licensed auctioneers, their agents and employees.

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
Joinder of offenses, § 23–201.

§ 22–1209 [6: 82]. Embezzlement by mortgagor of personal property in possession.

Any mortgagor of personal property in possession of the same, who, with intent to defraud the owner of the claim secured by the mortgage, removes any of the mortgaged property out of the District, or secretes or sells the same, or converts the same to his own use, shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than five years, or both. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 839.)

CROSS REFERENCE

Selling or concealing property held under conditional sales contract, § 22–1406.

§ 22–1210 [6: 83]. Embezzlement by executors and other fiduciaries.

Any executor, administrator, guardian, trustee, receiver, collector, or other officer into whose possession money, securities, or other property of the property or estate of any other person may come by virtue of his office or employment, who shall fraudulently convert or appropriate the same to his own use, shall forfeit all right or claim to any commissions, costs, and charges thereon, and shall be deemed guilty of embezzlement of the entire amount or value of the money or other property so coming into his possession and converted or appropriated to his own use, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding ten years, or both. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 841.)

NOTES TO DECISIONS

"AT LABOR"

A sentence under this section containing the words "at labor" will be modified by striking out such words as surplusage. *Fields* v. *United States* (27 App. D. C. 433, cert. den. 205 U. S. 292, 51 L. Ed. 807, 27 Sup. Ct. 543).

COMMINGLING

Mere commingling of trust funds with personal funds "affords no sufficient basis for a presumption of evil intent." *Ambrose* v. *United States* (45 App. D. C. 112).

EVIDENCE

In proving such intent "it is competent for the government to prove the financial condition of the accused at or immediately prior to the alleged offense." *Ambrose* v. *United States* (45 App. D. C. 112).

Evidence of similar offenses is admissible to show a course of conduct or a general scheme, but there must be some possible connection between the acts shown and the one on account of which the defendant is being tried. *Ambrose* v. *United States* (45 App. D. C. 112).

INDICTMENT

Indictment is sufficient which charges with precision and certainty that the defendant was appointed a receiver by order of court; that by virtue of said appointment he came into possession of a certain sum of money, alleged to be the property of the association and that on a certain date, he unlawfully and fraudulently converted and appropriated the same to his own use, and did then and there embezzle the same. *Fields* v. *United States* (27 App. D. C. 433, cert. den. 205 U. S. 292, 51 L. Ed. 807, 27 Sup. Ct. 543).

INTENT TO DEFRAUD

"Intent to defraud is an essential element of the crime denounced by section 841 (this section)." *Ambrose* v. *United States* (45 App. D. C. 112).

RECEIVER APPOINTED PRIOR TO EFFECTIVE DATE

This section "comprehends property that may have passed into the defendant's possession as receiver before the time that it went into effect, when embezzled thereafter." *Fields* v. *United States* (27 App. D. C. 433, cert. den. 205 U. S. 292, 51 L. Ed. 807, 27 Sup. Ct. 543).

§ 22–1211 [6: 84]. Taking property without right.

The taking and carrying away of the property of another in the District of Columbia without right to do so shall be a misdemeanor, punishable by a fine not to exceed one hundred dollars, or imprisonment for a term not to exceed six months, or both. (Apr. 21, 1906, 34 Stat. 127, ch. 1647.)

Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

Sec.

22–1301. False pretenses.
22–1302. Recordation of deed, contract, or conveyance with intent to extort money.
22–1303. False personation before court, officers, notaries.
22–1304. Falsely impersonating public officer or minister.
22–1305. False personation of inspector of departments of District of Columbia.
22–1306. False personation of police officer.
22–1307. Wearing or using insignia of certain organizations.
22–1308. False certificate of acknowledgment.

§ 22–1301 [6: 85]. False pretenses.

Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barters, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall, if the value of the property or the sum or value of the money or property so obtained, procured, sold, bartered, or disposed of is $50 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than $200 or imprisoned for not more than one year, or both. Any person who obtains any lodging, food, or accommodation at an inn, boarding-house, or lodging-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at such an inn, boarding-house, or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food, accommodation, or lodging, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the police court of the District of Columbia be fined not more than $100 or imprisoned not more than six months, or both, in the discretion of said court. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 842; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599.)

AMENDMENTS

Act of 1902 amended act of 1901 by changing penalty from six months to one year.

Act of 1937 is re-enactment with amendatory changes as given above.

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.

Forgery and frauds, § 22–1401 et seq.

General provisions concerning rights and liabilities of hotel and lodging-housekeepers, §§ 34–101 to 34–103.

Joinder of offenses, § 23–201

Larceny, § 22–2201.

See § 22–1202. *Davis* v. *United States* (37 App. D. C. 126).

NOTES TO DECISIONS

IN GENERAL

"The elements of the offense are a false pretense or false representation by the defendant or some one acting for and instigated by him, knowledge by the defendant as to the falsity, reliance on the pretense or representation by the person defrauded, intent to defraud, and an actual defrauding." *Robinson* v. *United States* (42 App. D. C. 186).

AMENDMENT

This section was intended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence, and possibly also to effect pro tanto repeal of the minimum penalty provisions of such existing acts as themselves stipulate a minimum penalty in excess of one-fifth of a stipulated maximum penalty. *Anderson* v. *Rives* (66 App. D. C. 174, 85 Fed. (2d) 673).

"ANYTHING OF VALUE"

A promissory note is a thing of value within the meaning of the statute. It is not necessary that false pretense should be the sole inducement for parting with the property; it is sufficient "if it had a preponderating influence sufficient to turn the scale, although other considerations operated upon the mind of the party." *Partridge* v. *United States* (39 App. D. C. 571, Ann. Cas. 1917D, 622).

Cited to the point that this section made the obtaining of anything of value by means of false pretenses a crime. *Biddle* v. *United States* ((C. C. A. 9), 156 Fed. 759).

CRIME AGAINST UNITED STATES

False pretense is a crime against the United States, and persons conspiring to commit it may be punished under U. S. R. S. § 5440 (U. S. C., title 18, § 88). *Geist* v. *United States* (26 App. D. C. 594).

ELECTION OF OFFENSES

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

EMBEZZLEMENT

"Verdict under embezzlement counts negatives one essential fact in the crime of procuring money by false pretenses, namely, the divesting of the title originally." *Davis* v. *United States* (37 App. D. C. 126).

EVIDENCE

Where the question is one of guilty knowledge, or fraudulent intent "it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate or establish his intent or motive in the particular act directly in judgment." *Partridge* v. *United States* (39 App. D. C. 571, Ann. Cas. 1917D, 622).

"It is for the jury to determine whether each of those elements has been established by the evidence, and the court is not authorized to invade the province of the jury by telling them that if certain facts are proved the intent to defraud is made out." *Robinson* v. *United States* (42 App. D. C. 186).

In prosecution for false pretenses involving sales to two complaining witnesses by means of fraudulent representation of warehouse receipts and for embezzlement involving conversion by defendant of money which one complaining witness turned over to defendant in connection with such sales, error in permitting introduction of testimony of another witness that about two years before acts charged defendant had sold witness similar warehouse receipts and had made to her similar representations was not cured by instruction directing jury to disregard such testimony. *Boyer* v. *U. S.*, 1942 (132 F. 2d 12, 76 U. S. App. D. C. 397).

FACT REPRESENTED FALSELY

In order to constitute the crime of obtaining money under false pretenses, the alleged false representation must be of some past or existing fact. *Biddle* v. *United States* ((C. C. A. 9), 156 Fed. 759).

INDICTMENT

Abusive words conveying the meaning that plaintiff had, by trick or artifice, obtained entrance into a theater, do

not charge the indictable offense of false pretenses. *Friedlander* v. *Rapley* (38 App. D. C. 208).

An indictment charging defendant in one count with forgery and in second count with uttering same forged letter was not demurrable on ground that it was "repugnant". *U. S.* v. *Briggs* (D. C., D. C. 1944, 54 F. Supp. 731).

INTENT TO DEFRAUD

Jury may impute an intent to defraud, where the evidence shows that one has obtained something of value from another by means of false representations, knowingly made with intent to induce the action taken by the other, by introducing evidence tending to show that he believed the other was receiving something of substantial value. *Robinson* v. *United States* (42 App. D. C. 186).

When indictment plainly describes numerous false representations of present and past facts, and it charges that their falsity was known to defendant, that they were made with the intention of defrauding and that one believed them and acted upon them by paying money, it adequately charged a public offense. *Randle* v. *United States* (72 App. D. C. 368, 113 Fed. (2d) 945).

MERE OPINION OR EXPECTATION

"False pretense or representation * * * must relate to some subsisting fact, past or present. A statement as to the future by way of opinion or expectation as to what can be accomplished does not constitute false pretense." *Engle* v. *United States* (48 App. D. C. 466).

ON APPEAL

Conviction of obtaining money by false pretenses affirmed. *Moffatt* v. *United States* (60 App. D. C. 35, 46 Fed. (2d) 616); *Howe* v. *United States* (61 App. D. C. 8, 56 Fed. (2d) 305).

PRESENT OR PAST FACTS

That false representations of present or past facts become effective only by being coupled with a false promise does not take a case out of the operation of the statute. *Randle* v. *United States* (72 App. D. C. 368, 113 Fed. (2d) 945).

In indictment for obtaining money by false pretenses, the misrepresentations must relate to present or past facts, as distinguished from something to take place in the future. *Randle* v. *United States* (72 App. D. C. 368, 113 Fed. (2d) 945).

A false pretense, under this section, must relate to a past event or existing fact, and any representation with regard to a future transaction is excluded. *Chaplin* v. *U. S.* (App. D. C. 1946, 157 F. 2d 697).

A liquor dealer who borrowed money on representations that he would use it to purchase liquor tax stamps, and that he would repay the money, but who used only a small portion to purchase stamps and failed to return the money so advanced, was not guilty under this section of obtaining money by "false pretenses", since the representations did not relate to a present or past existing fact. *Chaplin* v. *U. S.* (App. D. C. 1946, 157 F. 2d 697).

PREVIOUS CONVICTIONS

In prosecution for obtaining money by false pretenses, where government brought out on cross-examination that defendant had been previously convicted of bad check charges and of embezzlement, and defendant was permitted to explain all bad check convictions, refusal to permit defendant to explain the conviction of embezzlement, although technically wrong, did not justify a reversal. *U. S.* v. *Boyer* (App. D. C. 1945, 150 F. 2d 595, 80 U. S. App. D. C. 202).

RELIANCE ON PRETENSE

Statement by defendant that prosecuting witness should not rely on representations but should satisfy himself by observation and inquiry, is not sufficient to relieve of criminal liability for false representation theretofore made unless it appears that prosecuting witness accepted withdrawal of representations and assumed to act entirely on his own judgment. *Partridge* v. *United States* (39 App. D. C. 571, Ann. Cas. 1917D, 622).

REPRESENTATION—TO WHOM MADE

False representation must be made to the person defrauded. *Foster* v. *Goldsoll* (48 App. D. C. 505).

SCHEMES TO DEFRAUD

In prosecution for obtaining money under false pretenses, when evidence plainly shows a planned fraud, there was no error in the use of the phrase "schemes to defraud." *Randle* v. *United States* (72 App. D. C. 368, 113 Fed. (2d) 945).

While the word scheme does not itself occur in the statute, the language of the statute is broad enough to cover a scheme to defraud. *Randle* v. *United States* (72 App. D. C. 368, 113 Fed. (2d) 945).

WORTHLESS CHECK

It is no defense in fraudulent check cases that defendant subsequently reimbursed the prosecuting witness, nor that defendant at time of transaction intended to repay the money. *Clagett* v. *United States* (53 App. D. C. 134, 289 Fed. 532).

It is a violation of the statute and no defense for the defendant to obtain money from the prosecuting witness upon the faith of the worthless check, whether the check was to serve as security for a concurrent loan or was to be presented to the bank for payment in ordinary course. *Clagett* v. *United States* (53 App. D. C. 134, 289 Fed. 532).

§ 22–1302 [6: 89]. Recordation of deed, contract, or conveyance with intent to extort money.

Whoever having no title or color of title to the land affected shall maliciously cause to be recorded in the office of the recorder of deeds of the District of Columbia any deed, contract, or other instrument purporting to convey or to relate to any land in said District with intent to extort money or anything of value from any person owning such land, or having any interest therein, shall be fined not less than five hundred dollars or imprisoned not more than two years, or both. (June 30, 1902, 32 Stat. 535, ch. 1329, § 845a.)

§ 22–1303 [6: 132]. False personation before court, officers, notaries.

Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses, with intent to defraud, shall be imprisoned for not less than one year nor more than five years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 859; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 2.)

AMENDMENTS

Under act of 1909, the court known as "justice of the peace" was changed to "the municipal court of the District of Columbia."

Act of 1921 authorized the municipal court as court of record.

§ 22–1304 [6: 133]. Falsely impersonating public officer or minister.

Whoever falsely represents himself to be a judge of the municipal court, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his appointment or commission has expired or he has been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 860; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

The act of 1909 changed "justice of the peace" to "judge of the municipal court."

NOTES TO DECISIONS

BURDEN OF PROOF

In prosecution for falsely impersonating a police officer of the United States, burden is upon government to prove crime charged beyond a reasonable doubt though where defendant is charged with falsely pretending to be an officer and fails to produce evidence showing he was such officer, presumption arises that evidence if produced would have been unfavorable to defendant. *Taylor* v. *U. S.* (App. D. C. 1948, 167 F. 2d 752).

EVIDENCE

In prosecution for falsely impersonating a police officer of the United States, while it must in some manner appear that accused is not a federal officer, proposition is fairly inferable from character of proof much less direct and formal than might be required to affirmatively establish official capacity, and any facts which to average mind would fairly tend to indicate that accused was not a federal officer would be sufficient to warrant the jury in reaching such conclusion. *Taylor* v. *U. S.* (App. D. C. 1948, 167 F. 2d 752).

Evidence that accused was not a federal officer was sufficient to sustain conviction for false impersonation of a police officer of the United States notwithstanding government failed to offer direct proof that defendant was not such officer by reference to official police rolls. *Taylor* v. *U. S.* (App. D. C. 1948, 167 F. 2d 752).

PROTECTION OF CITIZENRY

This section penalizing false representation of a person as police officer of District of Columbia is a protection of the citizenry against exercise of excess jurisdiction by an impostor as well as impersonation in the genuine jurisdiction which might have been exercised by a legitimate officer. *Taylor* v. *U. S.* (App. D. C. 1948, 167 F. 2d 752).

VARIANCE

In prosecution for falsely pretending to be a member of District of Columbia Metropolitan Police, fact that scene of impersonation was in park subject to jurisdiction of United States Park Police did not establish a fatal variance under §§ 4–120, 4–201, granting Metropolitan Police and Park Police concurrent jurisdiction over United States Parks within District of Columbia. *Taylor* v. *U. S.* (App. D. C. 1948, 167 F. 2d 752).

§ 22–1305 [6: 302]. False personation of inspector of departments of District of Columbia.

It shall be unlawful for any person in the District of Columbia to falsely represent himself or herself as being an inspector of the health department of said District, or an inspector of any department of the District government; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction in the police court of said District shall be punished by a fine of not less than ten dollars nor more than fifty dollars for the first offense, and for each subsequent offense by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment in the jail of the District not exceeding six months, or both, in the discretion of the court. (Mar. 2, 1897, 29 Stat. 619, ch. 364.)

§ 22–1306 [6: 303]. False personation of police officer.

It shall be a misdemeanor, punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding five hundred dollars, for any person, not a member of the police force, to falsely represent himself as being such member, with a fraudulent design. (R. S., D. C., § 433.)

§ 22–1307 [6: 300]. Wearing or using insignia of certain organizations.

Whoever, in the District of Columbia, not being a member of the Military Order of the Loyal Legion of the United States, or the Grand Army of the Republic, of the Sons of Veterans, of the Woman's Relief Corps, of the Union Veteran's Union, of the Union Veteran Legion, of the United Spanish War Veterans, of the National Society of the Daughters of the American Revolution, and not entitled under the rules of the order to wear the same, wilfully wears or uses the insignia, distinctive ribbon, or badge of membership, rosette, or button thereof, or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (Mar. 15, 1906, 34 Stat. 62, ch. 949.)

§ 22–1308 [6: 88]. False certificate of acknowledgment.

Any officer authorized to take the proof or acknowledgment of an instrument which, by law, may be recorded, who wilfully certifies falsely that the instrument was acknowledged by any party thereto, or who wilfully certifies falsely as to any other material matter in such acknowledgment, shall be imprisoned for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 845.)

Chapter 14.—FORGERY—FRAUDS

Sec.
22–1401. Forgery.
22–1402. Forging or imitating brands or packaging of goods.
22–1403. Stealing, destroying, mutilating, secreting, or withholding will.
22–1404. Secreting or converting property, documents, or assets of decedent's estate.
22–1405. Taking away or concealing writings.
22–1406. Sale or concealment by conditional vendee, with intent to defraud.
22–1407. Fraud by operation of coin-controlled mechanism by use of slugs.
22–1408. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.
22–1409. "Person" defined.
22–1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.
22–1411. Fraudulent advertising.
22–1412. Prosecution under section 22–1411.
22–1413. Penalty under section 22–1411.
22–1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

§ 22–1401 [6: 86]. Forgery.

Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 843.)

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
False pretenses and false personations, § 22–1301 et seq.
Larceny, § 22–2201 et seq.

See section 22–1202. *Dowling* v. *United States* (41 App. D. C. 11); *Yeager* v. *United States* (59 App. D. C. 11, 32 Fed. (2d) 402).

NOTES TO DECISIONS

AGENT

The use by an agent of the signature of his principal for an unauthorized purpose constitutes forgery. *Yeager* v. *United States* (59 App. D. C. 11, 32 Fed. (2d) 402).

ALTERATION

Question for the jury is not merely whether defendant honestly believed he had authority to alter notes, but whether he had reasonable grounds for so believing. *Towles* v. *United States* (19 App. D. C. 471).

COMMON LAW

Forgery, at common law, is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. *Milton* v. *United States* (71 App. D. C. 394, 110 Fed. (2d) 556).

At common law, forgery and uttering were different substantive crimes. *Reid* v. *Aderhold* ((C. C. A. 5), 65 Fed. (2d) 110).

To same effect as first paragraph of original annotation, see *U. S.* v. *Briggs* (D. C., D. C. 1944, 54 F. Supp. 731).

ELEMENTS OF OFFENSE

To constitute "forgery" under this section, there must be a false making or other alteration of some instrument in writing, there must be fraudulent intent, and instrument must be apparently capable of effecting a fraud. *U. S.* v. *Briggs* (D. C., D. C. 1944, 54 F. Supp. 731).

EMBEZZLEMENT

Where one employed as bookkeeper, salesman, and collector of an electric company, with authority to indorse checks in the name of the company and deposit them in the bank, cashed the checks instead and appropriated the money to his own use, the offense of which he was guilty was forgery, and conviction for embezzlement must be reversed. *Yeager* v. *United States* (59 App. D. C. 11, 32 Fed. (2d) 402).

HABEAS CORPUS

Habeas corpus for release of one convicted of forgery. *Reid* v. *Aderhold* ((C. C. A. 5), 65 Fed. (2d) 110, cert. den. 290 U. S. 676, 78 L. Ed. 584, 54 Sup. Ct. 104).

INDICTMENT

"It matters not that at common law the charge of falsely making an instrument was held to include the offense of falsely altering it, since they are disjunctively named in the statute as distinct ways in which the crime of forging may be committed. Forgery is a statutory, not a common-law crime in this District, and the offense must be charged as defined in the statute, irrespective of common-law rules of pleading." *Frisby* v. *United States* (38 App. D. C. 22, 37 L. R. A. (N. S.) 96). See, however, *Read* v. *United States* (55 App. D. C. 43, 299 Fed. 918) wherein it is said, "The offense thus denounced is complete even though the instrument never is uttered. When it is uttered, another and distinct offense is committed, and a second uttering, of course, constitutes still another offense. In *Frisby* v. *United States* (38 App. D. C. 22, 37 L. R. A. (N. S.) 96) the question was not directly involved and the Burton case (202 U. S. 344, 50 L. Ed. 1057, 26 Sup. Ct. 688) was not brought to our attention."

"The statute defines two distinct criminal acts, either of which constitutes the crime of forgery. The making of a false instrument with intent to defraud is forgery. The uttering of a forged instrument with intent to defraud is forgery. But where the instrument is both forged and uttered by the same person, * * * there is only the single crime of forgery committed." *Frisby* v. *United States* (38 App. D. C. 22, 37 L. R. A. (N. S.) 96). See *Frisby* v. *United States* (35 App. D. C. 513). See also *Simon* v. *United States* (37 App. D. C. 280) holding that both acts may be charged in the indictment, or the pleader may elect to charge but one.

Indictment for uttering need not set forth the particular acts claimed to constitute such uttering. *Fuller* v. *United States* (53 App. D. C. 88, 288 Fed. 442).

Indictment charging defendant with possession and knowingly uttering and publishing a forged security, states a single offense. *Price* v. *United States* (53 App. D. C. 164, 289 Fed. 562).

Indictment need not allege the persons or corporations intended to be defrauded, but requires nothing more than a general intent to defraud. *Read* v. *United States* (55 App. D. C. 43, 299 Fed. 918).

An indictment charging defendant with having forged name of another individual to a letter and procuring of money for such letter from still another party with intent to defraud was sufficient to charge crimes of forgery and uttering, as against contention that instrument was not capable of effecting a fraud. *U. S.* v. *Briggs* (D. C., D. C. 1944, 54 F. Supp. 731).

An indictment charging defendant in one count with forgery and in second count with uttering same forged letter was not demurrable on ground that it was "repugnant". *U. S.* v. *Briggs* (D. C., D. C. 1944, 54 F. Supp. 731).

Counts in indictment charging defendant with uttering forged documents in interference proceeding in United States Patent Office "with intent to defraud and injure" were not required to name persons whom defendant intended to defraud and injure. *Mas* v. *U. S.* (App. D. C. 1945, 151 F. 2d 32, 80 U. S. App. D. C. 223, certiorari denied 66 S. Ct. 267).

INTENT

Elements of offense: "There must be a false making or other alteration of some instrument in writing; there must be a fraudulent intent; and the instrument must be apparently capable of effecting a fraud * * *. Intent in forgery will not be presumed from the mere making of a false instrument. It must be gathered from some affirmative act, or from the existence of circumstances from which criminal intent may be inferred." *Dowling* v. *United States* (41 App. D. C. 11), quoting from *Frisby* v. *United States* (38 App. D. C. 22, 37 L. R. A. (N. S.) 96). See § 22–1202.

It is not essential that "anyone shall be actually defrauded, or that the accused shall have the intent to defraud any particular person. All that is required in that respect is that there be an intent to defraud someone." *Easterday* v. *United States* (53 App. D. C. 387, 292 Fed. 664); *Read* v. *United States* (55 App. D. C. 43, 299 Fed. 918); *Milton* v. *United States* (71 App. D. C. 394, 110 Fed. (2d) 556).

INSTRUMENT

It is enough if the forged instrument be apparently sufficient to support a legal claim and thus to effect a fraud. *Milton* v. *United States* (71 App. D. C. 394, 110 Fed. (2d) 556).

§ 22–1402 [6: 298]. Forging or imitating brands or packaging of goods.

Whoever wilfully forges or counterfeits or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trademark, bottle, or package usually affixed or used by any person to or with the goods, wares, merchandise, preparation, or mixture of such person, with intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such, shall be fined not more than five hundred dollars or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 879.)

§ 22–1403 [6: 68]. Stealing, destroying, mutilating, secreting, or withholding will.

Whoever, during the life of a testator or after his death, shall, for a fraudulent purpose, take and carry

away a will, codicil, or other testamentary instrument, or destroy, mutilate, or secrete the same, whether it relates to personal or real property, shall suffer imprisonment for not more than five years.

If any person in whose possession or custody a will or codicil shall be after the death of a testator or testatrix shall wilfully neglect to deliver the same to the District Court of the United States for the District of Columbia, holding a special term as a probate court, or to the register of wills, or to some executor named in the will, for the space of three calendar months after the death of testator or testatrix shall be known to him, the person thus offending shall be punished by a fine not exceeding five hundred dollars. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 830; June 30, 1902, 32 Stat. 535, ch. 1329.)

AMENDMENT

The act of 1902 added the second paragraph.

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
Joinder of offenses, § 23–201.
Opening before delivery to probate court, § 19–111.

NOTES TO DECISIONS

TIME IN WHICH TO PROBATE

"While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done," citing 1901 Code, §§ 830, 1635a (this section and § 19–111), *McGowan* v. *Elroy* (28 App. D. C. 188).

§ 22–1404 [6: 69]. Secreting or converting property, documents, or assets of decedent's estate.

Whosoever wilfully and fraudulently makes away with, secretes, or converts to his own use any property, documents, or assets of any kind or nature belonging to the estate of a deceased person shall be punished by a fine not exceeding $2,000 or imprisonment for not more than two years, or both. (Apr. 19, 1920, 41 Stat. 567, ch. 153, § 830a.)

§ 22–1405 [6: 70]. Taking away or concealing writings.

Whoever, with intent to defraud or injure another person, shall take away or conceal any writing whereby the estate or right of such other person shall or may be defeated, injured, or altered shall suffer imprisonment for not more than seven years. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 840.)

NOTES TO DECISIONS

INDICTMENT

Averments of indictment were sufficient when they clearly set forth the defendant's relation to the building association; that certain books of record were required to be kept, and that six carefully described books of record were kept; and that the defendant, on a day named, "unlawfully, wilfully, and with an intent to defraud and injure the said association, and the said stockholders and members thereof, did take away and conceal said books hereinbefore in this indictment particularly described, said books then and there being the writing, records, and property of said association, stockholders, and members." *Miller* v. *United States* (41 App. D. C. 52, cert. den. .291 U. S. 755, 58 L. Ed. 468, 34 Sup. Ct. 323).

"WRITING"

The words "whereby the estate, etc.," do not modify the word "writing," but the section is to be read as though there were a comma after the latter word. *Miller* v. *United States* (41 App. D. C. 52, cert. den. 231 U. S. 755, 58 L. Ed. 468, 34 Sup. Ct. 323).

§ 22–1406 [6: 71]. Sale or concealment by conditional vendee, with intent to defraud.

Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals, or aids in concealing the same, or removes the same from the District of Columbia without the consent of the vendor, before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than $100, or by imprisonment for not more than ninety days. (Apr. 28, 1904, 33 Stat. 554, ch. 1808, § 833a; May 27, 1921, 42 Stat. 9, ch. 13.)

AMENDMENT

The 1921 amendment inserted the word "not" in the last phrase.

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
Selling or concealing mortgaged property, § 22–1209.

§ 22–1407 [6: 163]. Fraud by operation of coin-controlled mechanism by use of slugs.

Any person who shall operate or cause to be operated, or who shall attempt to operate or attempt to cause to be operated, in the District of Columbia any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, designed to receive or be operated by lawful coin of the United States of America or a token provided by the person entitled to the coin contents of such receptacle, in furtherance of or in connection with the sale, use, or enjoyment of property or service, by means of a slug or any false token, counterfeited, mutilated, sweated, or foreign coin, or by any means, method, trick, or device whatsoever not authorized by the person entitled to the coin contents of such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle; or any person who shall take, obtain, or receive from or in connection with any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle described in this section any goods, wares, merchandise, gas, electric current, or other article of value, or the use or enjoyment of any transportation or any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, in the District of Columbia, without depositing in and surrendering to such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle described in this section lawful coin of the United States of America to the amount required therefor by the person entitled to the coin contents of any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, or tokens provided and to the amount required by the person entitled to the coin contents of such legal receptacle, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding $500 or by imprisonment not to exceed six months, or by both fine and imprisonment in the discretion of the court. (Aug. 16, 1937, 50 Stat. 662, ch. 660, § 1.)

CROSS REFERENCES

Allegation and proof of intent to defraud, § 23–203.
Regulation of slot machines, § 10–109.

§ 22–1408 [6: 163a]. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.

Any person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the coin contents of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, designed to receive or be operated by lawful coin of the United States of America or a token provided by the person entitled to the coin contents of such legal receptacle, in furtherance of or in connection with the sale, use, or enjoyment of property or service, or any person who, knowing or having cause to believe that the same is intended for fraudulent or unlawful use on the part of the purchaser, donee, or user thereof, shall manufacture, sell, offer to sell, advertise for sale, give away, or possess, in the District of Columbia, any token, slug, false or counterfeit coin, or any device or substance whatsoever intended or calculated to be placed, deposited, or used in the operation of any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500 or by imprisonment not to exceed six months, or by both fine and imprisonment in the discretion of the court. (Aug. 16, 1937, 50 Stat. 663, ch. 660, § 2.)

§ 22–1409 [6: 163b]. "Person" defined.

The word "person," where used in sections 22–1407 to 22–1409, shall be construed to include any individual, individuals, copartnerships, associations, groups, and corporations. (Aug. 16, 1937, 50 Stat. 663, ch. 660, § 3.)

§ 22–1410 [6: 264]. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation, shall be guilty of a misdemeanor and punishable by imprisonment for not more than one year, or be fined not more than $1,000, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within five days after receiving notice in person, or writing, that such draft or order has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, or order. (July 1, 1922, 42 Stat. 820, ch. 273.)

Cross Reference

Allegation and proof of intent to defraud, § 23–203.

§ 22–1411 [6: 265]. Fraudulent advertising.

It shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail, or send to any person, firm, association, or corporation any false, untrue, or misleading statement, representation, or advertisement with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead, or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association, or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services. (May 29, 1916, 39 Stat. 165, ch. 130, § 1.)

Cross References

Allegation and proof of intent to defraud, § 23–203.
Gift enterprises forbidden, §§ 22–3401 to 22–3403.

§ 22–1412 [6: 266]. Prosecution under section 22–1411.

Prosecution under section 22–1411 shall be in the police court of the District of Columbia upon information filed by the United States District Attorney for the District of Columbia, or one of his assistants. (May 29, 1916, 39 Stat. 165, ch. 130, § 2.)

§ 22–1413 [6: 267]. Penalty under section 22–1411.

Any person, firm, or association violating any of the provisions of section 22–1411 shall upon conviction thereof, be punished by a fine of not more than $500 or by imprisonment of not more than sixty days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of section 22–1411 shall be fined not more than $500, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than sixty days, in the discretion of the court. (May 29, 1916, 39 Stat. 165, ch. 130, § 3.)

§ 22–1414 [6: 297]. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

If any person shall fraudulently tamper with any box used or intended by the jury commission for the

names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall wilfully draw from any such box a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more than $500 or imprisonment in the District jail or workhouse for not more than one year, or both. (Apr. 19, 1920, 41 Stat. 560, ch. 153, § 213.)

CROSS REFERENCE

Allegation and proof of fraudulent intent, § 23–203.

Chapter 15.—GAMBLING

Sec.

22–1501. Lotteries—Promotion—Sale or possession of tickets.
22–1502. Possession of lottery or policy tickets.
22–1503. Permitting sale of lottery tickets on premises.
22–1504. Gaming—Setting up gaming table—Inducing play.
22–1505. Permitting gaming table or device to be set up.
22–1506. Three-card monte and confidence games.
22–1507. "Gaming table" defined.
22–1508. Gambling pools and bookmaking.
22–1509. Bucketing, and bucket-shopping and bucket-shops—Definitions.
22–1510. Penalty for bucketing or keeping bucket-shop.
22–1511. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices.
22–1512. Bucketing—Written statement to be furnished—Contents.
22–1513. Corrupt influence in connection with athletic contests.

§ 22–1501 [6: 151]. Lotteries—Promotion—Sale or possession of tickets.

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than $1,000 or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima-facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 863; June 30, 1902, 32 Stat. 535, ch. 1329; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 1.)

AMENDMENTS

The act of 1902 struck out the words "one year" and inserted in lieu thereof the words "three years."

The act of 1938 changed penalty from $500 to $1,000 and added the last sentence.

CROSS REFERENCES

Other criminal penalties for gambling, § 16–704.

Search warrant, destruction of property, severability of provisions, §§ 23–301, 23–304, 23–305.

Transfer or suspension of liquor license pending prosecution, §§ 25–117, 25–118.

NOTES TO DECISIONS

ARREST AND SEARCH

Evidence sustained conclusion of existence of sufficient cause to believe that the offense of conducting a "numbers game" had been committed and that defendant had participated therein to justify arrest and search without warrant. *Newyahr* v. *U. S.* (C. A. D. C. 1949, 177 F. 2d 658, 85 US App. D. C. 348, certiorari denied, 70 S. Ct. 350, 338 US 936, 94 L. Ed. 257).

DISTRIBUTION OF PRIZES

One of the essential elements of a lottery is the awarding of a prize by chance, but the exact method adopted for the application of chance to the distribution of prizes is immaterial. *Forte* v. *United States* (65 App. D. C. 355, 83 Fed. (2d) 612, 105 A. L. R. 300).

EVIDENCE

In prosecution under this section, the credibility of the testimony of officers as to evidences of guilt found in defendant's automobile, is for the judge and the trial court's finding in disputed evidence will be upheld. *Coupe* v. *United States* (72 App. D. C. 86, 113 Fed. (2d) 145).

In prosecution under this section a page from a notebook found on the person of the accused was properly admitted in evidence, over the objection of the accused that it was a memorandum of a bet on a horse race, although it may tend, incidentally, to prove another distinct offense. *Shettel* v. *United States* (72 App. D. C. 250, 113 Fed. (2d) 34).

Intercepted interstate and local messages pertaining to gambling are not admissible when received by person not authorized by the sender. *United States* v. *Plisco* ((D. C.-D. C.), 22 Fed. Supp. 242).

INDICTMENT

Where an indictment under this section contains two counts, one for misdemeanor and one for felony, defendant's objection that the conviction on the misdemeanor count was invalid is immaterial in view of the fact that the sentences for each were to be served concurrently and the longer sentence was based on a valid count. *Coupe* v. *United States* (72 App. D. C. 86, 113 Fed. (2d) 145).

INSTRUCTIONS

Where the trial court instructed the jury, "Do I believe from the evidence I have heard in this trial that the defendants have committed this crime? If you answer the question yes, you must find the defendants guilty. If your answer is no, then you must find them not guilty," it is error. This statement is not the law, for the law is that if the jury believes beyond a reasonable doubt that the defendant has committed the alleged offense, it should find a verdict of guilty, but if there be a reasonable doubt in the minds of the jurors, they must acquit. *Billeci* v. *United States* (C. A. D. C. 1950, 184 F. 2d 394).

If the intonations and gestures of a trial judge, when instructing the jury, are erroneously detrimental to a defendant in a criminal case, it is the duty of counsel

to report fully and accurately, at the time and on the record, although not in the hearing of the jury, what has transpired. *Billeci* v. *United States* (C. A. D. C. 1950, 184 F. 2d 394).

When a federal judge comments upon evidence by expressing his opinion upon phases of it, he is treading close to the line which divides proper judicial action from the field which is exclusively the jury's. Therefore, he must make it unequivocally clear to the jury that conclusions upon such matters are theirs, not his, to make, and he must do so in such manner and in such time that the jury will not be left in doubt. *Billeci* v. *United States* (C. A., D. C. 1950, 184 F. 2d 394).

NUMBERS GAME

"Numbers game" is lottery when the player merely guesses that the result of mathematical calculations, based upon the prices paid at a certain track, will be a certain number. *Forte* v. *United States* (65 App. D. C. 355, 83 Fed. (2d) 612, 105 A. L. R. 300).

Conviction of violating and of conspiracy to violate the lottery law was sustained where evidence showed that defendants had been engaged in operation of the "numbers" game. *Smith* v. *United States* (72 App. D. C. 187, 112 Fed. (2d) 217).

SEARCH AND SEIZURE

Where defendant had been indicted for carrying on a lottery known as the numbers game, in violation of the District Code, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *MacDonald* v. *United States,* 1948 (69 S. Ct. 191, 335 U. S. 451, 93 L. Ed. 53).

SUFFICIENCY OF EVIDENCE

Evidence justified submitting to jury prosecution for operating a lottery and possessing materials therefor. *Kenney* v. *U. S.* (App. D. C. 1946, 157 F. 2d 442, 81 U. S. App. D. C. 259).

UNLAWFUL SEARCH

Where there is no claim in the case that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed. A new trial on the indictment must be ordered. *Accarino* v. *United States* (C. A. D. C. 1949, 179 F. 2d 456, 85 U. S. App. D. C. 394).

§ 22–1502 [6: 151a]. Possession of lottery or policy tickets.

If any person shall within the District have in his possession, knowingly, any ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for the purpose of playing, carrying on, or conducting any lottery, or the game or device commonly known as policy lottery or policy, he shall be fined upon conviction of each said offense not more than $500 or be imprisoned for not more than six months, or both. (Apr. 5, 1938, 52 Stat. 198, ch. 72, § 2.)

CROSS REFERENCE

Search warrant, destruction of property, severability of provisions, §§ 23–301, 23–304, 23–305.

NOTES TO DECISIONS

MOTION TO SUPPRESS

Where numbers slips taken from defendant were admitted without objection on trial which commenced three days after his arrest, motion to suppress made for first time when trial resumed following a continuance was not timely, and denial of the motion was not error. *Harris* v. *U. S.* (D. C. 1943, 32 A. 2d 101, certiorari denied 69 S. Ct. 161, 335 U. S. 873, 93 L. Ed. 417).

SEARCH AND SEIZURE

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SUFFICIENCY OF EVIDENCE

Evidence justified submitting to jury prosecution for operating a lottery and possessing materials therefor. *Kenney* v. *U. S.* (App. D. C. 1946, 157 F. 2d 442, 81 U. S. App. D. C. 259).

Evidence was insufficient to sustain conviction of defendant for knowingly having in his possession "numbers slips" in violation of this section. *Fletcher* v. *U. S.* (D. C. Mun. App. 1946, 49 A. 2d 88).

UNLAWFUL SEARCH

Where there is no claim in the case involved that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed. A new trial on the indictment must be ordered. *Accarino* v. *United States* (C. A., D. C. 1949, 179 F. 2d 456, 85 U. S. App. D. C. 394).

§ 22–1503 [6: 152]. Permitting sale of lottery tickets on premises.

If any person shall knowingly permit, on any premises under his control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such premises, he shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 864.)

CROSS REFERENCE

Search warrant, destruction of property, §§ 23–301, 23–304.

§ 22–1504 [6: 153]. Gaming—Setting up gaming table—Inducing play.

Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming, or gambling device commonly called A B C, faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised, and designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than five years. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 865.)

CROSS REFERENCES

Search warrant, destruction of property, §§ 23–301, 23–304.

See notes to § 22–1501. *Forte* v. *United States* (65 App. D. C. 355, 83 Fed. (2d) 612, 105 A. L. R. 300); *United States* v. *Plisco* ((D. C.-D. C.), 22 Fed. Supp. 242).

NOTES TO DECISIONS

IN GENERAL

Nelson v. *United States* (28 App. D. C. 32); *Swan* v. *United States* (54 App. D. C. 100, 295 Fed. 921); citing *Miller* v. *United States* (6 App. D. C. 6), wherein it is said: "Any games, devices, or contrivances set up or kept for the purpose of gaming, or any gambling device, so set up and kept, adapted, devised, and designed for the purpose of

playing any game of chance for money or property, and to which the public may resort to bid or wager money, is a gaming table within the meaning of the statute. The definition of a gaming table under the statute does not involve the ordinary mechanical definition of a table, but depends for its statutory meaning upon the means or contrivances adopted for playing the game."

"Two offenses are created by section 865 (§ 22–1504). One is the setting up or keeping of a gaming table or device; the other is the keeping of a house, vessel, or place for the purpose of gaming." *Wade* v. *United States* (33 App. D. C. 29, 20 L. R. A. (N. S.) 347, 17 Ann. Cas. 707).

Claw Machine

"Claw machine" used for the purpose of obtaining articles, by mere chance, was a "gambling device." *Boosalis* v. *Crawford* (69 App. D. C. 141, 99 Fed. (2d) 374).

Elements of Offensive

The gravamen of offense of setting up and keeping a gaming place is furnishing the facilities for gaming activities and it is immaterial that betting actually took place or that money actually passed. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

Evidence

In prosecution for setting up and keeping a gaming place, evidence necessary to show a gaming place need not be direct, and the intent with which the act was done may be gathered from all the circumstances shown in evidence. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting on result of horse races, where prima facie evidence of corpus delecti was made out, damaging admissions made by defendant were admissable in evidence. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting on result of horse races, evidence authorized inference that defendant was in control and possession of the premises when the offense occurred. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

Evidence sustained conviction of setting up and keeping a gaming place for purpose of betting upon result of horse races. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, evidence sustained finding that a gaming place was illegally set up and maintained. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

In prosecution for keeping gambling tables, testimony of a defendant at a previous trial, together with a bank statement to which it related, were properly admitted, where the testimony had some tendency to establish such defendant's guilt. *Warde* v. *U. S.* (App. D. C. 1946, 158 F. 2d 651).

Evidence of gambling on one occasion is sufficient to sustain conviction for keeping gambling tables. *Warde* v. *U. S.* (App. D. C. 1946, 158 F. 2d 651).

Gambling Device

Where player of pinball amusement machine achieving certain minimum score would receive a "free play" or another "try" without an additional coin but nothing more, the machine was not a "gambling device" designed for purpose of playing game of chance for "property" within this section. *Washington Coin Mach. Ass'n* v. *Callahan,* 1944 (142 F. 2d 97, 79 U. S. App. D. C. 41).

To "gamble" is to risk one's money or other property on an event, chance, or contingency in the hope of the realization of gain, and the test as to whether a particular machine combination constitutes a "gambling device" is whether it is adapted, devised, and designed for purpose of playing any game of chance for money or property. *Washington Coin Mach. Ass'n* v. *Callahan,* 1944 (142 F. 2d 97, 79 U. S. App. D. C. 41).

Gaming Table

Section 865 of the code (this section) made it a crime to set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming or gambling, under the penalty of imprisonment for a term of not more than five years. *Kelleher* v. *United States* (59 App. D. C. 107, 35 Fed. (2d) 877).

Indictments charge that appellants set up and kept a gambling table for the purpose of betting and wagering on the results of horse races, contrary to this section. This charges an offense against the laws of the United States. *Nuckols* v. *United States* (69 App. D. C. 120, 99 Fed. (2d) 353).

Indictment

Indictment in either case of maintaining table or place in which gaming was done need not allege proof of passing money; but if it is drawn in almost the language of the statute, and charges both the place and table defendants were conducting, that is sufficient. *Beard* v. *United States* (65 App. D. C. 231, 82 Fed. (2d) 837).

Offense a Felony

This section, by prescribing a maximum penalty of five years' imprisonment, made the offense a felony. No warrant for arrest was necessary where defendant was apprehended in the act of violating the statute. *Zerega* v. *United States* (59 App. D. C. 67, 32 Fed. (2d) 963).

On Appeal

Conviction on five counts of keeping gaming table and a place for gambling on horse races was affirmed. *Brown* v. *United States* (59 App. D. C. 57, 32 Fed. (2d) 953).

When one was convicted for operating gaming table he could not afterwards dispute the verdict, for a question of fact or of law distinctly put in issue and directly determined by a court of competent jurisdiction cannot afterwards be disputed between the same parties. *Beard* v. *Sanford* ((C. C. A. 5), 99 Fed. (2d) 750).

When appellant was convicted on two counts, first, by setting up gaming table, and, second, keeping a place for gaming, but as he did not raise the question of double jeopardy on the trial or on the appeal from conviction, effect of his failure to do so was to waive the question for all time. *Beard* v. *Sanford* ((C. C. A. 5), 105 Fed. (2d) 141).

Place for Gaming

It is not necessary that one charged with the crime of maintaining a gambling place should have been in permanent possession of the place or a lessee or keeper, but that it is sufficient if he is in charge of the place at the time the offense occurs. *Donald* v. *United States* (70 App. D. C. 14, 102 Fed. (2d) 618).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, it is not necessary that defendant should have been in permanent possession of the premises or that he should have been a lessee or even a keeper. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, it was only incumbent upon the Government to show that defendant was in charge, possession or control of the place when the offense occurred. *Sesso* v. *U. S.*, 1942 (133 F. 2d 381, 77 U. S. App. D. C. 35).

Property

The term "property" as used in this section includes goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, or money or right or title to property, real or personal, is created or transferred but none of such terms should be expanded to include a free amusement feature such as privilege of playing an additional free game if certain score is made. *Washington Coin Mach. Ass'n* v. *Callahan,* 1944 (142 F. 2d 97, 79 U. S. App. D. C. 41).

Purpose

The purpose of Congress in enacting this section was to make criminal the use of all contrivances by which money or property is bet or wagered or risked on the chance of some material reward. *Washington Coin Mach. Ass'n* v. *Callahan,* 1944 (142 F. 2d 97, 79 U. S. App. D. C. 41).

SEARCHES AND SEIZURE

Where defendant had been indicted for carrying on a lottery known as the numbers game in violation of the District Code, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *MacDonald* v. *United States,* 1948 (69 S. Ct. 191, 335 U. S. 451, 93 L. Ed. 53).

Where there is no claim in the case involved that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed. A new trial on the indictment must be ordered. *Accarino* v. *United States* (C. A. D. C. 1949, 179 F. 2d 456, 85 U. S. App. D. C. 394).

SEPARATE TRIAL

Where four defendants were indicted for keeping a gaming table, and one was also charged with assault, a motion of the three to be tried separately from the fourth, who had been charged with assault, will not be granted since their guilt of the only crime of which they were accused was so clear that no defense was attempted and none would have been attempted if they had been tried separately. The court's refusal to try them separately was not prejudicial. *Scheve* v. *United States* (C. A., D. C. 1950, 184 F. 2d 695).

§ 22–1505 [6: 154]. Permitting gaming table or device to be set up.

Whoever in the District knowingly permits any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises to him belonging or by him occupied, or of which at the time he has possession or control, shall be punished by imprisonment in the jail for not more than one year or by a fine not exceeding five hundred dollars or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 866.)

CROSS REFERENCES

Search warrant, destruction of property, §§ 23–301, 23–304.

See notes to § 22–1504. *Boosalis* v. *Crawford* (69 App. D. C. 141, 99 Fed. (2d) 374); *Beard* v. *Sanford* ((C. C. A. 5), 99 Fed. (2d) 750).

NOTES TO DECISIONS

IN GENERAL

This section provided that whoever knowingly permitted any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises belonging to or occupied by him, or under his possession or control, should be punished by imprisonment in the jail for not more than one year or by a fine not exceeding $500, or both. *Kelleher* v. *United States* (59 App. D. C. 107, 35 Fed. (2d) 877).

PROOF

An indictment charging an offense under this section cannot be sustained by proof of a violation of section 865 (§ 22–1504). "In order to warrant a conviction under section 866 (this section) it is necessary that a defendant shall knowingly permit a gambling device to be set up or used for the purpose of gaming upon premises owned or occupied by him, or of which at the time of the commission of the offense he had possession or control." *Nelson* v. *United States* (28 App. D. C. 32).

§ 22–1506 [6: 155]. Three-card monte and confidence games.

Whoever shall in the District deal, play, or practice, or be in any manner accessory to the dealing or practicing, of the confidence game or swindle known as three-card monte, or of any such game, play, or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars and by imprisonment for not more than five years. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 867.)

CROSS REFERENCES

Search warrant, § 23–301.

See notes to §§ 22–1504, 22–1505.

§ 22–1507 [6: 156]. "Gaming table" defined.

All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of sections 22–1504 to 22–1506; and the courts shall construe said sections liberally, so as to prevent the mischief intended to be guarded against. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 868.)

CROSS REFERENCES

Search warrant, destruction of property, §§ 23–301, 23–304.

See notes to §§ 22–1504, 22–1505.

NOTES TO DECISIONS

INDICTMENT

Indictment is sufficient which alleges a setting up of gaming table and keeping a gaming table for the purpose of betting on the results of horse races. *Swan* v. *United States* (54 App. D. C. 100, 295 Fed. 921).

§ 22–1508 [6: 157]. Gambling pools and book making.

It shall be unlawful for any person or association of persons to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of baseball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3.)

AMENDMENT

The act of 1908 struck out after the word "persons" in the first sentence the following words "in city of Washington and Georgetown in District of Columbia within one mile of boundaries of said District."

CROSS REFERENCE

Search warrant, destruction of property, §§ 23–301, 23–304.

NOTES TO DECISIONS

IN GENERAL

This section made it unlawful for any person to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, and prescribed a punishment for violation of the provisions of the section of a fine not exceeding $500 or imprisonment not exceeding 90 days, or both. *Kelleher* v. *United States* (59 App. D. C. 107, 35 Fed. (2d) 877).

ACCOMPLICES

Persons engaging in wagering contests are not accomplices. *Paylor* v. *United States* (42 App. D. C. 428, L. R. A. 1915D, 682, cert. den. 235 U. S. 704, 59 L. Ed. 434, 35 Sup. Ct. 209).

DEFAMATORY WORDS

When words are not libelous per se, as laying bets on horse races, it is for the jury to determine the defamatory

meaning. *Baker* v. *Warner* (231 U. S. 588, 58 L. Ed. 384, 34 Sup. Ct. 175).

EVIDENCE

Where evidence justified conviction on counts under 1901 code § 865 (§ 22–1504), counts under this section need not be considered. *Zerega* v. *United States* (59 App. D. C. 67, 32 Fed. (2d) 963).

PROHIBITION—GEOGRAPHICAL

This section only prohibited betting on horse races and bookmaking within one mile of the boundaries of the cities of Washington and Georgetown. *Baker* v. *Warner* (231 U. S. 588, 58 L. Ed. 384, 34 Sup. Ct. 175).

§ 22–1509 [6: 158]. Bucketing, and bucket-shopping and bucket-shops—Definitions.

The following words and phrases used in sections 22–1509 to 22–1512 shall, unless a different meaning is plainly required by the context, have the following meanings:

"Person" shall mean an individual, partnership, corporation, or association, whether acting in his or their own right or as the officer, agent, servant, correspondent, or representative of another.

"Contract" shall mean any agreement, trade, or transaction.

"Securities" shall mean all evidences of debt or property and options for the purchase and sale thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action, and other evidences of debt or property and options for the purchase or sale thereof.

"Commodities" shall mean anything movable that is bought and sold.

"Bucket-shop" shall mean any room, office, store, building, or other place where any contract prohibited by sections 22–1509 to 22–1512 is made or offered to be made.

"Keeper" shall mean any person owning, keeping, managing, operating, or promoting a bucket-shop, or assisting to keep, manage, operate, or promote a bucket-shop.

"Bucketing" or "bucket-shopping" shall mean: (a) The making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties thereto intend, or such keeper intends, that such contract shall be, or may be, terminated, closed, or settled according to or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in and without a bona fide purchase or sale of the same; or (b) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed, or settled when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or (c) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are or are asserted to be bought and sold. (Mar. 1, 1909, 35 Stat. 670, ch. 233, § 869a.)

NOTES TO DECISIONS

"ANY CONTRACT"

The words "any contract defined in the preceding section," as used in section 869b (§ 22–1510) "were intended to refer, and did in fact refer, to bucketing and bucket-shopping contracts, or to 'agreements, trades, or transactions' relating thereto." *United States* v. *Cella* (37 App. D. C. 423, cert. den. 223 U. S. 728, 56 L. Ed. 633, 32 Sup. Ct. 526).

CONSPIRACY

Conspiracy to violate the "bucket-shop" law of the District of Columbia (act of March 1, 1909, 35 Stat. 670, ch. 233 (§§ 22–1509 to 22–1512)) held an offense against the United States within the meaning of R. S. §§ 1014, 5440 (U. S. Comp. St. 1901, pp. 716, 3678). *United States* v. *Cella* (37 App. D. C. 423, cert. den. 223 U. S. 728, 56 L. Ed. 633, 32 Sup. Ct. 526); *United States* v. *Campbell* ((D. C.-Pa.), 179 Fed. 762).

Where indictment was for conspiracy to violate this section, the proceeding was removable under R. S. § 1014. *United States ex rel. Vause* v. *McCarthy* ((D. C.-N. Y.), 250 Fed. 800).

CONSTITUTIONALITY

As to constitutionality of act, see *United States* v. *Cella* (37 App. D. C. 423, cert. den. 223 U. S. 728, 56 L. Ed. 633, 32 Sup. Ct. 526).

PROSECUTIONS

Prosecutions under this section should be in the name of the United States. *United States* v. *Cella* (37 App. D. C. 423, cert. den. 223 U. S. 728, 56 L. Ed. 633, 32 Sup. Ct. 526)

§ 22–1510 [6: 159]. Penalty for bucketing or keeping bucket-shop.

Any person who makes or offers to make any contract defined in section 23–1509, or who is the keeper of any bucket-shop, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year. Any person who shall be convicted of a second offense shall be punished by imprisonment for not more than five years. The continuing of the keeping of a bucket-shop by any person after the first conviction therefor shall be deemed a second offense under sections 22–1509 to 22–1512. If a domestic corporation shall be convicted of a second offense, the District Court of the United States for the District of Columbia shall have jurisdiction, upon an information in equity in the name of the United States district attorney for the District of Columbia, on the relation of the commissioners of the District of Columbia, to dissolve the corporation; and if a foreign corporation shall be convicted of a second offense, the District Court of the United States for the District of Columbia shall have jurisdiction, in the same manner, to restrain the corporation from doing business in the District of Columbia. (Mar. 1, 1909, 35 Stat. 671, ch. 233, § 869b.)

CROSS REFERENCE

See notes to § 22–1509

§ 22–1511 [6: 160]. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices.

Any person who shall communicate, receive, exhibit, or display in any manner any statement of quotations of prices of any securities or commodities with an intent to make, or offer to make, or to aid in making, or offering to make any contract prohibited by sections 22–1509 to 22–1512, upon conviction thereof shall be subject to the penalties provided in section 22–1510. (Mar. 1, 1909, 35 Stat. 671, ch. 233, § 869c.)

CROSS REFERENCE

See notes to § 22–1509.

§ 22–1512 [6: 161]. Bucketing—Written statement to be furnished—Contents.

Every person shall furnish, upon demand, to any customer or principal for whom such person has executed any order for the actual purchase or sale of any securities or commodities, either for immediate or future delivery, a written statement, containing the names of the persons from whom such property was bought or to whom it has been sold, as the fact may be, the time when, place where, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within twenty-four hours after such demand such refusal or neglect shall be prima facie evidence that such purchase or sale was bucketing or bucket-shopping within the terms of sections 22–1509 to 22–1512. (Mar. 1, 1909, 35 Stat. 671, ch. 233, § 869d.)

CROSS REFERENCE

See notes to § 22–1509.

§ 22–1513. Corrupt influence in connection with athletic contests.

(a) It shall be unlawful to pay or give, or to agree to pay or give, or to promise or offer, any valuable thing to any individual—

(1) with intent to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit his or his team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) with intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause (A) the loss of such athletic contest by such contestant, participant, or team; or (B) the margin of victory or score of such contestant, participant, or team to be limited; or

(3) with intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause (A) the loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or (B) the margin of victory or score of any such contestant, participant, or team to be limited.

(b) It shall be unlawful for any individual to solicit or accept, or to agree to accept, any valuable thing or a promise or offer of any valuable thing—

(1) to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit his or his team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause (A) the loss of such athletic contest by such contestant, participant, or team; or (B) the margin of victory or score of such contestant, participant, or team to be limited; or

(3) to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause (A) the loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or (B) the margin of victory or score of any such contestant, participant, or team to be limited.

(c) Whoever violates any provision of subsection (a) of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years and by a fine of not more than $10,000.

(d) Whoever violates any provision of subsection (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year and by a fine of not more than $5,000.

(e) As used in this section, the term "athletic contest" means any of the following, wherever held or to be held: A football, baseball, softball, basketball, hockey, or polo game, or a tennis or wrestling match, or a prize fight or boxing match, or a horse race or any other athletic or sporting event or contest. (Mar. 3, 1901, ch. 854, § 869e, as added July 11, 1947, 61 Stat. 313, ch. 230).

Chapter 16.—GAME AND FISH LAWS

Sec.

22–1601. Net fishing in Potomac River prohibited—Exceptions—Permit.
22–1602. Bass—Restrictions on catching and killing.
22–1603. Sale of bass—"Person" defined.
22–1604. Possession or sale of shad or herring.
22–1605. Small striped bass.
22–1606. Use of explosives, drugs, or poisons in fishing.
22–1607. Penalties for violation of sections 22–1601, 22–1602, 22–1604 to 22–1606.
22–1608. Nets, boats, and contrivances forfeited on conviction.
22–1609. Exposing for sale or possession of woodcocks.

Sec.
22–1610. Exposing for sale or possession of squirrels or rabbits.
22–1611. Exposing for sale or possession of wild ducks, wild geese, brant, snipe, or plover.
22–1612. Exposing for sale or possession of water-rail or ortolan, reed bird, and certain other game birds.
22–1613. Exposing for sale or possession of deer meat.
22–1614. Catching, exposing for sale, or possession of wild birds—Robbing or destroying nests—Permit for collection for scientific purposes of birds and eggs.
22–1615. Trapping, netting, or ensnaring waterfowl or wild birds—Possession of devices for that purpose—Not applicable to certain stuffed specimens.
22–1616. Inspection of premises and other places to detect violation of game laws.
22–1617. Trespassing for purpose of shooting or hunting—Notice to be posted by landowner—Defacing.
22–1618. Shooting or possessing implements therefor on Sunday.
22–1619. Killing or capturing game beyond District of Columbia no defense.
22–1620. Person securing conviction of violator of game laws to receive one-half of fine.
22–1621. Killing or attempting to kill game or wild birds—Permits.
22–1622. Squirrels, chipmunks, and rabbits.
22–1623. English sparrow and wild animal suffering from disease or injury to be shot only after permit.
22–1624. Hunting or disturbing ducks, geese, and waterfowl.
22–1625. Purchase, sale, and possession of certain birds prohibited.
22–1626. License may issue for scientific purposes—Penalty under section 22–1625.
22–1627. Sale of birds raised in captivity or for propagation.

§ 22–1601 [6: 201]. Net fishing in Potomac River prohibited—Exceptions—Permit.

It shall not be lawful for any person to fish with fyke-net, pound-net, stake-net, weir, float-net, gill-net, haul-seine, dip-net, or any other contrivance, stationary or floating, in the waters of the Potomac River and its tributaries within the District of Columbia: *Provided,* That this section shall not be construed to prevent the use of barrel-nets or pots for the catching or killing of eels or prevent the United States Commissioner of Fisheries or his agents from taking from said waters, in any manner desired, fish of any kind for scientific purposes or for purposes of propagation, and that nothing herein contained shall apply to persons employed in catching young catfish, smelt, chub, bull minnows, and crayfish for use as bait in fishing with hook and line: *Provided further,* That any person engaged in taking such catfish, smelt, chub, bull minnows, and crayfish shall first have procured a written permit from the said Commissioner of Fisheries to take such bait for hook-and-line fishing. (Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 896.)

NOTES TO DECISIONS

HISTORICAL

Compact of 1785 between Maryland and Virginia providing for the right of fishing in the Potomac River was never in force in the District of Columbia. *Evans* v. *United States* (31 App. D. C. 544).

Respective rights of Virginia and Maryland in waters of Potomac River. *Marine R. & Coal Co.* v. *United States* (257 U. S. 47, 66 L. Ed. 124, 42 Sup. Ct. 32); *Herald* v. *United States* (52 App. D. C. 147, 284 Fed. 927).

§ 22–1602 [6: 202]. Bass—Restrictions on catching and killing.

No person shall catch or kill in the waters of the Potomac River or its tributaries within the District of Columbia any black bass (otherwise known as green bass and chub), crappie (otherwise known as calico bass and strawberry bass), between the 1st day of April and the 29th of May of each year, nor have in possession or expose for sale any of said species of fish at any other time during the year except by angling, nor catch nor kill any of the aforesaid species by what are known as out lines or trot lines, having a succession of hooks or devices. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 897; June 30, 1902, 32 Stat. 536, ch. 1329.)

AMENDMENT

Act of 1901 was amended by substituting month "May" for that of "June" and a slight rewording of the act.

§ 22–1603 [6: 203]. Sale of bass—"Person" defined.

The word "person" when used in this section shall include any company, partnership, corporation, or association. It shall be unlawful for any person to offer for sale or to sell within the District of Columbia, either large-mouth or small-mouth black bass. Any person violating the provisions of this section shall, upon conviction thereon, be punished by a fine not exceeding $100, or by imprisonment for a term of not more than three months, or by both such fine and imprisonment, in the discretion of the court. This section shall be effective from March 3, 1927. (Mar. 3, 1927, 44 Stat. 1379, ch. 343, §§ 1–4.)

COMPILER'S NOTE

This section supersedes the provisions of § 22–1605 concerning black bass.

§ 22–1604 [6: 204]. Possession or sale of shad or herring.

It shall be unlawful for any person to have in possession or expose for sale in the District of Columbia, between the 10th day of June and the 30th day of November, both inclusive, in any year, any fresh fish of the shad or herring species. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 898; Feb. 26, 1944, 58 Stat. 105, ch. 67.)

AMENDMENTS

The act of Feb. 26, 1944, cited to text, amended section by changing "after the 10th day of June" to read "between the 10th day of June and the 30th day of November, both inclusive,".

§ 22–1605. Small striped bass.

It shall be unlawful for any person, prior to July 1, 1947, to offer for sale, to expose for sale, or to sell, in the District of Columbia, at any time during the year, any striped bass, locally called rockfish, which is less than eleven inches in length (measured from the tip of the nose to the tip of the tail), and it shall be unlawful for any person, on or after July 1, 1947, to offer for sale, to expose for sale, or to sell, in the District of Columbia, at any time during the year, any striped bass, locally called rockfish, which is less than twelve inches in length (measured from the tip of the nose to the tip of the tail). (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 899; Nov. 30, 1945, 59 Stat. 588, ch. 498.)

AMENDMENTS

The act of Nov. 30, 1945, cited to text, amended section generally increasing restrictions on size of fish to be sold.

§ 22–1606 [6: 206]. Use of explosives, drugs, or poisons in fishing.

It shall be unlawful for any person to catch or kill in the waters of the Potomac River or its tributaries within the District of Columbia any fish by means of explosives, drugs, or poisons. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 900.)

§ 22–1607 [6: 207]. Penalties for violation of sections 22–1601, 22–1602, 22–1604 to 22–1606.

Any person who shall violate any of the provisions of sections 22–1601, 22–1602, 22–1604 to 22–1606 shall be fined for each and every such offense not less than ten dollars nor more than one hundred dollars, and in default of payment of fine shall be imprisoned for a period not exceeding six months; and any officer or other person securing such conviction shall be entitled to and receive one-half of any fine or fines imposed upon and paid by the party or parties adjudged guilty. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 902.)

§ 22–1608 [6: 208]. Nets, boats, and contrivances forfeited on conviction.

All nets, boats, or other contrivances, the property of any person or persons convicted under the provisions of sections 22–1601, 22–1602, 22–1604 to 22–1606 shall be confiscated to the District of Columbia, and the same shall be sold at public auction to the highest bidder, by the property clerk of said District, and the proceeds therefrom be deposited with the collector of taxes, as are other District revenues. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 903; June 30, 1902, 32 Stat. 536, ch. 1329.)

AMENDMENT

Act of 1901 read as follows: "All nets, boats, or other contrivances the property of any person convicted under the provisions of the preceding sections shall be returned to the property clerk of the Metropolitan Police Department, to be delivered to the owner upon the order of the court, and if not called for within six months by the claimant the same shall be treated as other abandoned property coming into the hands of the police."

CROSS REFERENCE

Property clerk, § 4–151 et seq.

§ 22–1609 [6: 209]. Exposing for sale or possession of woodcocks.

No person shall expose for sale, or have in his or her possession, either dead or alive, any woodcock between the first day of January and the first day of July, under a penalty of five dollars for each woodcock exposed for sale, or had in his or her possession, either dead or alive, and in default thereof to be imprisoned in the workhouse for a period not less than thirty days nor more than six months. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 1; Mar. 3, 1901, 31 Stat. 1091, ch. 844.)

STATUTORY REFERENCE

See U. S. C., title 16, §§ 701–711, 715–715r, relative to migratory birds.

§ 22–1610 [6: 210]. Exposing for sale or possession of squirrels or rabbits.

No person shall kill, expose for sale, or have in his or her possession either dead or alive, any squirrel or rabbit except the species known as the English rabbit, Belgian hare, between the first day of February and the first day of November, under a penalty of two dollars for each squirrel or rabbit killed, exposed for sale, or had in his or her possession either dead or alive, and in default thereof to be imprisoned in the workhouse for a period not less than fifteen days nor more than three months. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 1; Mar. 3, 1901, 31 Stat. 1091, ch. 844.)

CROSS REFERENCE

Special written permit required, § 22–1622.

§ 22–1611 [6: 211]. Exposing for sale or possession of wild ducks, wild geese, brant, snipe, or plover.

No person shall kill, expose for sale, or have in his or her possession, either dead or alive, any wild duck, wild goose, brant, snipe, or plover between the first day of April and the first day of September, under a penalty of five dollars for each wild duck, wild goose, brant, snipe, or plover killed, exposed for sale, or had in his or her possession, either dead or alive, and in default thereof to be imprisoned in the workhouse for a period not less than thirty days nor more than six months. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 1; Mar. 3, 1901, 31 Stat. 1092, ch. 844.)

CROSS REFERENCE

See note to § 22–1609.

§ 22–1612 [6: 212]. Exposing for sale or possession of water-rail or ortolan, reed bird, and certain other game birds.

No person shall kill, expose for sale, or have in his or her possession, either dead or alive, any water-rail or ortolan, reed bird or rice-bird, or other game bird not previously mentioned, between the first day of February and the first day of September, under a penalty of two dollars for each water-rail or ortolan, reed bird or rice-bird, or other game bird not previously mentioned, killed, exposed for sale, or had in his or her possession, either dead or alive, and in default thereof to be imprisoned in the workhouse for a period not less than fifteen days nor more than six months. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 1; Mar. 3, 1901, 31 Stat. 1092, ch. 844.)

CROSS REFERENCE

See note to § 22–1609.

§ 22–1613 [6: 213]. Exposing for sale or possession of deer meat.

No person shall expose for sale or have in his or her possession any deer meat or venison, between the first day of January and the first day of September, under a penalty of ten dollars for such exposure for sale or having in possession, and the forfeiture of all such deer meat or venison to the officer making the arrest, who shall destroy the same; and, in default of fine, to be imprisoned in the workhouse for a period not exceeding sixty days. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 2.)

§ 22–1614 [6: 214]. Catching, exposing for sale, or possession of wild birds—Robbing or destroying nests—Permit for collection for scientific purposes of birds and eggs.

No person shall catch, expose for sale, or have in his or her possession, living or dead, any wild bird other than a game bird, English sparrow, crow, Cooper's hawk, sharpshinned hawk, or great horned owl; nor rob the nest of any such wild bird of eggs or young; nor destroy such nest except in the clearing of land of trees or brush, under a penalty of five dollars for every such bird killed, caught, exposed for sale, or had in his or her possession, either dead or alive, and for each nest destroyed, and in default thereof to be imprisoned in the workhouse for a period not exceeding thirty days: *Provided,* That this section shall not apply to birds or eggs collected for scientific purposes under permits issued by the superintendent of police of the District of Columbia in accordance with such instructions as the secretary of the Smithsonian Institution may prescribe, such permits to be in force for one year from date of issue and nontransferable. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 3; Mar. 3, 1901, 31 Stat. 1092, ch. 844.)

CROSS REFERENCE

See note to § 22–1609.

§ 22–1615 [6: 215]. Trapping, netting, or ensnaring waterfowl or wild birds—Possession of devices for that purpose—Not applicable to certain stuffed specimens.

No person shall trap, net, or ensnare any waterfowl or other wild bird (except the English sparrow), or have in his or her possession any trap, snare, net, or illuminating device for the purpose of killing or capturing any such bird, under penalty of five dollars for each waterfowl or other wild bird (except the English sparrow) killed or captured, and in default thereof to be imprisoned in the workhouse not exceeding thirty days: *Provided,* That this section shall not apply to birds or animals stuffed prior to March 3, 1901, or to birds or animals thereafter killed in open season and subsequently stuffed. (Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 3; Mar. 3, 1901, 31 Stat. 1092, ch. 844.)

CROSS REFERENCE

See notes to § 22–1609.

§ 22–1616 [6: 216]. Inspection of premises and other places to detect violation of game laws.

To carry out the provisions of sections 22–1609 to 22–1620, any police officer, game warden having police authority, or health officer, in the District of Columbia, with sworn information presented to such officer or warden, is authorized and empowered to thoroughly inspect any house, boat, market-box, stall, cold storage, or other place of whatever character or kind, where he may believe game, meats, or birds, as heretofore mentioned in said sections, may be stored or kept; and any proprietor, agent, employee, or other person refusing to permit such inspection shall be deemed guilty of interference with the police, and, upon conviction therefor, be fined not more than one hundred dollars nor less than twenty-five dollars, and, in default of such payment, to be imprisoned in the United States jail not exceeding six months. (Mar. 3, 1899, 30 Stat. 1013, ch. 417, § 5.)

§ 22–1617 [6: 217]. Trespassing for purpose of shooting or hunting—Notice to be posted by landowner—Defacing.

Any person who shall knowingly trespass on the lands of another for the purpose of shooting or hunting thereon, after due notice by the owner or occupant of lands, shall be liable to such owner or occupant in exemplary damages to an amount not exceeding one hundred dollars. That notice shall be given by erecting and maintaining signboards, at least eight by twelve inches in dimensions, on the borders of the premises, and at least two such signs for every fifty acres; and any person who shall maliciously tear down or in any manner deface or injure any of such signboards shall be liable to a penalty of not less than five dollars for each and every signboard so torn down, defaced, or injured; and, in default, to be imprisoned for a period not exceeding thirty days in the workhouse. (Mar. 3, 1899, 30 Stat. 1013, ch. 417, § 6.)

§ 22–1618 [6: 218]. Shooting or possessing implements therefor on Sunday.

There shall be no shooting, or having in possession in the open air the implements for shooting, on the first day of the week, called Sunday, except to transport said implements within or without the District of Columbia; and any person violating the provisions of this section shall be liable to a penalty of not more than twenty dollars for each offense. (Mar. 3, 1899, 30 Stat. 1013, ch. 417, § 7.)

§ 22–1619 [6: 219]. Killing or capturing game beyond District of Columbia no defense.

Wherever in sections 22–1609 to 22–1620, possession of any birds, fowls, or meats is prohibited, the fact that the said birds, fowls, or meat were killed or captured outside the District of Columbia shall constitute no defense for such possession. (Mar. 3, 1899, 30 Stat. 1013, ch. 417, § 8.)

§ 22–1620 [6: 220]. Person securing conviction of violator of game laws to receive one-half of fine.

Any officer or other person securing the conviction of any violator of any of the provisions of sections 22–1609 to 22–1620, in the police court or other court of the District of Columbia, shall receive one-half of any fine which may be imposed and paid for such violation, and prosecution shall be brought in the name of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1013, ch. 417, § 9.)

§ 22–1621 [6: 221]. Killing or attempting to kill game or wild birds—Permits.

No person shall at any time or at any place in the District of Columbia kill, or attempt to kill, any game bird or any other wild bird whatever, except the English sparrow, under a penalty of five dollars or imprisonment in the workhouse for not more than six months, or both, for each bird killed or for each attempt as aforesaid: *Provided,* That landowners or tenants may, under special written permit from the superintendent of the Metropolitan police, shoot or kill crows, Cooper hawks, sharp-shinned hawks, and great horned owls found destroying crops or poultry on their premises. (June 30, 1906, 34 Stat. 808, ch. 3932, § 1.)

§ 22–1622 [6: 222]. Squirrels, chipmunks, and rabbits.

No person shall at any time or at any place in the District of Columbia trap, catch, kill, injure, pursue, or attempt to trap, catch, kill, injure, or pursue any squirrel or any chipmunk, or shall shoot or hunt with a gun any rabbit or other wild animal without a special written permit so to do from such officer as the commissioners of the District of Columbia may, by regulation or order, from time to time charge with that duty, under a penalty of five dollars or imprisonment in the workhouse for not more than thirty days, or both, for each squirrel or chipmunk trapped, caught, killed, injured, or pursued, or for each rabbit or other animal killed as aforesaid: *Provided,* That any wild animal may be killed when suffering from injury or disease. (June 30, 1906, 34 Stat. 808, ch. 3932, § 2.)

CROSS REFERENCE

Open season, § 22–1610.

§ 22–1623 [6: 223]. English sparrow and wild animal suffering from disease or injury to be shot only after permit.

No person in the District of Columbia shall kill any English sparrow or any wild animal suffering from injury or disease, by means of any gun, air gun, rifle, air rifle, parlor rifle, pistol, revolver, or other firearms, without a special written permit so to do from such official as the commissioners of the District of Columbia may, by regulation or order, from time to time charge with that duty, under a penalty of five dollars or imprisonment in the workhouse for not more than thirty days, or both, for each sparrow or animal so killed. (June 30, 1906, 34 Stat. 809, ch. 3932, § 3.)

§ 22–1624 [6: 224]. Hunting or disturbing ducks, geese, and waterfowl.

No person in the District of Columbia shall at any time hunt, pursue, or needlessly disturb any wild duck, goose, or other waterfowl, in any of the waters of the District of Columbia, under penalty of $10 or imprisonment in the workhouse for not more than thirty days, or both, for each offense. (June 30, 1906, 34 Stat. 809, ch. 3932, § 5; July 14, 1932, 47 Stat. 660, ch. 478, § 1.)

AMENDMENT

The act of 1932 omitted the words "with any boat propelled by any means other than oars," after the words "waters of the District of Columbia."

§ 22–1625 [6: 226]. Purchase, sale, and possession of certain birds prohibited.

It shall be unlawful, within the District of Columbia, for any person at any time to buy, sell, or expose for sale, or to have in possession for the purpose of selling, any heath hen, sage hen, any kind of quail, bob white, grouse, partridge, ptarmigan, prairie chicken, pheasant, wild turkey, Hungarian partridge, English, ring-necked, Mongolian or Chinese pheasant, or marsh blackbird. (Dec. 18, 1919, 41 Stat. 368, ch. 10, § 1.)

§ 22–1626 [6: 227]. License may issue for scientific purposes—Penalty under section 22–1625.

Nothing contained in section 22–1625 shall prevent the right of any person to take or kill any game birds therein defined when the same shall be so taken or killed by virtue of the authority of a license duly issued by the proper authorities of said District of Columbia for scientific purposes.

That any person who shall violate any of the provisions of sections 22–1625 to 22–1627 shall be fined not more than $100, or be imprisoned for not more than one month, or both so fined and imprisoned: *Provided,* That each bird mentioned in said sections so had in possession, bought, sold, exposed for sale, or had in possession for the purpose of sale shall constitute a separate offense. (Dec. 18, 1919, 41 Stat. 368, ch. 10, § 2.)

§ 22–1627 [6: 228]. Sale of birds raised in captivity or for propagation.

Nothing in sections 22–1625 to 22–1627 shall prevent the sale at any time of Hungarian partridges, English, ring-necked, Mongolian or Chinese pheasants, when the same shall have been raised in captivity, or the sale of birds mentioned in said sections alive, for propagating purposes, under such regulations and requirements as shall be prescribed by the commissioners of the District of Columbia. (Dec. 18, 1919, 41 Stat. 368, ch. 10, § 3.)

Chapter 17.—HARBOR REGULATIONS

Sec.
22–1701. Harbor regulations—Authority vested in commissioners to make—Federal approval if affecting navigable waters—Parks and water-front—Penalty.
22–1702. Throwing or depositing matter in Potomac River.
22–1703. Deposits of deleterious matter in Rock Creek or Potomac River.

§ 22–1701 [6: 304]. Harbor regulations—Authority vested in Commissioners to make—Federal approval if affecting navigable waters—Parks and water-front—Penalty.

Every vessel coming to anchor in the Potomac River between the junction of the Washington and Georgetown Channels of said river and the extension of the south line of P Street southwest, in the city of Washington, shall anchor as near the flats in said river as possible, so that the channel of said river will not be obstructed; and if such vessel is to remain over twelve hours it shall be moored with both anchors, so as to give room for passing vessels and so as not to swing and obstruct said channel.

Every vessel coming to anchor in any other portion of the navigable waters in the District of Columbia shall also be so moored under the direction of the harbor master, or the pilot of the police boat acting in the harbor master's absence, as not to obstruct the channel, and be secured with an anchor at bow and stern as to keep the long axis of the vessel parallel with that of the channel and prevent it from swinging so as to obstruct the free passage of the channel by other vessels.

No vessel shall be permitted to anchor in the Washington Channel of the Potomac River between a point one thousand feet south of the south line of P Street and the north line of K Street south extended, each point to be designated by a white buoy; and all vessels coming to anchor above the north line of K Street south aforesaid shall come to anchor as near the flats as possible and so that the channel will not be

obstructed; and all vessels coming to anchor shall be so moored by the use of both anchors as to prevent obstruction of the channel within four hundred feet of the nearest wharf, the said anchorage to continue only twenty-four hours unless otherwise ordered or directed by the harbor master.

The captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia, shall raise and remove the same in five days. Any vessel at the end of wharves or in docks shall, when required by the harbor master, haul either way to accommodate vessels going in or coming out from such wharves or docks. They shall not occupy regular steamers' or sailing packets' berths without permission from the recognized occupants of such wharves and dock, and they are required to rig in all fore-and-aft spars, have boats hoisted up under the bow, and davits turned up, as the harbor master may direct. Vessels when not engaged in loading or discharging cargo shall give place to such vessels as are ready to receive or deliver freights; and if the captain or person in charge of any vessel refuse to move said vessel when notified by the occupant of the wharf at which she is lying, the harbor master shall order him to haul to some other berth or into the stream. The powers and authority herein conferred upon the harbor master may, in his absence or temporary disability, be exercised by the pilot of the harbor police boat. Any person refusing to obey the instructions of the harbor master, or, in case of his absence or temporary disability, the said pilot of the harbor police boat, or any person failing to comply with any of the provisions of this section, shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or both.

The commissioners of the District of Columbia are hereby vested with authority to make harbor regulations for the entire water-front of the city within the District of Columbia, to alter and amend the same from time to time as they may find necessary: *Provided,* That whenever these regulations affect navigable waters, channels, and anchorage areas or other interests of the United States, such regulations shall be subject to the approval of the Secretary of War: *And provided further,* That whenever said regulations affect the water-front within the District of Columbia under the jurisdiction of the Director of the National Park Service, or affect the interests and rights of the National Capital Park and Planning Commission, such regulations shall be subject to prior approval of the respective agencies. (Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 895; June 30, 1902, 32 Stat. 535, ch. 1329; Feb. 8, 1904, 33 Stat. 11, ch. 152; June 15, 1934, 48 Stat. 963, ch. 536.)

AMENDMENTS

The first sentence of this section has not been changed by subsequent amendments. The remainder of the section is a composite of the credits cited in the history line.

The 1904 act added the second sentence of the first paragraph, and provided that the provision in the third paragraph requiring "any captain or owner of or anyone in charge of any barge, sand scow, or any vessel that may sink in said canals, shall raise and remove the same in five days" shall be applicable to the captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia.

The 1934 act vested the Commissioners of the District of Columbia with authority to make harbor regulations for the entire water-front of the city within the District, subject to the approval of the Secretary of War whenever they affect navigable waters, channels, anchorage areas, or other interests of the United States, and when the regulations affect the water-front within the District which is under the jurisdiction of the National Park Service or the National Park and Planning Commission, they shall be subject to approval of those agencies.

CROSS REFERENCES

Fish wharf and market, § 10–135.

Jurisdiction and control of wharves, §§ 9–101, 9–102.

Metropolitan police, duty to enforce harbor regulations, § 4–106.

Rules and regulations, publication and effect, §§ 4–177, 4–178.

§ 22–1702 [6: 305]. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the commissioners of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States Government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court. (Feb. 3, 1913, 37 Stat. 656, ch. 25.)

CROSS REFERENCE

See notes to § 22–1701.

§ 22–1703 [6: 306]. Deposits of deleterious matter in Rock Creek or Potomac River.

No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same. Any person who shall violate any of the provisions of this section shall be fined for each and every such

offense not less than ten dollars nor more than one hundred dollars and in default of payment of fine shall be imprisoned for a period not exceeding six months; and any officer or other person securing such conviction shall be entitled to and receive one-half of any fine or fines imposed upon and paid by the party or parties adjudged guilty. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, §§ 901, 902.)

CROSS REFERENCE

See notes to § 22–1701.

NOTES TO DECISIONS

APPLICATION

The prohibition of this section is "general and unqualified, and applies to all alike," and prevents the discharge of any such waste products. *Holden* v. *United States* (24 App. D. C. 318, cert. den. 196 U. S. 639, 49 L. Ed. 631, 25 Sup. Ct. 796).

NEGLIGENCE

When construction company places tanks on banks of navigable stream within limits of the city and if substance from the tanks escapes into the river and interferes with public use, it is liable irrespective of the question of negligence. *Brennan Constr. Co.* v. *Cumberland* (29 App. D. C. 554, 15 L. R. A. (N. S.) 535, 10 Ann. Cas. 865).

Chapter 18.—HOUSEBREAKING

Sec.
22–1801. Definition and penalty.

§ 22–1801 [6: 55]. Definition and penalty.

Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 823.)

CROSS REFERENCE

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

CONFESSION

Where written confession of housebreaking and larceny was inadmissible because result of illegal detention and lengthy questioning of accused, subsequent oral admissions of accused, while still in custody immediately following first confession, and while demonstrating how premises were entered, were likewise inadmissible. *Akowskey* v. *U. S.* (App. D. C. 1946, 158 F. 2d 649, 81 U. S. App. D. C. 353).

EVIDENCE

In prosecution for housebreaking and larceny, evidence was sufficient to establish corporate character of occupant of property entered and owner of property stolen. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, evidence was sufficient to sustain determination that defendant was one of men who entered building and committed larceny. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, record supported Government's theory that, while witness had made conflicting statements regarding whether he would testify, prosecutor reasonably believed that he would testify, and therefore action of prosecutor in calling witness who identified certain tools, but then relied on his privilege and refused to connect himself or defendant with the crime, was not objectionable on ground that defendant was deprived of a fair trial, where court instructed the jury to disregard witness' testimony and the tools which he identified. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

Where jury could find beyond a reasonable doubt that both defendant and his companion entered a room with intent to steal and that either defendant or his companion stole watch, defendant's conviction of larceny of a watch and of entering a room with intent to commit larceny was authorized, notwithstanding that defendant's part in the crimes may have been only to stand guard. *Fretz* v. *U. S.*, 1944 (140 F. 2d 468, 78 U. S. App. D. C. 290).

Where evidence showed that crimes of housebreaking and larceny were committed in store building by two men, defendant was found in unexplained association with another who later confessed participation in crimes and each was in possession of some of the stolen property, evidence was sufficient to justify conviction. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

Housebreaking, robbery and burglary are merely aggravated forms of larceny and evidence competent in one case is competent, also, in the others. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

Evidence sustained a conviction for housebreaking. *Henderson* v. *United States* (C. A. D. C. 1949, 172 F. 2d 289, 84 U. S. App. D. C. 295).

INDETERMINATE SENTENCE ACT

Under the Indeterminate Sentence Act the trial court could impose a term of imprisonment of 15 years, or less, as a maximum, i. e., not more than one-fifth of the 15 years. *Anderson* v. *Rives* (66 App. D. C. 174, 85 Fed. (2d) 673).

INDICTMENT

There is no variance where the indictment alleges that building entered was occupied by A and the proof shows occupancy by B, with the consent of A. *Cady* v. *United States* (54 App. D. C. 10, 293 Fed. 829).

The attempt to identify particular room in indictment charging larceny of watch and entering a room with intent to commit larceny was harmless surplusage. *Fretz* v. *U. S.*, 1944 (140 F. 2d 468, 78 U. S. App. D. C. 290).

The purpose of the law in requiring the name of the person who occupied and used building entered to be stated in indictment is to negative the defendant's right to break and enter and to protect him from a second prosecution for the same offense. *Bord* v. *U. S.*, 1942 (133 F. 2d 213, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

INSTRUCTIONS

In prosecution for housebreaking and larceny, where after jury had been out several hours the court recalled jury and stated that a juror should ask himself whether his view is reasonable or unreasonable, that he should not be bullheaded, that he should not be stubborn, and that if he found himself in a small minority he should ask himself "would I be shocking my conscience or reason if I yielded", use of the words "bullheaded" and "stubborn" did not coerce the jury, in view of additional parts of the instruction. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

INTENT

Unlawful entry with intent to commit an offense constitutes the crime, hence, the actual commission of the other offense is not necessary. *Lee* v. *United States* (37 App. D. C. 442).

Evidence, that lock on garage had been pulled, that defendants were in the garage that morning and when questioned by a witness at that time refused to make a response and drove away, was sufficient to sustain conviction of feloniously entering with intent to commit larceny. *Cady* v. *United States* (54 App. D. C. 10, 293 Fed. 829).

JOINDER

Counts of housebreaking and of larceny committed after the entry may be joined, and the court does not err in refusing to require the government to elect between them. *Lee* v. *United States* (37 App. D. C. 442).

Chapter 19.—INCEST

Sec.
22–1901. Definition and penalty.

§ 22–1901 [6: 176]. Definition and penalty.

If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with such other so-related person, knowing him or her to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment for not more than twelve years. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 875.)

COMPILER'S NOTE

§ 317 of the act of Mar. 4, 1909, 35 Stat. 1149, ch. 321 (U. S. C., title 18, § 517) provides for a penalty of 15 years for the same offense. § 311 thereof makes the section applicable when the offense is "committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States."

CROSS REFERENCE

Assault with intent to commit crime, possession of firearm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

INSTRUCTIONS

In prosecution for incest, refusal to give a prayer requested by defendant concerning reputation was not error where the subject had been adequately covered in an instruction given. *Hodge* v. *U. S.*, 1942 (126 F. 2d 849, 75 U. S. App. D. C. 332).

VIEW OF PREMISES

In prosecution for incest, refusal to grant defendant's motion for view of premises was not an abuse of discretion. *Hodge* v. *U. S.*, 1942 (126 F. 2d 849, 75 U. S. App. D. C. 332).

Chapter 20.—INDECENT PUBLICATIONS

Sec.
22–2001. Definition and penalty.

§ 22–2001 [6: 174]. Definition and penalty.

Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872.)

NOTES TO DECISIONS

CONSTITUTIONALITY

No merit exists in defendant's contention that the statute, as construed and interpreted by the trial court, countervenes the first and fifth amendments. *Benjamin* v. *United States* (D. C. Mun. App. 1950, 74 A. 2d 64).

GUILTY KNOWLEDGE

Guilty knowledge must be alleged and proved. *Moens* v. *United States* (50 App. D. C. 15, 267 Fed. 317).

INTENT IMPLIED

"If the indictment had charged knowledge of the character of the pictures in the possession of the accused, the criminal intent in exhibiting them would be implied from the guilty knowledge of their nature." *Moens* v. *United States* (50 App. D. C. 15, 267 Fed. 317).

SUFFICIENCY OF EVIDENCE

Without attempting to describe the pictures, court was of opinion that they were of such a nature as to sustain a finding of guilty by any recognized standard. *Benjamin* v. *United States* (D. C. Mun. App. 1950, 74 A. 2d 64).

Chapter 21.—KIDNAPING

Sec.
22–2101. Definition.

§ 22–2101 [6: 36]. Definition.

Whoever shall be guilty of, or of aiding or abetting in, seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, or carrying away any individual by any means whatsoever, and holding or detaining, or with the intent to hold or detain, such individual for ransom or reward, shall, upon conviction thereof, be punished by imprisonment for life or for such term as the court in its discretion may determine. This section shall be held to have been violated if either the seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia. If two or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and one or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 812; Feb. 18, 1933, 47 Stat. 858, ch. 103.)

AMENDMENT

The act of 1933 enlarges the venue of the crime, includes and defines a conspiracy to commit the crime, and omits the penalties.

CROSS REFERENCE

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

STATUTORY REFERENCE

Lindbergh kidnaping law, U. S. C., title 18, §§ 408a to 408c.

NOTES TO DECISIONS

PARENT

"In no case, in the absence of an express provision of statute, can a parent be guilty of kidnaping his or her

own minor child, unless the forcible taking is from the custody established by the decree of a competent court." *Hard* v. *Splain* (45 App. D. C. 1).

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

Sec.
22–2201. Grand larceny.
22–2202. Petit larceny—Order of restitution.
22–2203. Larceny after trust.
22–2204. Unauthorized use of vehicles.
22–2204a. Theft from vehicles.
22–2205. Receiving stolen goods.
22–2206. Stealing property of District of Columbia.
22–2207. Receiving property stolen from the District of Columbia.
22–2208. Destroying stolen property.

§ 22–2201 [6: 60]. Grand larceny.

Whoever shall feloniously take and carry away anything of value of the amount or value of $50 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 826; Aug. 12, 1937, 50 Stat. 628, ch. 599.)

AMENDMENT

The act of 1937 increased the value to $50.

CROSS REFERENCES

Allegations and proof of fraudulent intent, § 23–203.
Concealing or converting assets of estates, § 22–1404.
Embezzlement, § 22–1201 et seq.
False pretenses and false personations, § 22–1301 et seq.
Joinder of offenses, § 23–201.
Misappropriation of assets of building and homestead associations declared to be larceny, § 26–404.
Misappropriation of funds of certain corporations, or of funds entrusted to such corporations, made larceny, § 26–320 and Compiler's Note thereto.
Possession of firearms, additional penalty, §§ 22–3201, 22–3202.
Robbery, § 22–2901.
Stealing library books, § 22–3106.
Stealing written instruments, § 22–1405.
Taking or carrying away will, codicil, or other testamentary instrument, § 22–1403.
Taking property without right, § 22–1211.
Use of slugs in automatic vending machines, §§ 22–1407 to 22–1409.
See note to § 22–1801. *Lee* v. *United States* (37 App. D. C. 442).

STATUTORY REFERENCE

As to larceny from the United States, see U. S. C., title 18, § 100.

NOTES TO DECISIONS

COMPARING EMBEZZLEMENT

To constitute larceny the property must be unlawfully taken from the possession of another, with the fraudulent intent to convert the same to his own use. He who takes without the consent of the owner commits a trespass. The offense of embezzlement consists in the wrongful conversion of the property which has been entrusted to the possession of another. He commits no trespass or wrong in acquiring the possession, but a breach of trust in converting the property to his own use. *Rohde* v. *United States* (34 App. D. C. 249).

Treasurer of unincorporated association who converts funds coming into his possession as such treasurer is guilty of embezzlement and not larceny. *Rohde* v. *United States* (34 App. D. C. 249).

Embezzlement is where any agent, attorney, clerk, or servant wrongfully converts to his own use anything of value which shall come into his possession or under his care by virtue of his employment, but his possession for a special limited purpose may not destroy legal possession of the owner, and therefore his subsequent conversion of the article would be larceny. *Talbert* v. *United States* (42 App. D. C. 1).

Driver of transfer truck who converts property while hauling it from a freight depot is guilty of larceny and not embezzlement. *Weisberg* v. *United States* (49 App. D. C. 28, 258 Fed. 284), citing *Talbert* v. *United States* (42 App. D. C. 1).

A bookkeeper and clerk in a hotel, to whom a guest delivers property for safe-keeping, and who subsequently abstracts them from the hotel safe, is guilty of larceny and not embezzlement. *Chanock* v. *United States* (50 App. D. C. 54, 267 Fed. 612, 11 A. L. R. 799).

EVIDENCE

In prosecution for housebreaking and larceny, evidence was sufficient to establish corporate character of occupant of property entered and owner of property stolen. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, evidence was sufficient to sustain determination that defendant was one of men who entered building and committed larceny. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, record supported Government's theory that, while witness had made conflicting statements regarding whether he would testify, prosecutor reasonably believed that he would testify, and therefore action of prosecutor in calling witness who identified certain tools, but then relied on his privilege and refused to connect himself or defendant with the crime, was not objectionable on ground that defendant was deprived of a fair trial, where court instructed the jury to disregard witness' testimony and the tools which he identified. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

Evidence that another person had stolen bag containing surgical instruments and placed bag on wheelbarrow used by such person and defendant in collecting junk and stated to defendant that bag had been found among garbage cans and that when contents of bag were discovered defendant made unsuccessful effort to return bag and instruments to owner, and later delivered bag and contents to policeman, was insufficient to convict defendant of grand larceny. *Williams* v. *U. S.*, 1944 (140 F. 2d 351, 78 U. S. App. D. C. 322).

FORCE AND VIOLENCE

Larceny consists in "a wrongful and fraudulent taking" and it does not exclude the idea of force and violence, or of fraud accompanied by force, nor does it imply that the taking must be secret. *Williams* v. *United States* (3 App. D. C. 335).

HABEAS CORPUS

Where petitioners were arrested in Pennsylvania, charged with committing certain crimes in the District of Columbia, habeas corpus proceedings would be proper to raise jurisdictional questions respecting their removal to the District. *U. S.* v. *Reing* (D. C., E. D. Pa. 1948, 81 F. Supp. 367).

INDETERMINATE SENTENCE ACT

Person having been sentenced for two to four years for grand larceny, served 25 months and was then resentenced to serve 15 months on grounds that the prior sentences were void because the Indeterminate Sentence Act did not apply to such actions; held, however, that sentence does not run as of date of the original sentences. *De Benque* v. *United States* (66 App. D. C. 36, 85 Fed. (2d) 202, 106 A. L. R 839).

INDICTMENT

It is sufficient in the indictment to describe the property by the generic name of the class to which it belongs. *Nordlinger* v. *United States* (24 App. D. C. 406, 70 L. R. A. 227).

INFERENCES

Where theater was entered and money and property stolen therefrom and on same night adjoining flower shop

was entered and money stolen therefrom, it could reasonably be inferred that the man who stole from the theater also stole from the flower shop. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

Where defendant was charged with entering and stealing from theater and with entering and stealing from adjoining flower shop on same night, instruction that, if jury found defendant guilty of entering and stealing from theater, they might but need not draw the inference that it was he who entered and stole from the flower shop, was proper. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

Where evidence showed that crimes of housebreaking and larceny were committed in store building by two men, defendant was found in unexplained association with another who later confessed participation in crimes and each was in possession of some of the stolen property, evidence was sufficient to justify conviction. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

INSTRUCTIONS

In prosecution for housebreaking and larceny, where after jury had been out several hours the court recalled jury and stated that a juror should ask himself whether his view is reasonable or unreasonable, that he should not be bullheaded, that he should not be stubborn, and that if he found himself in a small minority he should ask himself "would I be shocking my conscience or reason if I yielded", use of the words "bullheaded" and "stubborn," did not coerce the jury, in view of additional parts of the instruction. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

INTENT

Unlawful taking is not sufficient, it must be coupled with the intent to steal. *Ryan* v. *United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

Drunkenness no defense unless "so drunk as to be incapable of forming the intent to steal; that is to say, incapable of consciousness that he is committing a crime, incapable of discriminating between right and wrong." *Ryan* v. *United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

Where possession is secured by fraud, trick, or artifice the criminal intent must exist at the time the article is received. *Talbert* v. *United States* (42 App. D. C. 1). See also *Woodward* v. *United States* (38 App. D. C. 323); *Miller* v. *United States* (41 App. D. C. 52, cert. den. 231 U. S. 755, 58 L. Ed. 468, 34 Sup. Ct. 323).

Where possession of jewelry is secured by a salesman for the purpose of exhibiting the same to a prospective purchaser, and he subsequently converts it to his own use, the offense is larceny, and it is immaterial when the intent to convert was formed. *Talbert* v. *United States* (42 App. D. C. 1).

INTOXICATION AS DEFENSE

One who steals while intoxicated may nevertheless be convicted if he converts the property after complete return to consciousness. *Ryan* v. *United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

LIABILITY OF ARRESTING OFFICER

Arrest of one without warrant on strong suspicion of stealing a pocketbook containing $30, precluded maintenance of action for false arrest, since the officers could not know the amount of money it contained. *Maghan* v. *Jerome* (67 App. D. C. 9, 88 Fed. (2d) 1001).

LOCUS OF CONVERSION

The fact that one who, while intoxicated, stole an automobile and converted the same beyond the District of Columbia does not prevent a prosecution here, when the original taking was in the District. *Ryan* v. *United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

Indictment for larceny will not lie against one who steals property in another state and brings it into the District. *Brown* v. *United States* (35 App. D. C. 548, Ann. Cas. 1912A, 388), citing *Davis* v. *United States* (18 App. D. C. 468).

PRIOR ACQUITTAL—TEST

On plea of prior acquittal, the test of the identity of offenses that has commonly been applied in such cases is whether the facts necessary to conviction under the second indictment would have been sufficient, if proved, to warrant a conviction under the first. *Nordlinger* v. *United States* (24 App. D. C. 406, 70 L. R. A. 227).

PROOF

Where indictment alleges ownership in A B R, and the proof shows A P R, the variance is not prejudicial. *Jones* v. *United States* (53 App. D. C. 138, 289 Fed. 536). See also *Williams* v. *United States* (3 App. D. C. 335).

The corporate character of the owner or occupant of property stolen or entered may be proved by "reputation"; that is, by evidence tending to show that the corporation was de facto organized and acting as such. *Bord* v. *U. S.*, 1942 (133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78 (2 cases), 317 U. S. 671, 87 L. Ed. 539).

UNEXPLAINED POSSESSION OF STOLEN PROPERTY

"The unexplained exclusive possession of stolen property, shortly after the commission of a larceny, may satisfy the jury and warrant a verdict of guilty" of larceny. *Tractenberg* v. *United States* (53 App. D. C. 396, 293 Fed. 476).

Possession of recently stolen property, unexplained, is sufficient to support conviction for larceny. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

§ 22–2202 [6: 61]. Petit larceny—Order of restitution.

Whoever shall feloniously take and carry away any property of value of less than $50, including things savoring of the realty, shall be fined not more than $200 or be imprisoned for not more than one year, or both. And in all convictions for larceny, either grand or petit, the trial justice may, in his sound discretion, order restitution to be made of the value of the money or property shown to have been stolen by the defendant and made way with or otherwise disposed of and not recovered. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 827; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599.)

AMENDMENTS

The 1902 amendment added the second sentence to this section.

The 1937 act changed the value of the property taken from $35 to $50.

CROSS REFERENCE

See notes to § 22–2201.

NOTES TO DECISIONS

CONTINUANCE

Where the trial court had said a doctor's certificate would be required before the case could be continued on account of appellant's illness, and appellant was produced in court, and the trial continued without further objection, the question of granting the continuance was in the judicial discretion of the trial court. *Campbell* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

CONVERSION

One who is handed a bill or coin for the purpose of making change receives only custody of the money, and if he returns less than the correct change, with the felonious intent of converting the remainder to his own use, he is guilty of larceny. *Rice* v. *United States* (D. C. Mun. App. 1949, 64 A. 2d 567).

EVIDENCE

Where jury could find beyond a reasonable doubt that both defendant and his companion entered a room with intent to steal and that either defendant or his companion stole watch, defendant's conviction of larceny of a watch and of entering a room with intent to commit larceny was

authorized, notwithstanding that defendant's part in the crimes may have been only to stand guard. *Fretz* v. *U. S.*, 1944 (140 F. 2d 468, 78 U. S. App. D. C. 290).

In prosecution for petit larceny, which if committed was complete before fight ensued, admission of testimony concerning fight and nature of prosecuting witness' wounds was prejudicial error. *Furr* v. *U. S.* (D. C. 1943, 32 A. 2d 111).

In prosecution for petit larceny, admission of evidence regarding subsequent fight and nature of wounds received by prosecuting witness was so plainly prejudicial that appellate court had right to notice and correct the error even if it had not been properly saved for review. *Furr* v. *U. S.* (D. C. 1943, 32 A 2d 111).

Where after defendant left the store, he was arrested for petty larceny by the store detective who was the prosecuting witness and whose testimony was accepted as true by the jury, as it obviously was, the guilt of appellant was established beyond a reasonable doubt. *Campbell* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

Defendant's assignment of error that there was insufficient evidence to justify conviction, where the testimony of complaining witness was uncorroborated, is unsound since it has been repeatedly held that generally testimony of a single witness may legally suffice as evidence upon which a jury may found the verdict. *Rice* v. *United States* (D. C. Mun. App. 1949, 64 A. 2d 567).

Where defendant was convicted of petty larceny upon evidence obtained during an unlawful search and seizure, it must be reversed. The search of her desk was an invasion upon her privacy so as to constitute a violation of the Fourth Amendment. *Blok* v. *United States* (D. C. Mun. App. 1949, 70 A. 2d 55).

Indictment

The attempt to identify particular room in indictment charging larceny of watch and entering a room with intent to commit larceny was harmless surplusage. *Fretz* v. *U. S.*, 1944 (140 F. 2d 468, U. S. App. D. C. 290).

Instructions

Trial judge did not violate the rule of singling out and declaring the effect of certain facts, without consideration of other modifying facts, where by instructing the jury, he outlined the issues, and said among other things that "it was a question of fact for the jury to determine whether the cash register receipts had been obtained by defendant before, at the time of, or after his appearance at the store from which defendant was convicted of petty larceny of an item from the store." *Campbell* v. *United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

Offense is Misdemeanor

Stealing of less than $35 is a misdemeanor and an officer may not arrest for a misdemeanor without a warrant unless it is committed in his presence or within his view. *Maghan* v. *Jerome* (67 App. D. C. 9, 88 Fed. (2d) 1001).

Probation Conditioned on Restitution

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile* v. *United States* (D. C. Mun. App. 1944, 38 A. 2d 620).

§ 22–2203 [6: 98]. Larceny after trust.

That if any person entrusted with the possession of anything of value, including things savoring of the realty, for the purpose of applying the same for the use and benefit of the owner or person, so delivering it, shall fraudulently convert the same to his own use he shall, where the value of the thing so converted is $50 or more, be punished by imprisonment for not less than one nor more than ten years, or by a fine of not more than $1,000, or both; and where the value of the thing so converted is less than $50 he shall be punished by imprisonment for not more than one year or by a fine of not more than $500 or both: *Provided*, That nothing contained in this section shall be construed to alter or repeal any section contained in this chapter. (Mar. 3, 1901, ch. 854, § 851b, as added Mar. 3, 1913, 37 Stat. 727, ch. 108; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

Amendment

The act of 1937 struck out § 851b as it was added to the 1901 code and inserted a new section in lieu thereof, changing the value from $35 to $50.

Cross References

Allegations and proof of fraudulent intent, § 23–203.
Embezzlement, § 22–1201 et seq.
Forgery and frauds, § 22–1401 et seq.
Joinder of offenses, § 23–201.

NOTES TO DECISIONS

Comparing Embezzlement

Taking held to be embezzlement and not larceny after trust. *Talbert* v. *United States* (42 App. D. C. 1); *Henry* v. *United States* (50 App. D. C. 366, 273 Fed. 330, cert. den. 257 U. S. 640, 66 L. Ed. 411, 42 Sup. Ct. 51).

Election of Offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329 U. S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Dobbins* v. *U. S.* (App. D. C. 1946, 157 F. 2d 257, certiorari denied 67 S. Ct. 99, 329, U. S. 734, 91 L. Ed. 634).

Fraud or Trick

This section has no bearing on larceny by fraud or trick. *Talbert* v. *United States* (42 App. D. C. 1).

Use and Benefit

"Under the provisions of this section, the possession of property must be intrusted 'for the purpose of applying the same for the use and benefit' of the person so intrusting it; that is, the person to whom intrusted must be clothed with some actual dominion and control over the property for the purpose named. Otherwise, he is a mere temporary custodian, and, if he wrongfully appropriates the property he is guilty of larceny, and not of the crime denounced by this section." *Atkinson* v. *United States* (53 App. D. C. 277, 289 Fed. 935).

§ 22–2204 [6: 62]. Unauthorized use of vehicles.

Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment. (Feb. 3, 1913, 37 Stat. 656, ch. 23, § 826b, as added Feb. 3, 1913, 37 Stat. 656, ch. 23, § 1.

Cross Reference

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

Defense

Voluntary drunkenness does not constitute a defense to a charge of unauthorized use of a vehicle. Specific

intent or knowledge is not an element of the offense since the statute involves only a "general criminal intent" which may be presumed from doing the prohibited act. *Proctor* v. *U. S.* (C. A., D. C. 1949, 177 F. 2d 656, 85 US App D. C. 341).

PRIMA FACIE RULE

In prosecution for unlawfully taking, using, operating, and removing a certain automobile truck from a certain street without owner's consent, the jury were entitled to apply the prima facie rule applicable to unexplained possession of recently stolen property. *Epps* v. *U. S.* (App. D. C. 1946, 157 F. 2d 11).

QUESTIONS FOR JURY

In prosecution for unlawfully taking, using, operating, and removing a certain automobile truck without the consent of the owner, whether defendant was guilty was for jury. *Epps* v. *U. S.* (App. D. C. 1946, 157 F. 2d 11).

VARIANCE

Where indictment charged defendant with unlawfully taking, using, operating, and removing certain automobile truck from a certain street without owner's consent and proof showed that such truck was parked right on such street, there was no variance. *Epps* v. *U. S.* (App. D. C. 1946, 157 F. 2d 11).

§ 22–2204a. Theft from vehicles.

Whoever, after March 7, 1942, and in any period during which any restrictions on the sale or use of any of the articles hereinafter referred to are in effect pursuant to any law of the United States, shall feloniously take and carry away any oil or gasoline, or any other lubricant or fuel; or any antifreeze mixture, compound, or solution; or any tire, tire casing, inner tube, or rim; or any wheel, tire chain, battery, or other part, equipment, or accessory, of the value of less than $50, being then and there in, on, part of, or attached to any vehicle in the District of Columbia, shall suffer imprisonment for not more than three years: *Provided,* That nothing contained in this section shall be construed to affect the offense of grand larceny as defined by existing law. (Mar. 3, 1901, ch. 854, § 826c, as added Mar. 7, 1942, 56 Stat. 143, ch. 165.)

§ 22–2205 [6: 64]. Receiving stolen goods.

Any person who shall receive or buy anything of value which shall have been stolen or obtained by robbery, knowing the same to be so stolen or so obtained by robbery, with intent to defraud the owner thereof, if the thing or things received or bought shall be of the value of thirty-five dollars or upward, shall suffer imprisonment for not less than one year nor more than ten years; or if the value of the thing or things so received or bought be less than thirty-five dollars, shall suffer imprisonment for not more than two years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 829.)

CROSS REFERENCES

Allegation and proof of fraudulent intent, § 23–203.
Joinder of offenses, § 23–201.
Receiving embezzled goods, § 22–1204.

NOTES TO DECISIONS

ACCOMPLICE IN LARCENY

Hence one who advises, incites, or connives at the offense of larceny but is not present at the taking (although chargeable as a principal under 1901 code, § 908 [§ 22–105]) may be convicted of receiving stolen property when he subsequently purchases it from the thief. *Weisberg* v. *United States* (49 App. D. C. 28, 258 Fed. 284).

COMPARING LARCENY

"Under the prevailing modern rule the crime of receiving stolen goods is a substantive offense, separate and distinct from the larceny itself." *Weisberg* v. *United States* (49 App. D. C. 28, 258 Fed. 284).

EVIDENCE

Admissibility of evidence of other offenses is not subject to the qualification that the goods must have been received by the accused from the same person. *Witters* v. *United States* (70 App. D. C. 316, 106 Fed. (2d) 837).

KNOWLEDGE

Jury were properly instructed that defendant's knowledge that goods were stolen must be proved as a separate substantive fact. *Baer* v. *United States* (54 App. D. C. 24, 293 Fed. 843).

§ 22–2206 [6: 65]. Stealing property of District of Columbia.

Whoever shall embezzle, steal, or purloin any money, property, or writing, the property of the District of Columbia, shall suffer imprisonment for not exceeding five years, or be fined not more than five thousand dollars, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 831.)

CROSS REFERENCES

Allegation and proof of fraudulent intent, § 23–203.
Joinder of offenses, § 23–201.
Possession of firearms, additional penalty, §§ 22–3201, 22–3202.

§ 22–2207 [6: 66]. Receiving property stolen from the District of Columbia.

Whoever shall receive, conceal, or aid in concealing, or have in possession, with intent to convert to his own use, any money, property, or writing, the property of the District of Columbia, knowing the same to have been embezzled, stolen, or purloined from the District of Columbia by any other person, shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 832.)

CROSS REFERENCES

Allegation and proof of fraudulent intent, § 23–203.
Joinder of offenses, § 23–201.

§ 22–2208 [6: 67]. Destroying stolen property.

Whoever shall maliciously destroy anything of value of the amount or value of thirty-five dollars or upward which shall have been stolen, knowing the same to have been stolen, shall suffer imprisonment for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 828.)

CROSS REFERENCES

Allegations and proof of fraudulent intent, § 23–203.
Joinder of offenses, § 23–201.

Chapter 23.—LIBEL—BLACKMAIL

Sec.
22–2301. Libel.
22–2302. Libel—Publication—Sufficiency.
22–2303. Libel—Justification.
22–2304. False charges of unchastity.
22–2305. Blackmail.

§ 22–2301 [6: 38]. Libel.

Whoever publishes a libel shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding five years, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 815.)

NOTES TO DECISIONS

COMMON LAW

This section provides the punishment for libel, defining publication and justification but not libel itself. Common-law libel is thus meant. *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

PRIVILEGED COMMUNICATION

A scurrilous letter, addressed to the District Commissioners, charging certain of their subordinate officers with malfeasance in office, copies of which were sent to such officials, is not privileged, especially when no foundation for the charge appears. *Raymond* v. *United States* (25 App. D. C. 555, cert. den. 200 U. S. 619, 50 L. Ed. 623, 26 Sup. Ct. 755).

SENTENCE

One convicted under this section, and sentenced to 5 years' imprisonment at hard labor is not thereby subjected to "cruel or unusual punishment." *Raymond* v. *United States* (25 App. D. C. 555, cert. den. 200 U. S. 619, 50 L. Ed. 623, 26 Sup. Ct. 755).

§ 22–2302 [6: 39]. Libel—Publication—Sufficiency.

To knowingly send or deliver any libelous communication to the party libeled is a sufficient publication to subject the person sending or delivering the same to punishment as provided in section 22–2301. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 816.)

NOTES TO DECISIONS

INDICTMENT

Indictment is clearly inconsistent with an inference that the asserted libel was a privileged communication or an act done in the performance of a legal duty, because of the allegation in the indictment that the libelous words charged were not only false, scandalous, malicious, and defamatory, but were uttered with the unlawful and malicious intention to vilify, defame, scandalize, and disgrace the subject of the publication. *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

§ 22–2303 [6: 40]. Libel—Justification.

Any publication of a libel shall be justified if it appear that the matter charged as libelous was true and was published with good motives and for justifiable ends. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 817.)

§ 22–2304 [6: 41]. False charges of unchastity.

Whoever wrongfully accuses any woman of unchastity shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, and shall also be liable to a civil action for damages by the party injured. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 818.)

CROSS REFERENCE

See note to § 22–2301. *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

NOTES TO DECISIONS

CONSPIRACY

In action for damages under this section, an alleged conspiracy or combination is not one of the elements of the cause of action, as it is not created by the conspiracy, but by the wrongful acts done by the defendants to the injury of the plaintiff. *Ewald* v. *Lane* (70 App. D. C. 89, 104 Fed. (2d) 222).

CRIME AGAINST UNITED STATES

One who "wrongfully accuses a woman of unchastity commits a crime against the United States. And * * * an indictment for a conspiracy to commit * * * such an offense" charges an offense under said section 37 of the Federal Penal Code. *Fletcher* v. *United States* (42 App. D. C. 53, cert. den. 235 U. S. 706, 59 L. Ed. 434, 35 Sup. Ct. 283) (conspiracy to falsely accuse a woman of adultery in a divorce proceeding).

PRIVILEGED COMMUNICATION

Statement by physician to unmarried woman in the presence of a third party (who is there at the latter's request) that she is pregnant is privileged, in the absence of malice. *Brice* v. *Curtis* (38 App. D. C. 304).

§ 22–2305 [6: 42]. Blackmail.

Whoever verbally or in writing accuses or threatens to accuse any person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or to refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than five years or be fined not more than one thousand dollars, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 819.)

NOTES TO DECISIONS

AFFIDAVIT—PROBABLE CAUSE

When creditor, with intent to extort money, had accused debtor with conduct which, if true, would tend to subject him to the contempt of society, said debtor had probable cause for swearing out the affidavit under § 819 of the code (this section). *Slater* v. *Taylor* (31 App. D. C. 100, 18 L. R. A. (N. S.) 77).

COLLECTION AGENCY

No recovery can be had against a collection agency when they alleged that person's credit standing would be jeopardized if debt were not paid, as this does not violate the blackmail statute. *Clark* v. *Associated Retail Credit Men* (70 App. D. C. 183, 105 Fed. (2d) 62).

Chapter 24.—MURDER—MANSLAUGHTER

Sec.

22–2401. Murder in first degree—Purposeful killing—Killing while perpetrating certain crimes.
22–2402. Murder in first degree—Placing obstructions upon or displacement of railroad.
22–2403. Murder in second degree.
22–2404. Punishment for murder in first and second degrees.
22–2405. Punishment for manslaughter.

§ 22–2401 [6: 21]. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, or without purpose so to do kills another in perpetrating or in attempting to perpetrate any arson, as defined in section 22–401 or 22–402 of this Code, rape, mayhem, robbery, or kidnapping, or in perpetrating or in attempting to perpetrate any housebreaking while armed with or using a dangerous weapon, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 798; June 12, 1940, 54 Stat. 347, ch. 339, § 1.)

AMENDMENT

The act of 1940 enlarged the crime of murder in the first degree by adding those provisions commencing "or without purpose so to do."

NOTES TO DECISIONS

AFTER ASSAULT

"A conviction for an assault and battery is no bar to a subsequent indictment for manslaughter, or murder, in case the person assaulted dies within a year and a day." *Hopkins* v. *United States* (4 App. D. C. 430).

Failure of deceased to secure proper medical attention after assault no defense to charge of homicide. *Hopkins* v. *United States* (4 App. D. C. 430).

ARRAIGNMENT

Arraignment consists of three parts: (1) Calling the defendant by name and commanding him to hold up his hand, that his identification may be certain; (2) reading to him the indictment; (3) taking his plea. *Johnson* v. *United States* (38 App. D. C. 347, affd. 225 U. S. 405, 56 L. Ed. 1142, 32 Sup. Ct. 748).

COMPARING COMMON LAW

"The definition of murder in section 798 of the 1901 code (this section) is the common-law definition of the crime." *Hamilton* v. *United States* (26 App. D. C. 382); *Bishop* v. *United States* (71 App. D. C. 132, 107 Fed. (2d) 297).

CONFESSIONS

The drunken condition of accused when making a confession, unless such drunkenness goes to the extent of mania, does not affect the admissibility of such confession in evidence. *Bell* v. *United States* (60 App. D. C. 76, 47 Fed. (2d) 438, 74 A. L. R. 1098).

While it is the general rule that a confession to be admissible must relate to the offense charged, it is equally true that it may include other offenses when there can be no separation of the relevant and irrelevant parts. *Robinson* v. *United States* (61 App. D. C. 370, 63 Fed. (2d) 147, cert. den. 289 U. S. 749, 77 L. Ed. 1494, 53 Sup. Ct. 697).

Where the evidence showed that one charged with murder in the first degree had made confession of his crime after being in custody but eleven hours, without fear or compulsion, the voluntariness of his confession was for the jury. *McAffee* v. *United States* (72 App. D. C. 60, 111 Fed. (2d) 199).

In prosecution for murder, where neither of defendants made any attack upon the voluntariness of their confessions, either on direct examination or cross-examination, and not until on redirect examination did they intimate that confessions were obtained by threats of police to hold relatives of defendants until confessions were made, admitting confessions was not error. *Hawkins* v. *U. S.* (App. D. C. 1946, 158 F. 2d 652, certiorari denied 67 S. Ct. 1347, 331 U. S. 830, 91 L. Ed. 1844, rehearing denied 67 S. Ct. 1728, 331 U. S. 869, 91 L. Ed. 1872).

Error, if any, in permitting defendant's written confession to be received in evidence on ground that it clearly appeared that statement had been obtained through force, coercion and intimidation was rendered harmless by fact that defendant took stand in his own behalf and of his own accord gave testimony which was in all essential respects similar to statements in confession. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225, certiorari denied 68 S. Ct. 448, 339 U. S. 829, 92 L. Ed. 1155; see also 175 F. 2d 829, 84 U. S. App. D. C. 180).

CONVICTION OF LESSER OFFENSE

Where defendant is guilty of murder or nothing, it is not error to refuse to charge as to manslaughter. *Horton* v. *United States* (15 App. D. C. 310).

When, in homicide case, the only defense is insanity, but there is no evidence to reduce the crime from murder to manslaughter, it was not error for the trial court to state to the jury that the evidence will not justify a verdict of manslaughter. *Horton* v. *United States* (15 App. D. C. 310).

Where several strong men join in a criminal attack upon a defenseless man, knock him down, and, when he attempts to escape, pursue him and then with augmented numbers continue the assault, and one of the conspirators, while his confederates are beating their victim, plunges a knife into him, they should all be charged with manslaughter, even though they did not contemplate the use of the knife, for the conspirators must be presumed to know that great force and violence probably will result *Patten* v. *United States* (42 App. D. C. 239).

To reduce homicide from murder to manslaughter, defendant must not only show that he acted under the influence of passion but "in addition that there was a sufficient cause of provocation for his passion." *Jackson* v. *United States* (48 App. D. C. 272).

Law presumes that defendant, while attempting to perpetuate a robbery, foresaw and intended whatever consequences might naturally result from such an encounter. and the law, not as a matter of fact, but as a conclusion of legal reasoning and experience, considers this state of mind to be implied malice, the homicide would not be manslaughter which is an unlawful killing without malice, but murder either in first or second degree. *Marcus* v. *United States* (66 App. D. C. 298, 86 Fed. (2d) 854).

DELIBERATION

Evidence that defendant first struck his victim because she had complained about his work, that he went to floor above, obtained a stick from a fireplace, returned downstairs and killed her, that in the killing he used the stick and also choked her, and that to insure her death he used a knife, was sufficient to permit jury to find deliberation. *Fisher* v. *U. S.* (App. D. C. 1945, 149 F. 2d 28, certiorari granted 66 S. Ct. 27, 90 L. Ed. 416, rehearing denied 67 S. Ct. 24, 329 U. S. 818, 91 L. Ed. 697).

ELEMENTS OF CRIME

Premeditation and deliberation are necessary elements of first degree murder. *Mergner* v. *U. S.*, 1945 (147 F. 2d 572, 79 U. S. App. D. C. 373, certiorari denied 65 S. Ct. 1085, 89 L. Ed. 1971).

Murder first degree is defined by statute as a purposeful killing done either with premeditated malice or in committing or attempting to commit a felony. The statute also characterizes as such a killing one in the perpetration or attempted perpetration of any one of the enumerated felonies although there was no purpose to kill. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, cert. den. 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Since the indictment did not charge defendant with purposely killing another, but only with killing him while attempting to rob him, it was necessarily found under the second segment of the statute providing that the intent to kill is not an ingredient of the crime and need not be alleged or proved. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, cert. den. 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Murder first degree defined in statute as a purposeful killing done either with premeditated motive, or in committing or attempting to commit a felony, but also characterizes as such a killing done in the perpetration or attempted perpetration of any one of the five enumerated felonies, although there was no purpose to kill. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

EVIDENCE

To make one criminal act evidence of another, there must be a connection to show that he who committed the one must have done the other, and the admissibility of such evidence is a judicial question. *Burge* v. *United States* (26 App. D. C. 524).

Evidence received tending to show defendant and wife quarreled and fought, sufficiently established the corpus delicti to justify receiving testimony of defendant's statements. *Murray* v. *United States* (53 App. D. C. 119, 288 Fed. 1008).

Evidence sustained conviction for murder committed while attempting to perpetrate robbery. *Mumforde* v. *U. S.*, 1942 (130 F. 2d 411, 76 U. S. App. D. C. 107, certiorari denied, 1943, 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

In prosecution for murder committed while attempting to perpetrate robbery, admitting evidence that defendant entered plea of not guilty at preliminary hearing before committing magistrate, and that when defendant was asked to plead he answered that he was guilty of robbing and shooting, but that it was not premeditated or that he had not committed premeditated murder, was not prejudicial error where the evidence added nothing prejudicial either to confession or to evidence given by defendant at trial. *Mumforde* v. *U. S.*, 1942 (130 F. 2d 411, 76 U. S. App. D. C. 107, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

Under an indictment in the common-law form for murder in the first degree, the prosecution may prove facts to bring the case within any of the provisions of this section defining murder in the first degree. *Burton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 17).

In murder prosecution, evidence of uncommunicated complaint which victim of defendant had made about his work prior to the offense was properly excluded, where the complaint was not a threat, and there was no claim of self-defense. *Fisher* v. *U. S.* (App. D. C. 1945, 149 F. 2d 28, certiorari granted 66 S. Ct. 27, 326 U. S. 705, 90 L. Ed. 416, rehearing denied 67 S. Ct. 24, 329 U. S. 818, 91 L. Ed. 697).

Evidence of premeditation and deliberation was sufficient to sustain conviction for first degree murder. *Mergner* v. *U. S.*, 1945 (147 F. 2d 572, 79 U. S. App. D. C. 373, certiorari denied 65 S. Ct. 1085, 89 L. Ed. 1971).

In first degree murder prosecution, evidence that defendant deliberately pursued and shot deceased's sister immediately after defendant shot deceased was admissible as tending to show that defendant's shooting of deceased was not an accident in an attempt at self-defense against deceased's husband, but was done with deliberate intent to kill. *Copeland* v. *U. S.* (App. D. C. 1945, 152 F. 2d 769, 80 U. S. App. D. C. 308, certiorari denied, 66 S. Ct. 1010, 328 U. S. 841, 90 L. Ed.).

Evidence that defendant found deceased with a woman with whom defendant was friendly, that some discussion ensued, and that later all went outside, where an altercation occurred and defendant cut deceased with a knife resulting in death, was sufficient evidence of deliberation and premeditation to go to jury upon charge of first-degree murder. *Thomas* v. *U. S.* (App. D. C. 1946, 158 F. 2d 97, certiorari denied 67 S. Ct. 1303, 331 U. S. 822, 91 L. Ed. 1838).

Evidence supported conviction of codefendant who participated in robbery but who did not do the shooting or killing of another in perpetrating a robbery. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225).

In prosecution of three defendants jointly indicted on charge of murder in perpetration of robbery, where defendants suggested possibility that victim died of heart attack, exhibiting victim's clothing to jury and showing bullet hole in back of victim's coat was not improper. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1500, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335, U. S. 839, 93 L. Ed. 391).

In murder prosecution, receiving evidence that revolver with which victim was shot had been stolen from house of certain person was not error on ground that it constituted evidence of offense other than that for which defendants were on trial, in absence of any evidence showing that any of the defendants had stolen the revolver or had received it knowing it to have been stolen. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1500, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335, U. S. 839, 93 L. Ed. 391).

An examination of murder weapon by ballistics expert during trial was not part of the trial, and the fact that such examination was made in the absence of the defendant does not render inadmissible evidence concerning it. degree, indictment must stand. *Goodall* v. *U. S.* (C. A., D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Indictment

Statute of 1 Hen. V, ch. 5 (1413), requiring indictment to set forth "estate, or degree, or mystery of defendant and the town or county, etc., of which he was conversant," is not in force in this District. *Lanckton* v. *United States* (18 App. D. C. 348).

An indictment charging the commission of murder in a house situated in the District is not defective because it does not particularly describe the location of the house *Lanckton* v. *United States* (18 App. D. C. 348).

It is not necessary to charge in the indictment that accused was of sound mind and discretion. *Hill* v. *United States* (22 App. D. C. 395).

Indictment for murder is not defective for want of an express allegation of an intent to kill. *Hamilton* v. *United States* (26 App. D. C. 382), citing *Hill* v. *United States* (22 App. D. C. 395).

An indictment for murder which alleges that defendant did "choke, suffocate and strangle" of which the person died, is sufficient even though there is no allegation that the choking was "mortal." *Hamilton* v. *United States* (26 App. D. C. 382).

Requirement of copy of indictment and list of jurors and witnesses is mandatory. *Aldridge* v. *United States* (60 App. D. C. 45, 47 Fed. (2d) 407, revd. on other grounds 283 U. S. 308, 75 L. Ed. 1054, 51 Sup. Ct. 470, 73 A. L. R 1203).

Where indictment informed defendent in the plainest sort of language that he was charged with killing while attempting robbery, i. e., accused of murder in the first degree, indictment must stand. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, cert. den. 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Instructions to Jury

Charge to jury was proper which stated that the defendant might be found guilty of murder or manslaughter, or acquitted altogether if he killed deceased in the reasonable apprehension of danger to his own life, and it was not error for the trial court to exclude testimony to show vicious and dangerous character of deceased. *Travers* v *United States* (6 App. D. C. 450).

Instructions, that insanity was induced by operation of strong drink upon a mind rendered unsound by an injury, or that he was incapable of forming a specific intent to kill so as to reduce the crime to manslaughter, are not sufficient when the evidence does not support such instructions and where the jury is informed by other instructions that they must find that he had sufficient mental capacity to distinguish right from wrong at time of act, beyond a reasonable doubt. *Snell* v. *United States* (16 App. D. C 501).

A requested instruction of self-defense is defective which fails to state what the defendant was in imminent danger of. *Jackson* v. *United States* (48 App. D. C. 272).

Where instruction regarding second-degree murder and manslaughter was given at request of defendant's counsel, if the instruction was subject to criticism on ground that it was confusing because it opened up a matter not properly for jury's consideration, it was favorable to defendant, and he could not complain. *Mumforde* v. *U. S.*, 1942 (130 F. 2d 411, 76 U. S. App. D. C. 107, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

Where defendant testified that he entered store with definite purpose of committing robbery, but that a moment later he changed his mind and drew pistol from pocket hoping to quiet woman in charge, and thus to escape detection and arrest, but in excitement pistol was unintentionally discharged, instruction that, if defendant voluntarily abandoned his plan to rob before fatal shot was fired, defendant would not be guilty of murder in first degree, fully protected defendant's legal rights. *Mumforde* v. *U. S.*, 1942 (130 F. 2d 411, 76 U. S. App. D. C. 107, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

The perpetration of a robbery, during which act a homicide is committed, legally takes the place of that premeditation to kill which is necessary for murder in the first degree, and it was not error to give such instruction merely because the indictment for murder tendered no such issue as robbery. *Burton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 17).

Instruction that defendant had a vital interest in outcome of case, and in testing truth and weighing force of defendant's testimony jury might do so in light of that

interest as well as in light which might be shed by all other evidence in case, was not objectionable. *Fisher* v. *U. S.* (App. D. C. 1945, 149 F. 2d 28, certiorari granted 66 S. Ct. 27, 326 U. S. 705, 90 L. Ed. 416, rehearing denied 67 S. Ct. 24, 329 U. S. 818, 91 L. Ed. 697).

Instruction that in considering questions of intent, premeditation and deliberation, jury should consider entire personality of defendant, his mental, nervous, emotional and physical characteristics as developed by evidence was properly refused because it confused issue of insanity with question whether psychopathic characteristics of defendant prevented him from forming deliberate intent necessary to constitute first degree murder. *Fisher* v. *U. S.* (App. D. C. 1945, 149 F. 2d 28, certiorari granted 66 S. Ct. 27, 326 U. S. 705, 90 L. Ed. 416, rehearing denied 67 S. Ct. 24, 329 U. S. 818, 91 L. Ed. 697).

Failure to volunteer an instruction on question whether defendants were exhausted by hours of questioning when they confessed to murder charge was not error, where there was hardly sufficient evidence to warrant such an instruction and none was requested. *Hawkins* v. *U. S.* (App. D. C. 1946, 158 F. 2d 652).

In prosecution for murder resulting in conviction of second-degree murder, the court's charge covering premeditation, malice, and self-defense was not erroneous. *Thomas* v. *U. S.* (App. D. C. 1946, 158 F. 2d 97, certiorari denied 331 U. S. 332, 91 L. Ed. 1838).

Where robbery of fountain cash register at front of drug store by one of codefendants jointly indicted on charge of killing another in perpetrating robbery was a part of general holdup of store in perpetration of which other defendant killed proprietor while obtaining money in cash register in rear of store, defendant who did not do the shooting was not entitled to an instruction that two separate robberies had been committed, that such defendant could be convicted only of being accessory after the fact or that such defendant could be convicted only of offense of robbery. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225, certiorari denied 68 S. Ct. 448, 339 U. S. 329, 92 L. Ed. 1155; see also 175 F. 2d 829, 84 U. S. App. D. C. 180).

Fact that there was evidence that one of the three defendants jointly indicted on charge of murder in perpetration of robbery threw away the gun and bullets after the murder did not require an instruction that jury could find such defendant guilty as accessory after the fact, where such defendant's testimony and other circumstances stamped him as an accessory before the fact and therefore guilty as a principal. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9 335 U. S. 839, 93 L. Ed 391).

Court's comments concerning alibi as a defense were proper and not prejudicial where it was said that such defense should be given such weight and consideration to which it is entitled to under all facts and circumstances. *Goodall* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148; certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Appellant's claim that Court failed to charge that if jury believed him guilty of killing but if any reasonable doubt existed as to whether he committed murder first or murder second, it should be resolved in favor of the lesser crime, is without merit since such an instruction is necessary only when from the evidence as a whole the jury might reasonably find the dependent guilty in either degree and must decide which degree. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Instructions

Court's comments concerning alibi as a defense were proper and not prejudicial, where it was said that such defense should be given such weight and consideration to which it is entitled to under all facts and circumstances. *Goodall* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148; certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Intent

Defendant is guilty of murder if the deceased, in seeking to escape the violent assault of accused had a well-grounded belief that he would take her life or inflict serious injury, and so believing inadvertently fell into a canal and was drowned, and it is not necessary to show by the prosecution nor that the jury shall believe that the defendant had the malicious intent to do bodily harm. *Norman* v. *United States* (20 App. D. C. 494).

"A deliberate intent to take life is declared to be an essential element of murder in the first degree, and this, of course, must be shown as a fact." *Sabens* v. *United States* (40 App. D. C. 440); *Jordon* v. *United States* (66 App. D. C. 309, 87 Fed. (2d) 64).

Under this section defining "murder in first degree" as the killing of another while armed with or using a dangerous weapon in the perpetration or attempted perpetration of a robbery, it is not necessary to show that the killing was done purposely to raise the offense to first degree murder. *Mumforde* v. *U. S.*, 1942 (130 F. 2d 411, 76 U. S. App. D. C. 107, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

In prosecution for homicide, the recurrence of other acts of the sort tends to negative inadvertence, defensive purpose, or any form of innocent intent. *Copeland* v. *U. S.* (App. D. C. 1945, 152 F. 2d 769, 80 U. S. App. D. C. 308, certiorari denied 66 S. Ct. 1010, 328 U. S. 841, 90 L. Ed. —).

Intoxication

"Voluntary intoxication is neither an excuse nor a palliation for crime." *Lanckton* v. *United States* (18 App. D. C. 348).

Although defendant forms a deliberate and premeditated intent to kill while sober, and then voluntarily becomes drunk, he cannot be convicted of murder in the first degree, if at the time of the commission of the offense he was too drunk to deliberate and premeditate. *Sabens* v. *United States* (40 App. D. C. 440).

A charge given by the court of its own motion was proper to the effect that voluntary intoxication was generally not a justification for crime and that it is only considered when evidence tends to show condition of mind which rendered him incapable of forming an intent. *Smith* v. *United States* (50 App. D. C. 208, 269 Fed. 860).

Under this section, evidence of intoxication may be shown for purpose of proving lack of capacity to deliberate or premeditate; and under conflicting evidence, the question is for the jury. *McAffee* v. *United States* (72 App. D. C. 60, 111 Fed. (2d) 199).

Jury

What is reasonable adequate provocation is generally for the jury. *Jackson* v. *United States* (48 App. D. C. 272). See on provocation, *Grant* v. *United States* (28 App. D. C. 169).

"It is in the discretion of the court to permit the jury to separate in a homicide case, and his action in that respect will not be reviewed unless it appear affirmatively that prejudice resulted to the defendant." *McHenry* v. *United States* (51 App. D. C. 119, 276 Fed. 761, 34 A. L. R. 1109).

In prosecution of three defendants jointly indicted on charge of murder in perpetration of robbery, where two of three defendants testified that written statements given by them to officers were extorted by physical mistreatment, and officers denied having mistreated defendants, question as to whether written statements were voluntary and admissible was for jury. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied, 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U. S. 839, 93 L. Ed. 391).

Malice

However sudden the killing may be, if the means used, or the manner of doing it, or other external circumstances attending it, indicate a sedate and deliberate mind and formed design to kill, it will be upon express malice. *Travers* v. *United States* (6 App. D. C. 450).

"Implied malice constitutes murder in the second degree." *Sabens* v. *United States* (40 App. D. C. 440).

A heavy paling, with sharp, protruding nails, is a deadly weapon, from the use of which malice must be presumed. *Patten* v. *United States* (42 App. D. C. 239), citing *Hopkins* v. *United States* (4 App. D. C. 430 [use of brickbat]).

A homicide committed purposely and with deliberate and premeditated malice is murder in the first degree. "Malice aforethought" may be shown expressly, or may be "implied" from the commission of the act itself. *Bishop* v. *United States* (71 App. D. C. 132, 107 Fed. (2d) 297).

Means of Commission

"The proof of the means of commission of a homicide need not conform strictly to the averment of such means in the indictment. If the means of death proved agree in substance with that charged, it is sufficient." *Hamilton* v. *United States* (26 App. D. C. 382).

Mental Capacity

Mental dullness, weakness, or incapacity does not excuse from the consequences of crime, unless the evidence proves that defendant was at the time of the commission of the act so mentally impaired that he could not distinguish between right and wrong. *Travers* v. *United States* (6 App. D. C. 450).

Law does not recognize the doctrine of emotional insanity. *Taylor* v. *United States* (7 App. D. C. 27).

Refusal of the trial justice to admit in evidence an exemplification of the record of the Georgia State Sanitarium, showing the mental condition, treatment, and incarceration of certain relatives of the defendant, was proper. *Snell* v. *United States* (16 App. D. C. 501).

Where jury were fully informed that before they could find the accused guilty of the crime charged, insanity or unsoundness of mind being set up as a defense, they were required to find that the accused had sufficient capacity to distinguish between right and wrong, at the time of and with respect to the act which was the subject of inquiry, beyond a reasonable doubt. *Snell* v. *United States* (16 App. D. C. 501).

Motive

Government is not required to prove motive, but jury may consider absence of such proof as a circumstance in defendant's favor. *Lanckton* v. *United States* (18 App. D. C. 348).

Motive may be proved, because it "may be very important in determining whether or not the accused was actuated by deliberate, premeditated malice." *McHenry* v. *United States* (51 App. D. C. 119, 276 Fed. 761, 34 A. L. R. 1109). See also *Lomax* v. *United States* (37 App. D. C. 414), following *McUin* v. *United States* (17 App. D. C. 323).

On Appeal

In a homicidal case "it is the duty of an appellate court to correct any error prejudicial to the defendant, even though not properly raised in the trial court." *Patten* v. *United States* (42 App. D. C. 239). See *Burge* v. *United States* (26 App. D. C. 524).

Prejudicial Error

In prosecution for murder, where a police officer testified that defendant had failed to make a report to the police because of his record and defendant's counsel brought out the fact that the record referred to was failure to settle hotel bills, the net effect was not prejudicial to defendant. *Burton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 17).

In murder prosecution, where a nurse who made a written statement to the police took the stand and her testimony was substantially the same as the written statement, any error in permitting statement to be introduced in evidence was not prejudicial. *Burton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 17).

Accused in murder prosecution was required to plead and prove his own case and was responsible for the production in court of witnesses necessary to do so, and failure of the government to produce certain witnesses could not be regarded as prejudicial. *Thomas* v. *U. S.* (App. D. C. 1946, 158 F. 2d 97, certiorari denied 67 S. Ct. 1303, 331 U. S. 322, 91 L. Ed. 1834).

Punishable by Imprisonment in the Penitentiary

"The words 'punishable by imprisonment in the penitentiary' do not mean an offense that can be punished only by such imprisonment, but include such as may be so punished." *United States* v. *Evans* (28 App. D. C. 264).

Purposely

Quaere: Whether it is necessary to charge in indictment for first-degree murder that the killing was "purposely" done. As to this point the court did not decide but stated that, it is a safe rule, in criminal pleading, to follow the language of the statute, where there is any uncertainty in respect of its meaning. *United States* v. *Evans* (28 App. D. C. 269).

Proof of purpose in murder prosecution need not be direct; it may be inferred from the circumstances attending the killing. *Jordon* v. *United States* (66 App. D. C. 309, 87 Fed (2d) 64).

Prosecution required to show purpose to kill in murder prosecution. *Jordon* v. *United States* (66 App. D. C. 309, 87 Fed. (2d) 64).

Questions Withheld From Jury

Under all the facts and circumstances, the question whether there had been only second degree murder because of the killer's intoxication should not have been submitted to the jury. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397; 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Self-Defense

To justify application of the law of self-defense, the defendant must show clearly that he was attacked, and that he had good reason to believe that he was in imminent peril of his life or of great bodily harm. *Hopkins* v. *United States* (4 App. D. C. 430).

Accidental homicide and homicide in self-defense are wholly irreconcilable. *Fearson* v. *United States* (10 App. D. C. 536).

Court properly charged the jury that they should consider the words and acts of the deceased and any threats against the accused at the time of the killing. *Wallace* v. *United States* (18 App. D. C. 152).

Stabbing of a woman is not justifiable as self-defense in absence of anything to show that defendant suffered pain, or was apprehensive of bodily harm so serious as to suggest the use of a deadly weapon. *Grant* v. *United States* (28 App. D. C. 169).

Before one can be permitted to take life under the apprehension that he is in danger of life or serious bodily harm from the violence of another, it must appear that he had a reasonable right to believe, from all the facts and circumstances presented to his mind, that he was in such danger. *Sacrini* v. *United States* (38 App. D. C. 371).

In homicidal cases, where the defense is self-defense, the majority of the courts hold "that it is proper to give incidents or specific acts of violence within the knowledge of the witness or coming under his observation." From this view Shepherd, C. J., dissents, holding testimony should be confined to reputation of deceased for cruelty and violence. *Marshall* v. *United States* (45 App. D. C. 373). See on threats by accused, *Lomax* v. *United States* (37 App. D. C. 414).

A charge to the jury that it must appear that there was no reasonable occasion for the defendant to escape from the conflict was error, as the true test is whether circumstances presented to the mind of the defendant were such that would have produced upon the mind of any reasonable, prudent person, the reasonable belief that the deceased was about to kill him or do him serious bodily harm. *Marshall* v. *United States* (45 App. D. C. 373).

A charge is sufficient which states that "if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant, he may stand his ground, and if he kills him he has not exceeded the bounds of lawful self-defense." *Price* v. *United States* (51 App. D. C. 106, 276 Fed. 628).

Severance

Refusal of motion of one of two defendants jointly indicted on charge of killing another in perpetrating a robbery for a severance on ground that such defendant could not obtain a fair and impartial trial because codefendant had made admissions and confessions out of his presence and hearing was not an abuse of discretion, where codefendant's testimony from witness stand was substantially to same effect as his former extrajudicial

statement implicating moving defendant. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225, certiorari denied 68 S. Ct. 448, 339 U. S. 829, 92 L. Ed. 1155; see also 175 F. 2d 829, 84 U. S. App. D. C. 180).

Refusal to grant three defendants jointly indicted on charge of murder in perpetration of robbery separate trials was not an abuse of discretion, where trial court duly limited effect of evidence introduced which was competent against one defendant and incompetent as to others. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U. S. 839, 93 L. Ed. 391).

SUMMATION OF EVIDENCE

Fact that trial court, when summarizing the evidence, took longer to summarize evidence of the prosecution did not establish that it had placed undue emphasis on evidence of prosecution and had minimized evidence of defendant, where more time was taken to summarize evidence of prosecution because it was more voluminous than that of defendant, and it was not claimed by defendant that certain facts were "singled out" without consideration of other modifying facts. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225 certiorari denied 68 S. Ct. 448, 339 U. S. 829, 92 L. Ed. 1155; see also 175 F. 2d 829, 84 U. S. App. D. C. 180).

TIME

Some appreciable time must elapse in order that reflection and consideration amounting to the deliberation and premeditation required for first-degree murder may occur. *Bullock* v. *U. S.*, 1941 (122 F. 2d 213, 74 App. D. C. 220, certiorari denied 63 S. Ct. 39, 317 U. S. 627, 87 L. Ed. 507).

TRIAL PROCEEDINGS

An examination of murder weapon by ballistics expert during trial was not part of the trial. The fact that such examination was made in the absence of the defendant does not render inadmissible the evidence concerning it. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

VERDICT

In District of Columbia a jury may not qualify a verdict of murder in the first degree by adding thereto "without capital punishment." *Johnson* v. *United States* (38 App. D. C. 347, affd. 225 U. S. 405, 56 L. Ed. 1142, 32 Sup. Ct 748).

Where the evidence was sufficient for jury on charge of first-degree murder and jury was properly instructed, court's refusal to direct a verdict on first-degree murder charge could not be held to have erroneously influenced jury in reaching its verdict of second-degree murder. *Thomas* v. *U. S.* (App. D. C. 1946, 158 F. 2d 97, certiorari denied 67 S. Ct. 1303, 331 U. S. 822, 91 L. Ed. 1838).

WHILE ATTEMPTING ROBBERY

Homicide committed while attempting robbery is first-degree murder. *United States* v. *Evans* (28 App. D. C. 264).

Evidence supported conviction of murder while perpetrating robbery. *Medley* v. *U. S.* (App. D. C. 1946, 155 F. 2d 857, 81 U. S. App. D. C. 85, certiorari denied 66 S. Ct. 1377, 328 U. S. 873, 90 L. Ed. 1642, rehearing denied 67 S. Ct. 35, 929 U. S. 822, 91 L. Ed. 680).

One who kills as he robs is charged by this section with having that degree of malice which is indispensable to murder in the first degree. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225, certiorari denied 68 S. Ct. 448, 339 U. S. 829, 92 L. Ed. 1155; see also 175 F. 2d 829, 84 U. S. App. D. C. 180).

WHILE HOUSE BREAKING

This section defined murder in the first degree as purposely killing a human being either with deliberate or premeditated malice, or by poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary. Housebreaking being so punishable, one who commits a homicide while engaged in that offense may be charged with first degree murder. *Monroe* v. *United States* (56 App. D. C. 80, 10 Fed (2d) 645).

§ 22–2402 [6: 22]. Murder in first degree—Placing obstructions upon or displacement of railroad.

Whoever maliciously places an obstruction upon a railroad or street railroad, or displaces or injures anything appertaining thereto, or does any other act with intent to endanger the passage of any locomotive or car, and thereby occasions the death of another, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 799.)

§ 22–2403 [6: 23]. Murder in second degree.

Whoever with malice aforethought, except as provided in sections 22–2401, 22–2402, kills another, is guilty of murder in the second degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 800; June 12, 1940, 54 Stat. 347, ch. 339.)

AMENDMENT

This section was re-enacted in the act of 1940.

CROSS REFERENCE

See notes to § 22–2401.

NOTES TO DECISIONS

ACCIDENT—PURPOSE LACKING

If defendant did not have purpose to kill or if pistol went off accidentally, he would be guilty of murder in the second degree. *Marcus* v. *United States* (66 App D. C. 298. 86 Fed. (2d) 854).

Instruction to jury was correct to the effect that if in perpetrating the crime the killing was not done purposely but by accident or otherwise, appellant was not guilty of murder in the first degree. *Jordon* v. *United States* (66 App. D. C. 309, 87 Fed. (2d) 64).

ADMISSIBILITY OF EVIDENCE

In murder prosecution, where preceding witnesses had testified that defendant stabbed deceased with a knife, testimony that immediately after the stabbing deceased exclaimed "I've been stuck" was admissible as part of the res gestae, although the witness so testifying did not also testify that the attack had taken place. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

In prosecution for murder of husband, forged letter written by accused to a friend of husband and purporting to be a confession of murder by fictitious person was admissible, though letter was postmarked and delivered several months after crime was committed. *Harris* v. *U. S.* (C. A., D. C. 1948, 169 F. 2d 887, certiorari denied 69 S. Ct. 161, 335 U. S. 873, 93 L. Ed. 417).

EXAMINATION OF WITNESSES

In murder prosecution, where defense counsel had elicited from defendant on direct examination the fact that he had been in jail continuously from time of his arrest, court properly permitted government counsel on cross-examination to inquire of defendant whether it was not a fact that the court had set bail at $1,500 and that defendant therefore had an opportunity to obtain release while awaiting trial if he had been able to secure bond. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

In murder prosecution, permitting government counsel on cross-examination to inquire of defendant whether it was not a fact that the court had set bail at $1,500 and that defendant could have obtained his release while awaiting trial if he had been able to secure bond, after defendant's counsel had brought out the fact that defendant had been in jail continuously from time of his arrest, did not affect the course of the trial so as to be ground for new trial. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

Defendant was not prejudiced by trial court's propounding questions to him when he was testifying as a witness, where defendant by the interchange was enabled

to make a logical answer explaining his conduct, entirely consistent with his theory of self-defense. *Griffin* v. *U. S.* (App. D. C. 1947, 164 F. 2d 903).

INDETERMINATE SENTENCE ACT

Indeterminate Sentence Act is inapplicable to second degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect, and definite term of 20 years is a valid sentence. *Anderson* v. *Rives* (66 App. D. C. 174, 85 Fed. (2d) 673).

INSTRUCTIONS TO JURY

In prosecution for murder, court properly instructed that, if defendant did flee from the scene, jury had right to consider that fact as a consciousness of guilt, if jury deemed it proper to do so. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

In murder prosecution, where court called jury's attention to defendant's denial that he fled from the scene, and permitted jury to determine that question before they could consider flight as a consciousness of guilt, court did not err in refusing to elaborate by giving an additional charge to the effect that defendant claimed that he ran from the scene not for the purpose of avoiding arrest but because of fear of attack by decedent's companion. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

Although the indictment charged murder in first degree, appellant could have been found guilty of murder second degree had the evidence warranted it, since a defendant may be found guilty of any offense necessarily included in the crime charged in the indictment. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

Appellant's claim that Court failed to charge that if jury believed him guilty of killing but if any reasonable doubt existed as to whether he committed murder first or murder second, it should be resolved in favor of the lesser crime, is without merit, since such an instruction is neccessary only when from the evidence as a whole the jury might reasonably find guilty in either degree and must decide which degree. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

MALICE

Where a homicide directly resulted from excessive speed of the driver of an automobile carrying contraband liquor, after being told to stop by arresting officers, the illegal transportation was an offense punishable by imprisonment in the penitentiary, and constitutes the malice essential to murder in the second degree. *Lee* v. *United States* (72 App. D. C. 147, 112 Fed. (2d) 46).

A defendant's voluntary intoxication does not of itself negative the malice required to constitute second-degree murder and thereby reduce second-degree murder to voluntary manslaughter. *Nestlerode* v. *U. S.*, 1941 (122 F. 2d 56, 74 App. D. C. 276).

"Legal malice" does not necessarily mean a malicious or malevolent purpose or personal hatred or hostility toward deceased, but a state of mind which shows a heart unmindful of social duty and fatally bent on mischief, or which prompts a person to do an injurious act willfully to the injury of another. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

A killing under the influence of passion, induced by insufficient provocation, may be "murder in the second degree," and an accidental or unintentional killing constitutes murder in the second degree if it is accompanied by malice. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

QUESTIONS WITHHELD FROM JURY

Under all the facts and circumstances, the question whether there had been only second degree murder because of the killer's intoxication should not have been submitted to the jury. *Goodall* v. *U. S.* (C. A., D. C. 1950, 180 F. 2d 397, 86 U. S. App. D. C. 148, certiorari denied, 70 S. Ct. 1009, 339 U. S. 987, 94 L. Ed. 924).

REDUCTION TO MANSLAUGHTER

If the killing is committed in a sudden heat of passion, caused by adequate provocation, the crime may be reduced from murder to manslaughter, but a trivial or slight assault is not sufficient provocation for that purpose. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

Jury was warranted in concluding that conduct of deceased in kicking defendant was not adequate provocation for the fatal stabbing of deceased, so as to reduce the killing to manslaughter. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

SUFFICIENCY OF EVIDENCE

Evidence that defendant approached deceased and others with a knife in his hand and wantonly stabbed deceased during an altercation, resulting in death, warranted conviction of murder in the second degree. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

Evidence that defendant found deceased with a woman with whom defendant was friendly, that some discussion ensued, followed by an altercation during which defendant cut deceased with a knife resulting in death, justified a finding that defendant acted with the malice aforethought essential to crime of second degree murder. *Thomas* v. *U. S.* (App. D. C. 1946, 158 F. 2d 97).

Evidence sustained conviction of second degree murder as against contention that fatal wound was inflicted in self-defense. *Parker* v. *U. S.* (App. D. C. 1947, 158 F. 2d 185, certiorari denied 67 S. Ct. 861, 330 U. S. 829, 91 L. Ed. 1278).

§ 22–2404 [6: 24]. Punishment for murder in first and second degrees.

The punishment of murder in the first degree shall be death by electrocution. The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 801; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1.)

AMENDMENT

The act of 1925 changes punishment of murder in first degree, from hanging to electrocution.

CROSS REFERENCE

Possession of firearm, additional penalty, §§ 22–3201. 22–3202.

NOTES TO DECISIONS

ACCIDENT—PURPOSE LACKING

If defendant did not have purpose to kill or if pistol went off accidentally, he would then be guilty of murder in the second degree and punishable by imprisonment for life, or for not less than 20 years. *Marcus* v. *United States* (66 App. D. C. 298, 86 Fed. (2d) 854).

INDETERMINATE SENTENCE ACT

Indeterminate Sentence Act is inapplicable to second degree murder and the existing penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson* v. *Rives* (66 App. D. C. 174, 85 Fed. (2d) 673).

PROSECUTION OF SECOND-DEGREE MURDER

Prosecution in District of Columbia for second-degree murder was properly conducted in name of the United States rather than in name of District of Columbia. *Morton* v. *Welch* (C. C. A. Va. 1947, 162 F. 2d 840, certiorari denied 68 S. Ct. 44, 332 U. S. 779, 92 L. Ed. 363, 68 S. Ct. 1498, 334 U. S. 848, 92 L. Ed. 1771).

SUPERSEDENCE

Provisions of the Criminal Code as to murder and manslaughter do not supersede or repeal the Code of the District of Columbia. *Johnson* v. *United States* (225 U. S. 405, 56 L. Ed. 1142, 32 Sup. Ct. 748, affg. 38 App. D. C. 347).

§ 22–2405 [6: 25]. Punishment for manslaughter.

Whoever commits manslaughter shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding fifteen years, or by both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 802.)

CROSS REFERENCES

Negligent homicide, §§ 40–606, 40–607.

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

INDICTMENT

Crime must be charged with reasonable particularity of time, place, and circumstances. *United States* v. *Geare* (54 App. D. C. 30, 293 Fed. 997, Knickerbocker Theater disaster).

INDICTMENT, SUFFICIENCY

Where manslaughter indictment against landlord, its vice president, and tenant, who operated rooming house, charged acts of negligence which were not violations of common law duties jointly owed by defendants, and indictment was uncertain concerning statutory and regulatory requirements with which defendants allegedly failed to comply, the indictment was bad on demurrer. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

If regulation is pleaded which requires notice from an official to person who owns or controls building that a specific condition must be remedied within a certain period of time, fact should be stated concerning the giving of such notice and allegations of manslaughter indictment that findings and directives were made known to defendants were insufficient, but nature of findings and directives and when and how they were made known to defendants should have been made to appear. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 U. S. App. D. C. 392).

INVOLUNTARY MANSLAUGHTER

Conviction on charge of involuntary manslaughter affirmed, upon evidence that defendant operated an automobile while drinking and in a criminally careless manner, and ran over and caused the death of a man whom he knew to be so intoxicated he could hardly stand. *Story* v. *United States* (57 App. D. C. 3, 16 Fed. (2d) 342, 53 A. L. R. 246).

JOINDER OF DEFENDANTS

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with violation of alleged joint duty to use reasonable care to maintain premises in a reasonably safe condition, that defendants negligently failed to have a dumb-waiter shaft constructed of fire-resistive materials, that they negligently failed to forbid use of shaft as a receptacle for waste, and that they negligently failed to provide a front fire escape, the acts of negligence charged were not violations of common-law duties jointly owed by the defendants, and there was a misjoinder of defendants under common law principles. *U. S.* v. *Interstate Properties* (App. D. C. 1946, 153 F. 2d 469, 80 App. D. C. 392).

JURY

Deliberations of the jury should be confined to the charge in the indictment, and if defendant was not charged generally with negligence but with specific acts of negligence, namely, unlawful speeding and reckless driving, and if the death was not caused by those acts or one of them, he was entitled to a verdict of not guilty. *Sinclair* v. *United States* (49 App. D. C. 351, 265 Fed. 991).

MANSLAUGHTER, DEFINITION

"Manslaughter" is the unlawful killing of a human being without malice aforethought. *U. S.* v. *Edmonds* (D. C., D. C. 1946, 63 F. Supp. 968).

Chapter 25.—PERJURY

Sec.
22–2501. Perjury—Subornation of perjury.

§ 22–2501 [6: 131]. Perjury—Subornation of perjury.

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section. (Mar. 3, 1901, 31 Stat. 1329, ch. 854, § 858.)

CROSS REFERENCES

Affidavits from professional bondsmen and their assistants, § 23–608.

False representations concerning fraternal benefit associations, § 35–913.

False statement in return of tax schedule for personal property, § 47–1203.

False statements before tax boards, § 47–606.

False statements by officers of insurance companies concerning assets, § 35–108.

False statements in application for liquor permits or licenses, § 25–115.

False statements of life insurance companies, § 35–408.

False swearing before Commission on Licensure to Practice the Healing Art declared to be perjury, § 2–128.

False testimony before Alcoholic Control Board, § 25–126.

False testimony by witnesses generally, § 14–102.

Form of indictment, §§ 23–204, 23–205.

Wilful false swearing in certificate, report, or public notice required of building or homestead association, § 26–404.

NOTES TO DECISIONS

ADMINISTRATION OF OATHS

This section is broad enough to cover false testimony given under oath before any tribunal or any officer or person authorized to administer oaths. *U. S.* v. *Meyers* (D. C., D. C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U. S. App. D. C. 101, certiorari denied 63 S. Ct. 602, 336 U. S. 912, 93 L. Ed. 1076).

A United States senator as chairman of a subcommittee was an "officer or person authorized to administer oaths" within meaning of this section. *U. S.* v. *Meyers* (D. C., D. C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U. S. App. D. C. 101, certiorari denied 63 S. Ct. 602, 336 U. S. 912, 93 L. Ed. 1076).

ADMISSIBILITY OF EVIDENCE

In prosecution for perjury, teletype message sent by F. B. I. in Washington to Texas agent containing accusations that defendant had been guilty of fornication in District of Columbia was improperly received because of charge of another criminal offense. *Pyle* v. *U. S.* (App. D. C. 1946, 156 F. 2d 852, 81 U. S. App. D. C. 209).

In perjury prosecution based on testimony of defendant in rape prosecution denying that signature on statement introduced in evidence was his, where no signatures were

obtained from defendant during the perjury trial, signatures which were part of record from rape case were admissible and were not objectionable as requiring defendant to give testimony. *Buckner* v. *U. S.* (App. D. C. 1946, 154 F. 2d 317, 81 U. S. App. D. C. 38).

Authorized by Law

An oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of this section. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

Information called for by regulations under Traffic Act § 40–601 et seq., in an application for certificate of title is not required to be under oath so as to constitute a false statement perjury, though lien statement which Motor Vehicle Lien Law, § 40–701 et seq., requires that application contain, must be under oath. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

Circumstantial Evidence

Falsity of sworn statement and that the accused actually remembered the facts which he had formerly sworn to may be proved by circumstantial evidence and the only issue in such a case is whether it meets the test of proof beyond a reasonable doubt. *Behrle* v. *United States* (69 App. D. C. 304, 100 Fed. (2d) 714).

Civil Service

Under civil-service regulations, false statements as to whether one had previously been employed by the Government, and whether he resigned or was discharged, was perjury within section R. S. § 5392 (U. S. C., title 18, § 231). *Johnson* v. *United States* (26 App. D. C. 128).

Conspiracy—Divorce

Crime of conspiracy to commit perjury under § 37 United States Penal Code of March 4, 1909 (35 Stat. 1088, ch. 321, U. S. Comp. Stat. Supp. 1911, p. 1588), relating to offenses against United States, and D. C. 1901, § 858 (this section) (31 Stat. 1329, ch. 854), denouncing perjury offenses, is charged by indictment alleging pending divorce suit in Supreme Court of District of Columbia, but such indictment does not come within meaning of the Code of 1901, § 910 (§ 22–107) which provides for punishment of offenses not covered by District Code or any law inapplicable to District of Columbia by United States. *Fletcher* v. *United States* (42 App. D. C. 53, cert. den. 235 U. S. 706, 59 L. Ed. 434, 35 Sup. Ct. 283).

Crime Against United States

A crime against United States is committed by any person who violates either § 818 (§ 22–2304) or this section of the District Code. *Arnstein* v. *United States* (54 App. D. C. 199, 296 Fed. 946).

Defense

A defense to a charge of perjury may not be established by the device of lifting a statement of the accused out of its immediate context and thereby giving it a meaning wholly different from that which its context clearly shows. *Meyers* v. *United States* (C. A. D. C. 1948, 171 F. 2d 800, 84 U. S. App. D. C. 101, 181 F. 2d 802, 86 U. S. App. D. C. 320, certiorari denied 70 S. Ct. 1030, 339 U. S. 983, 94 L. Ed. 923).

Federal Penal Code

Had Congress intended that the perjury statute in the Federal Penal Code should have effect in the District of Columbia, it would have said so in clear language. *Carpenter* v. *United States* (69 App. D. C. 306, 100 Fed. (2d) 716).

Habeas Corpus

If it be assumed, arguendo, that the Court erred in its trial of a perjury committed before Congress in holding that three Senators (admittedly present) of a Congressional subcommittee were qualified, at most it was a mere error of law not subject to attack by habeas corpus. Habeas corpus does not lie to correct mere errors in law. Proper remedy is by appeal. *Meyers* v. *U. S.* (C. A. D. C. 1950, 181 F. 2d 802, 86 U. S. App. D. C. 320, certiorari denied, 70 S. Ct. 1030, 339 U. S. 983, 94 L. Ed. 923).

Instructions

In perjury prosecution, instructions charging jury on matter of corroboration were proper. *Buckner* v. *U. S.* (App. D. C. 1946, 154 F. 2d 317, 81 U. S. App. D. C. 38).

Issue

Question is not whether appellant made the statement voluntarily or involuntarily or whether the statement made was true or false, for it was not the truth or falsity of what he said which was involved, but simply the fact of his having said it. *O'Brien* v. *United States* (69 App. D. C. 135, 99 Fed. (2d) 368).

Marriage License

Under the statute defining perjury, generally, or by requirements of the statute which defines it in terms of false swearing by an applicant for a marriage license, the ultimate test of materialness in either case is whether such statements have a natural tendency to influence the clerk in his investigation of the facts, in the exercise of his official discretion, and in the administration of the law. *Robinson* v. *United States* (72 App. D. C. 254, 114 Fed. (2d) 475).

Materiality of Evidence

Perjury is committed when one states, contrary to his oath, any material matter which he does not believe to be true. *Pyle* v. *U. S.* (App. D. C. 1946, 156 F. 2d 852, 81 U. S. App. D. C. 209).

Although perjury must relate to a matter which was material to the issue, the materiality need not be immediate, but it is sufficient if the false testimony gives weight to or detracts from testimony as to material facts in issue. *Pyle* v. *U. S.* (App. D. C. 1946, 156 F. 2d 852, 81 U. S. App. D. C. 209).

Where defendant's testimony in prosecution of another for unlawful transportation of a girl for immoral purposes did not vary on issue of transportation from defendant's prior written statement, variations between statement and testimony on question of whether statement was given voluntarily, as to who paid rent on her apartment and other details, related to immaterial matters and furnished no basis for perjury charge. *Pyle* v. *U. S.* (App. D. C. 1946, 156 F. 2d 852, 81 U. S. App. D. C. 209).

Nature of

The criminal nature of perjury is not removed by the fact that the perjurer later in the proceedings states the truth. *Meyers* v. *United States* (C. A. D. C. 1948, 171 F. 2d 800, 84 U. S. App. D. C. 101, 181 F. 2d 802, 86 U. S. App. D. C. 320, certiorari denied, 70 S. Ct. 1030, 339 U. S. 983, 94 L. Ed. 923).

Number of Offenses

One making two false statements, one violating this section and the other violating Motor Vehicle Lien Law, § 40–714, commits two offenses, though both statements are under one oath. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

Perjury Before Congress

Where appellant was convicted of perjury before a Congressional committee, such conviction must be reversed where the committee did not constitute a quorum. All of the elements of the crime charged shall be proved beyond a reasonable doubt. An element of the crime of perjury is the presence of a competent tribunal, and a tribunal that is not competent, is no tribunal. *Christoffel* v. *United States,* 1949 (69 S. Ct. 1447, 338 U. S. 89, 93 L. Ed. 1826).

One may be indicted for perjury before Congress under this section. *Meyers* v. *United States* (C. A. D. C. 1948, 171 F. 2d 800, 84 U. S. App. D. C. 101, aff'd 181 F. 2d 802, 86 U. S. App. D. C. 320, certiorari denied, 70 S. Ct. 1030, 339 U. S. 983, 94 L. Ed. 923).

Reversal

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens

The act of prostitution was not an offense indictable at common law, so as to entitle a person accused thereof to a trial by jury under the Constitution of the United States. *Bailey* v. *United States* (69 App. D. C. 25, 98 Fed. (2d) 306).

WHITE SLAVE ACT

The transportation of a woman wholly within the District of Columbia with the intent or purpose to induce or entice the woman transported to practice prostitution violates the Mann Act, 18 U. S. C. § 398. *U. S.* v. *Beach,* 1945 (65 S. Ct. 602, 324 U. S. 193, 89 L. Ed. 569, opinion conformed to 149 F. 2d 837, reversed 89 L. Ed. 865).

The Mann Act, 18 U. S. C. § 398, penalizing the transportation in the District of Columbia of any woman with the intent or purpose to induce or entice the woman transported to practice prostitution does not conflict with any other legislation applicable to the District. *U. S.* v. *Beach,* 1945 (65 S. Ct. 602, 324 U. S. 193, 89 L. Ed. 865, opinion conformed to 149 F. 2d 837).

§ 22–2702. Repealed. Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.

Section, Act Aug. 15, 1935, 49 Stat. 651, ch. 546, § 2, related to inmate or frequenter of house of ill fame.

CROSS REFERENCES

Vagrants, see § 22–3302.

§ 22–2703 [6: 177c]. Suspension of sentence of guilty person—Conditions—Enforcement.

The court may impose conditions upon any person found guilty under the aforesaid sections 22–2701, 22–2702 and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The health officer of the District of Columbia, the Women's Bureau of the Police Department, the Board of Public Welfare, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 3.)

CROSS REFERENCE

Police matrons, §§ 4–116 to 4–118.

§ 22–2704 [6: 178]. Abducting, secreting, or enticing child from her home for purposes of prostitution—Harboring such child.

Any person who, for purposes of prostitution, persuades, entices, or forcibly abducts from her home or usual abode, or from the custody and control of her parents or guardian, any female under sixteen years of age shall be punished by imprisonment for not less than two nor more than twenty years; and whoever knowingly secretes or harbors any such female so persuaded, enticed, or abducted as aforesaid shall suffer imprisonment for not more than eight years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 813.)

CROSS REFERENCES

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

See §§ 22–2705, 22–2706.

§ 22–2705 [6: 179]. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

That any person who, within the District of Columbia shall place or cause, induce, procure, or compel the placing of any female in the charge or custody of any other person, or in a house of prostitution, with intent that she shall engage in prostitution, or who shall compel, induce, entice, or procure or attempt to compel, induce, entice, or procure any female to reside with any other person for immoral purposes or for the purpose of prostitution, or who shall compel, induce, entice, or procure or attempt to compel, induce, entice, or procure any such female to reside or continue to reside in a house of prostitution, or compel, induce, entice, or procure or attempt to compel, induce, entice, or procure her to engage in prostitution, or who takes or detains a female against her will, with intent to compel her by force, threats, menace, or duress to marry him or to marry any other person; or any parent, guardian, or other person having legal custody of the person of a female, who consents to her taking or detention by any person, for the purpose of prostitution or sexual intercourse, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than $1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 1; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 1.)

AMENDMENT

The 1941 amendment reworded this section throughout, broadened the scope of the offense, and provided that the offense should constitute a felony.

CROSS REFERENCES

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

See note to § 22–2704

NOTES TO DECISIONS

CROSS EXAMINATION

Appellant's contention that the trial court improperly restricted his cross examination of complaining witnesses is without foundation where the record shows that the court permitted extensive, and in fact, exhaustive cross examination, particularly on matters affecting the witnesses' credibility. *Wright* v. *United States* (C. A. D. C. 1950, 183 F. 2d 821).

INDICTMENT

It was proper to charge in first count of indictment that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and in second count to charge an attempt. *Welch* v. *U. S.,* 1943 (135 F. 2d 465, 77 U. S. App. D. C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

EVIDENCE

Evidence was sufficient to sustain conviction for attempting to compel, induce, entice, and procure a certain female to engage in prostitution. *Welch* v. *U. S.,* 1943 (135 F. 2d 465, 77 U. S. App. D. C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

VERDICT

Where first count of indictment charged that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and second count charged an

attempt, even if there had been inconsistency between directed verdict on first count and verdict finding defendants guilty on second count, that would constitute no reason for setting aside verdict of jury. *Welch* v. *U. S.*, 1943 (135 F. 2d 465, 77 U. S. App. D. C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

Where first count of indictment charged that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and second count charged an attempt, the fact that court directed a verdict on the first count and that jury convicted defendants on the second count resulted in no inconsistency. *Welch* v. *U. S.*, 1943 (135 F. 2d 465, 77 U. S. App. D. C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

§ 22–2706 [6: 180]. Compelling female to live life of prostitution against her will—Penalty.

Any person who, within the District of Columbia, by threats or duress, detains any female against her will, for the purpose of prostitution or sexual intercourse, or any person who shall compel any female, against her will, to reside with him or with any other person for the purposes of prostitution or sexual intercourse, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and a fine of not more than $1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 2; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 2.)

AMENDMENT

The 1941 amendment reworded this section throughout, broadened the scope of the offense, and provided that the offense should constitute a felony.

CROSS REFERENCES

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

See note to § 22–2704.

§ 22–2707 [6: 181]. Procurer—Punishment for receiving money or valuable thing for arranging assignation or debauchery—Penalty.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of arranging for or causing any female to have sexual intercourse with any other person or to engage in prostitution, debauchery, or any other immoral act, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and a fine of not more than $1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 3; Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 3.)

AMENDMENT

The 1941 amendment reworded this section throughout, broadened the scope of the offense, and increased the penalty.

NOTES TO DECISIONS

AMOUNT OF MONEY RECEIVED

Under this section, it is immaterial whether the procurer receives much or little and it is not important whether payment is made all at once in a lump sum or in scattered amounts at different times. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

BROTHEL KEEPERS

This section does not penalize brothel keeper as such or agents who procure patrons for brothels or for woman elsewhere so long as they do nothing toward bringing the woman there for that purpose and for money or value received. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

COHABIT, DEFINITION OF

The word "cohabit" as used in this section, making it unlawful for person to receive money or valuable thing for procuring or placing in house of prostitution or elsewhere any female for purpose of causing her illegally to cohabit with any male person or persons, covers promiscuous and casual relations and is not used in strict sense of cohabiting with a single person in manner of husband and wife. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

CONSTRUCTION

Where there had been contradictory rulings in district court in interpreting this section, neither interpretation could be taken to have settled the law or as showing intent of Congress. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Term "arranging" may include within its meaning the act of procuring as a part of the arrangement, but it certainly does not confine itself to only that activity and has much broader significance embracing many more activities than the one of procuring. *Byas* v. *United States* (C. A., D. C. 1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

CONVICTION, GROUNDS FOR

Under this section, the keeping and maintaining of a girl for prohibited purpose cannot be grounds for conviction. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

CROSS EXAMINATION

Appellant's contention that the trial court improperly restricted his cross examination of complaining witnesses is without foundation where the record shows that the court permitted extensive, and in fact, exhaustive cross examination, particularly on matters affecting the witnesses credibility. *Wright* v. *United States* (C. A., D. C. 1950, 183 F. 2d 821).

ELEMENTS NECESSARY

Under this section the placing of woman in house of prostitution or elsewhere for purpose of causing her to cohabit illegally with male person or persons and prohibited intent must coincide but payment for the placing need not do so and it may occur before, at, or after the placing, but whenever it takes place it must be for or on account of that act. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

EVIDENCE

Evidence of conditions of the defendant's house at the time of her arrest for violating statute, which established presence of the two women referred to in the indictment, was competent and relevant in proof of one element of each offense, i. e., "engagement in prostitution." *Smith* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 775).

INDICTMENT

To sustain conviction under this section, the government must charge and prove an act of procuring a woman for or placing her in a house of prostitution or elsewhere, for the purpose of causing her to cohabit illegally with a male person or persons, and that the defendant received money or other valuable thing for or on account of the procuring or placing. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Where appellant was convicted on seven counts of an eight count indictment of receiving money for arranging for one to engage in prostitution, with four counts relating to one female and three to another, the crimes charged in the several counts were of the same character, permitting joinder of the counts. *Smith* v. *U. S.* (C. A. D. C. 1950, 180 F. 2d 775).

INSTRUCTIONS

In prosecution for violating this section, instruction informing jury to find defendant guilty if jury believed defendant kept, placed, or maintained girl at premises for prohibited purpose was reversibly erroneous, since it permitted jury to find defendant guilty without regard to placing or the intent with which it was done. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

In prosecution for pandering, where defendant produced witnesses who testified to his general reputation, and court refused requested instruction on weight to be given to evidence of good character but expressed pur-

pose to instruct on the subject, failure to give instruction on weight to be given to evidence of good character was error. *Colbert* v. *U. S.*, 1944 (146 F. 2d 10, 79 U. S. App. D. C. 261).

An erroneous instruction may be withdrawn or corrected at any time, at least prior to the time the jury retires to deliberate. *Byas* v. *United States* (C. A. D. C. 1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

Where judge told the jury that the essential elements of the crime would have to be proved by the government beyond a reasonable doubt before verdict of guilty could be found and immediately thereafter in a concise statement he set out the elements, no error was committed. *Byas* v. *United States* (C. A. D. C. 1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

Objection to court's use of the word "arrange" is without merit since it needs no judicial definition. It is a common word and admits of no double entendre which casts an umbrage of legal nicety beyond its ordinary meaning. *Byas* v. *United States* (C. A. D. C. 1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

Offense, Gist of

Under this section, the gist of the offense is the placing of a female in a house of prostitution or elsewhere for purpose of causing her illegally to cohabit with any male person or persons and not the receiving of money. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Procuring Patrons

This section does not punish merely procuring patrons for a woman, or sharing her earnings, or keeping or maintaining her even with intent to cause her to cohabit illegally. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Review

In prosecution for violating this section, where arresting officer was permitted to testify that defendant and his daughter were registered at hotel as man and wife, whether testimony was properly allowed to remain in evidence for purpose of showing defendant's knowledge of his daughter's activities would not be determined where reversal was required on other grounds. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Defendant's contentions that this section outlaws only the act of placing, and that receiving money for or on account of some other act than placing, does not violate this section would be considered on merits notwithstanding claim that the contentions were too late because raised for the first time on appeal, in view of unusual circumstances in which appeal had been taken and perfected. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Court will not entertain an appeal based on a complaint that because of inartful exercise of his right to challenge jurors peremptorily, a party has created such prejudice as to deny himself a fair trial. *Byas* v. *United States* (C. A. D. C. 1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

Sentence

In prosecution for violating this section where defendant was convicted under separate counts which, in the light of evidence presented to sustain them, differed only in charging separate acts of receiving money for a single placing and where defendant was sentenced under each conviction, the sentence was invalid since it was a sentence for two crimes when only one had been charged. *Boykin* v. *U. S.*, 1942 (130 F. 2d 416, 76 U. S. App. D. C. 147).

Sufficiency of Evidence

Evidence clearly supports finding that appellant at least participated in arranging for a female to commit an act of prostitution with a police officer. *Byas* v. *United States* (C. A., D. C. 1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

§ 22–2708 [6: 182]. Punishment for causing wife to live in prostitution.

Any person who by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one nor more than ten years. (June 25, 1910, 36 Stat. 833, ch. 404, § 4.)

Cross Reference

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

§ 22–2709 [6: 183]. Punishment for detaining inmate in disorderly house for debt there contracted.

Any person or persons who attempt to detain any girl or woman in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one nor more than five years. (June 25, 1910, 36 Stat. 833, ch. 404, § 5.)

§ 22–2710 [6: 184]. Procurer for house of prostitution—Penalty.

Any person who, within the District of Columbia, shall pay or receive any money or other valuable thing for or on account of the procuring for, or placing in, a house of prostitution, for purposes of sexual intercourse, prostitution, debauchery, or other immoral act, any female, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than $1,000. (June 25, 1910, ch. 436, § 6, as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

§ 22–2711 [6: 185]. Procurer for third persons—Penalty.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any female shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than $1,000. (June 25, 1910, ch. 436, § 7, as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

§ 22–2712 [6: 186]. Running home of prostitution—Penalty.

Any person who, within the District of Columbia, knowingly, shall accept, receive, levy, or appropriate any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any female engaged in prostitution shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than $1,000. (June 25, 1910, ch. 404, § 8, as added by Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

§ 22–2713 [6: 184]. Premises occupied for lewdness, assignation, or prostitution declared nuisance.

Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place used for the purpose of lewdness, assigna-

tion, or prostitution in the District of Columbia is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 1.)

CROSS REFERENCE

Powers and duties of Metropolitan Police, §§ 4–145, 4–146.

NOTES TO DECISIONS

IN GENERAL

Intent of this act was "to enjoin and abate houses of lewdness, assignation, and prostitution" as therein defined, but to subject owners or lessees to the provisions of the act only when guilty knowledge was brought home to them. *Holmes* v. *United States* (50 App. D. C. 147, 269 Fed. 489, 12 A. L. R. 427).

§ 22–2714 [6: 185]. Abatement of nuisance under section 22–2713 by injunction—Temporary injunction—Effect of injunction.

Whenever a nuisance is kept, maintained, or exists as defined in sections 22–2710 to 22–2718 the attorney of the United States for the District of Columbia, or the Attorney-General of the United States, or any citizen of the District of Columbia, may maintain an action in equity in the name of the United States of America, upon the relation of such attorney of the United States for the District of Columbia, the Attorney-General of the United States, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days' notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the District of Columbia, and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 2.)

CROSS REFERENCE

See notes to § 22–2713.

§ 22–2715 [6: 186]. Abatement of nuisance under section 22–2713—Trial—Dismissal of complaint—Prosecution to judgment—Costs.

The action when brought shall be triable at the first term of court, after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the attorney of the United States for the District of Columbia or the Attorney-General of the United States of America in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, it may direct the attorney of the United States for the District of Columbia to prosecute said action to judgment; and if the action is continued more than one term of court, any citizen of the District of Columbia, or the attorney of the United States for the District of Columbia, may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 3.)

CROSS REFERENCE

See note to § 22–2713.

§ 22–2716 [6: 187]. Trials for violating injunction granted under section 22–2714—Punishment.

In case of the violation of any injunction granted under the provisions of section 22–2714, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral examination of the witnesses. A party found guilty of contempt, under the provisions of this section, shall be punished by a fine of not less than $200 nor more than $1,000 or by imprisonment in the District jail not less than three nor more than six months or by both fine and imprisonment. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 4.)

§ 22–2717 [6: 188]. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.

If the existence of the nuisance be established in an action as provided in sections 22–2713 to 22–2721, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in section 22–2716. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 5.)

§ 22–2718 [6:189]. Disposition of proceeds of sale.

The proceeds of the sale of the personal property, as provided in section 22–2717, shall be applied in the payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 6.)

§ 22–2719 [6:190]. Bond for abatement—Order for delivery of premises—Effect of release.

If the owner appears and pays all costs of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court or, in vacation, by the collector of taxes of the District of Columbia, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept within a period of one year thereafter, the court, or, in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner and said order of abatement canceled so far as the same may relate to said property; and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from judgment, lien, penalty, or liability to which it may be subject by law. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 7.)

§ 22–2720 [6:191]. Tax for maintaining such nuisance.

Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by sections 22–2713 to 22–2721, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of $300. The assessment of said tax shall be made by the assessor of the District of Columbia and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the chief of police, and a return of said assessment shall be made to the collector of taxes. Said tax shall be a perpetual lien upon all property, both personal and real, used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of said sections. (Feb. 7, 1914, 38 Stat. 282, ch. 16, § 8.)

§ 22–2721 [6:192]. Granting immunity to witnesses.

The United States district attorney or other attorney representing the prosecution for violation of sections 22–2713 to 22–2721, with the approval of the court, may grant immunity to any witness called to testify in behalf of the prosecution. (Feb. 7, 1914, 38 Stat. 282, ch. 16, § 9.)

§ 22–2722 [6:193]. Keeping bawdy or disorderly houses.

Any person convicted of keeping a bawdy or disorderly house shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both. (July 16, 1912, 37 Stat. 192, ch. 235, § 1.)

NOTES TO DECISIONS

APPEAL

On appeal from conviction of operating a disorderly house where defendant contended that hotel register was improperly admitted, being unlawfully seized property because warrant of arrest was void for insufficiency of supporting affidavit. Municipal Court of Appeals ordered warrant of arrest and supporting affidavit made part of record. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

ARREST

Affidavit for warrant of arrest, which merely recited police officer's legal conclusion that defendant was maintaining a disorderly house, and which was devoid of single recital of fact to support conclusion and referred to a name other than that of defendant, was insufficient to support warrant. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

COMPARING COMMON LAW

What may not have been an infamous crime at common law, may, by statute, be made such. In determining whether a crime is infamous, we must look to the penalty the law imposes, and though the crime of keeping a disorderly house may not have been an infamous crime at common law, it is within the power of Congress to impose a penalty that will make it such in the District of Columbia *Palmer* v. *Lenovitz* (35 App. D. C. 303).

EVIDENCE

Where warrant of arrest for maintaining disorderly house was void, the arrest, which was for a misdemeanor not committed in presence or within view of arresting officers, was unlawful and hotel register seized at time of arrest was unlawfully seized and inadmissible in evidence. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

In prosecution for maintaining disorderly house, admission in evidence of hotel register which was seized at time of defendant's arrest under void warrant, notwithstanding defendant's subsequent motion to suppress register as evidence, and objection at time of trial to its admission, was reversible error. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

Evidence was sufficient to sustain conviction for operating a disorderly house. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

INSTRUCTIONS

Instructions given to jury in prosecution for operating a disorderly house were not tainted with prejudicial error. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

PROBATION OFFICER RECOMMENDING SENTENCE

Where accused pleaded guilty to maintaining disorderly house and, on plea for probation, trial judge announced that probation officer had recommended maximum sentence and, on objection to consideration of recommendation, trial judge, without express ruling thereon, sentenced defendant to the near maximum penalty, sentence was set aside. *Ishkanian* v. *U. S.* (D. C. Mun. App. 1944, 35 A. 2d 176).

A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by §§ 24–101 to 24–105 but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Ishkanian* v. *U. S.* (D. C. Mun. App. 1944, 35 A. 2d 176).

QUESTIONS FOR COURT

In prosecution for maintaining disorderly house, objection to introduction of hotel register as unlawfully seized evidence because of invalidity of warrant of arrest raised question for judge presiding at trial. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

WAIVER

In prosecution for maintaining a disorderly house, defendant, by failing to move to quash warrant of arrest before he entered plea of not guilty, did not "waive" right to object to introduction of hotel register, seized at time of arrest, as unlawfully seized evidence. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

Chapter 28.—RAPE

Sec.
22–2801. Definition and penalty.

§ 22–2801 [6: 32]. Definition and penalty.

Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided,* That in any case of rape the jury may add to their verdict, if it be guilty, the words "with the death penalty," in which case the punishment shall be death by electrocution: *Provided further,* That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 808; Apr. 19, 1920, 41 Stat. 567, ch. 153, § 808; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1.)

AMENDMENT

The 1920 amendment deleted the words "for not less than five nor" which appeared in the 1901 act following the word "imprisoned;" the 1901 act contained the word "hanging" where the word "electrocution" now appears, the amendment being in conformity with the section of the 1925 act.

CROSS REFERENCE

Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

CONSTITUTIONALITY

This section which empowers the jury to add the words "with the death penalty" to verdict in cases of rape does not violate U. S. Const. Art. 3, § 2, cl. 3 and U. S. Const. Amend. 6, guaranteeing right to "jury trial" on theory that at the time of the adoption of the Constitution common-law juries did not fix penalty. *Lindsey* v. *U. S.*, 1943 (133 F. 2d 368, 77 U. S. App. D. C. 1).

CONTINUANCE

A general indignation toward those who commit rape is not regarded as "bias or prejudice", and it cannot be assumed in support of a motion for an indefinite continuance, on ground that alleged confession of another man to ten or more similar offenses has inflamed the mind of the community so that a particular defendant cannot receive a fair trial, that all juries impaneled at any given time will not give any defendant a fair trial. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 76 U. S. App. D. C. 29).

In rape prosecution, trial court did not err in denying defendant's motion for an indefinite continuance on ground that alleged confession of another man to ten or more similar offenses had inflamed the mind of the community so that defendant could not receive a fair trial where there was no specific showing of any kind in support of motion. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 76 U. S. App. D. C. 29).

DEATH PENALTY

Where evidence was sufficient to sustain verdict of guilty in prosecution for rape, jury had exclusive power to determine whether death penalty should be imposed. *Williams* v. *U. S.*, 1942 (131 F. 2d 21, 76 U. S. App. D. C. 299).

DEFENSE, REQUISITES OF

In prosecution for rape and robbery, the defendant did not have the obligation of making out a complete defense. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

DISCRETION OF COURT

In rape prosecution, record sustained trial court's determination, on motion for new trial, that evidence did not sustain charges that defendant was not competently represented by trial counsel. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, where hearing on motion for new trial had been continued over and over to allow some supposed new lead to be followed out and when, after final continuance had been granted, with court's insistence that hearing be brought to an end, defendant filed affidavits and insisted on cross-examining those who had made counter affidavits, but court took matter under advisement and at next sitting brought hearing to close without taking further evidence, action of court in determining the matter on affidavits was not an abuse of discretion. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

EVIDENCE

Where prosecuting witness is under age of consent her reputation for unchastity is inadmissible. Her reputation for truth and veracity may be attacked, as in the case of any other witness. *Sacks* v. *United States* (41 App. D. C 34). See also *Kidwell* v. *United States* (38 App. D. C. 566); *Monalokos* v. *United States* (41 App. D. C. 19).

Prosecuting witness in cases of rape may testify as to whether or not she made complaint, when and to whom, although the details of the disclosure are not admissible except on cross-examination or to confirm her testimony after it is impeached, or unless a part of the res gestae. *Harris* v. *United States* (50 App. D. C. 139. 269 Fed. 481), citing *Snowden* v. *United States* (2 App D. C. 89). See also *Lyles* v. *United States* (20 App. D. C 559); *Roney* v. *United States* (43 App. D. C. 533).

In prosecutions for statutory rape testimony of similar acts prior to the offense charged in the indictment is admissible. *Weaver* v. *United States* (55 App. D. C. 26. 299 Fed. 893).

On charge of carnal knowledge, evidence of subsequent marriage of parties is admissible. *Weaver* v. *United States* (55 App. D C. 26, 299 Fed. 893).

In prosecution for sex offenses, evidence of prior acts between the same parties is admissible as showing a disposition to commit the act charged, the probabilities being that the emotional predisposition or passion will continue. *Bracey* v. *U. S.* (App. D. C. 1944, 142 F. 2d 85, certiorari denied 64 S. Ct. 1274, 322 U. S. 762, 88 L. Ed. 1589).

In rape prosecution, where defense witness had testified to facts which, if believed, established defendant's innocence, and during cross-examination regarding interview with prosecutrix's mother, as to which defense witness had not testified on direct examination, witness denied that she had stated she believed defendant guilty, that he was facing the electric chair, and that she had to be on his side, but the prosecutrix's mother subsequently testified that the defense witness made such statements, evidence was admissible within the "self-contradiction rule," within the "impeachment rule," and for purpose of affecting credibility of defense witness by showing bias, and was not objectionable as being on "collateral matter." *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, evidence that defendant was present in apartment visiting with prosecutrix and another shortly before crucial time and spent night either in living room or in room across hall, that force was used

against door of prosecutrix's bedroom making a new break in already defective lock with no other evidence to explain the new condition, that complaint was made to friends within twelve hours, to police within 24 hours, and was followed by defendant's arrest and confrontation with prosecutrix and medical evidence that the prosecutrix had recently had intercourse for the first time, was sufficient "corroboration." *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 928, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution "corroboration," in the sense that there must be circumstances in proof which tend to support the prosecutrix's story, is required. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, testimony of complaining witness and the circumstantial evidence supporting it, which were sufficient to show that the intercourse occurred and took place by force and against her will, in the sense that her resistance was overcome by physical force and threats which put her in fear of her life, sustained jury's implicit finding that the act was without the "consent" of the complaining witness. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, "consent" is not shown when the evidence discloses resistance is overcome by threats which put the woman in fear of death or grave bodily harm or by those combined with some degree of physical force. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In prosecution for murder and rape, evidence regarding whether defendant's oral admissions against interest and his written confession were voluntary was sufficient to justify the submission of the issue of voluntariness to the jury. *Catoe* v. *U. S.*, 1942 (131 F. 2d 16, 76 U. S. App. D. C. 292).

Evidence was sufficient to sustain conviction for rape. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 75 U. S. App. D. C. 29).

In prosecution for carnally knowing and abusing a 12 year old girl, where defendant elected to defend on issue of conspiracy against himself, and the only evidence which he offered in support of that defense was that which he produced by cross-examination of his 11 year old daughter, who testified that she disliked her father, rebuttal testimony indicating that daughter's dislike was based on father's commission of similar offense against daughter was properly admitted. *Bracey* v. *U. S.*, 1944 (142 F. 2d 85, 79 U. S. App. D. C. 23, certiorari denied 64 S. Ct. 1274, 322 U. S. 762, 88 L. Ed. 1589).

Where record presented no reversible error and evidence supported conviction for rape, conviction was affirmed. *Clinton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 12).

Indictment

That indictment charging rape contained four counts relating to two acts of intercourse did not prejudice defendant, where defendant made no election, stated that he was ready to go to jury on all four counts, and in no way questioned charge allowing case to go to jury only on two counts charging carnal knowledge of a girl under age of consent because testimony was that complaining witness was under 16. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 76 U. S. App. D. C. 29).

That indictment charging rape was signed by an Assistant United States Attorney rather than by the United States Attorney concerned a "matter of form" which did not prejudice defendant. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 76 U. S. App. D. C. 29).

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

Instructions

In prosecution on two counts for assault with a dangerous weapon and on one count for rape, where court's charge did not discuss nor define offenses included within the indictment and jury were not told what assault with intent to rape was nor how it was distinguished from rape and were not informed that a verdict of not guilty might be returned, there was prejudicial error. *Williams* v. *U. S.*, 1942 (131 F. 2d 21, 76 U. S. App. D. C. 299).

In prosecution for rape and robbery, where pistol which victim stated assailant used, clothing which he said he had stolen and money which he had taken were not found in possession of defendant, neighbors testified to good character of defendant and to his having a night job at which he worked regularly, and thorough examination by police failed to shake statement of defendant that he had never seen the prosecuting witness before, such circumstances were important enough to be called to the attention of the jury to be weighed together with evidence in support of legal presumption of innocence. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

In prosecution for rape and robbery, failure to instruct jury in precise terms that a not guilty verdict was necessary in event of failure by the government to prove each of the elements of the offenses charged beyond a reasonable doubt was error requiring reversal, notwithstanding the court instructed that defendant was presumed to be innocent and that the government was obliged to rebut the presumption by proof of guilt beyond a reasonable doubt. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

In prosecution for rape and robbery, where verity of identification of accused by prosecuting witness was point on which case turned, failure to instruct jury in plain words that if circumstances of identification were not convincing, jury should acquit accused was error. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

In prosecution for rape and robbery where court referring to conditions obtaining at time of prosecuting witness' identification of accused stated that the jury should take into consideration the attitude of the prosecuting witness upon coming in view of the accused and that they should search their reasoning power regarding what motivated the selection of the accused from among all others, in view of fact that verity of identification was the point on which the case turned, the court should have cautioned that if the motivation was not convincing beyond a reasonable doubt the jury should find the defendant not guilty. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

Nothing suggests that the jury did not understand and respect the action and instructions of the court for unless it appears to the contrary, jurors should be presumed to have understood and followed the court's instructions. *Hall* v. *United States* (C. A., D. C. 1948, 171 F. 2d 347, 84 U. S. App. D. C. 209).

Mental Capacity

After conviction of rape, a sanity inquisition was denied when it did not occur to either his counsel or to the court that he was mentally irresponsible; and that during his examination and cross-examination, it did not "suggest, in the slightest degree, that defendant was not fully and entirely responsible from a mental standpoint." *Jackson* v. *United States* (58 App. D. C. 125, 25 Fed (2d) 549).

Evidence regarding insanity of defendant was insufficient to justify reversal of conviction for rape. *Holloway* v. *U. S.* (App. D. C. 1945, 148 F. 2d 665, 80 U. S. App. D. C. 3, certiorari denied 68 S. Ct. 1507, 334 U. S. 852, 92 L. Ed. 1774).

Plea of Guilty

This section authorizing jury to recommend death penalty in a rape case does not deprive court of inherent jurisdiction to accept plea of guilty, but defendant does

not have absolute right to plead guilty. *U. S.* v. *Willis* (D. C., D. C. 1948, 75 F. Supp. 628).

Plea of guilty of carnal knowledge, avoiding possibility of death sentence, was accepted in exercise of trial court's discretion, upon recommendation of United States Attorney and in view of facts of particular case. *U. S.* v. *Willis* (D. C., D. C. 1948, 75 F. Supp. 628).

QUESTIONS FOR JURY

In rape cases and other cases of the nature of a sexual assault, delay in making complaint is a subject for consideration of jury and may seriously affect credibility of complaining witness. *Stitely* v. *U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

RES GESTAE

In prosecution for rape of child about five years old, the statements of the child made to her grandmother on the same day of crime was admissible as part of the res gestae. *Snowden* v. *United States* (2 App. D. C. 89).

SUFFICIENCY OF EVIDENCE

Evidence warranted a conviction for rape, and death penalty therefor. *Holmes* v. *United States* (C. A. D. C. 1948, 171 F. 2d 1022, 84 U. S. App. D. C. 168).

TRIAL PROCEDURE

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In rape prosecution where during cross-examination defense witness, who had testified to facts which, if believed, established defendant's innocence, was asked whether in interview with prosecutrix's mother witness had given affirmative answer to question whether she thought defendant was guilty and prosecutrix's mother later testified that the defense witness stated that she believed defendant guilty, the province of the jury was not invaded. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

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In a prosecution for rape, the remarks of the prosecutor were improper where he asked defendant if he were a "sex fiend" since cross-examination is no place for argument or for vituperation; nor could a former offense be used for any other purpose than to reflect upon the credibility of appellant's testimony. *Hall* v. *United States* (C. A. D. C. 1948, 171 F. 2d 347, 84 U. S. App. D. C. 209).

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Carnal knowledge of child under age specified is rape. *Sanselo* v. *United States* (44 App. D. C. 508).

Chapter 29.—ROBBERY

Sec.
22–2901. Robbery.
22–2902. Attempt to commit robbery.

§ 22–2901 [6: 34]. Robbery.

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 810.)

CROSS REFERENCES

Grave robbery, § 22–3103.
Larceny, § 22–2201 et seq.
Possession of firearm, additional penalty, §§ 22–3201, 22–3202.

STATUTORY REFERENCE

Train robbery, U. S. C., title 18, § 522.

NOTES TO DECISIONS

ASSISTANCE OF COUNSEL

Where defendants, who allegedly entered plea of guilty at preliminary hearing to charge of robbery, were without counsel until arraignment but when counsel was assigned by court, defendants pleaded not guilty and adhered to the plea throughout trial and on appeal and denied that they had had hearing on robbery charge and claimed that they had pleaded guilty to misdemeanor charges only, in determining whether alleged plea of guilty at preliminary hearing was admissible, court was required to assume that defendants, who had not been asked whether they wanted counsel or informed regarding privilege against self-incrimination, did not know their rights and did not intend to waive them when they allegedly pleaded guilty. *Wood* v. *U. S.*, 1942 (128 F. 2d 265), 75 U. S. App. D. C. 274, 141 A. L. R. 1318).

CONSTITUTIONALITY

This section is valid. *Pope* v. *Huff*, 1944 (141 F. 2d 727, 79 U. S. App. D. C. 18).

DEFENSE, REQUISITES OF

In prosecution for rape and robbery, the defendant did not have the obligation of making out a complete defense. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

EVIDENCE

Where defendant, after arrest but prior to arraignment, denied having any connection with robbery but admitted being in company of two other men, charged with same offense, shortly before and shortly after the robbery, admission of evidence of defendant's statement was not error where statement was not claimed to have been coerced. *Sykes* v. *U. S.*, 1944 (143 F. 2d 140, 79 U. S. App. D. C. 97).

Housebreaking, robbery and burglary are merely aggravated forms of larceny and evidence competent in one case is competent, also, in the others. *Edwards* v. *U. S.*, 1944 (139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

In prosecution for robbery of a watch, a purse, a key, and $37 in money, admission of a watch, purse, key, and

against door of prosecutrix's bedroom making a new break in already defective lock with no other evidence to explain the new condition, that complaint was made to friends within twelve hours, to police within 24 hours, and was followed by defendant's arrest and confrontation with prosecutrix and medical evidence that the prosecutrix had recently had intercourse for the first time, was sufficient "corroboration." *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 928, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution "corroboration," in the sense that there must be circumstances in proof which tend to support the prosecutrix's story, is required. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, testimony of complaining witness and the circumstantial evidence supporting it, which were sufficient to show that the intercourse occurred and took place by force and against her will, in the sense that her resistance was overcome by physical force and threats which put her in fear of her life, sustained jury's implicit finding that the act was without the "consent" of the complaining witness. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, "consent" is not shown when the evidence discloses resistance is overcome by threats which put the woman in fear of death or grave bodily harm or by those combined with some degree of physical force. *Ewing* v. *U. S.*, 1942 (135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In prosecution for murder and rape, evidence regarding whether defendant's oral admissions against interest and his written confession were voluntary was sufficient to justify the submission of the issue of voluntariness to the jury. *Catoe* v. *U. S.*, 1942 (131 F. 2d 16, 76 U. S. App. D. C. 292).

Evidence was sufficient to sustain conviction for rape. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 75 U. S. App. D. C. 29).

In prosecution for carnally knowing and abusing a 12 year old girl, where defendant elected to defend on issue of conspiracy against himself, and the only evidence which he offered in support of that defense was that which he produced by cross-examination of his 11 year old daughter, who testified that she disliked her father, rebuttal testimony indicating that daughter's dislike was based on father's commission of similar offense against daughter was properly admitted. *Bracey* v. *U. S.*, 1944 (142 F. 2d 85, 79 U. S. App. D. C. 23, certiorari denied 64 S. Ct. 1274, 322 U. S. 762, 88 L. Ed. 1589).

Where record presented no reversible error and evidence supported conviction for rape, conviction was affirmed. *Clinton* v. *U. S.* (App. D. C. 1945, 151 F. 2d 12).

Indictment

That indictment charging rape contained four counts relating to two acts of intercourse did not prejudice defendant, where defendant made no election, stated that he was ready to go to jury on all four counts, and in no way questioned charge allowing case to go to jury only on two counts charging carnal knowledge of a girl under age of consent because testimony was that complaining witness was under 16. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 76 U. S. App. D. C. 29).

That indictment charging rape was signed by an Assistant United States Attorney rather than by the United States Attorney concerned a "matter of form" which did not prejudice defendant. *Robinson* v. *U. S.*, 1942 (128 F. 2d 322, 76 U. S. App. D. C. 29).

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

Instructions

In prosecution on two counts for assault with a dangerous weapon and on one count for rape, where court's charge did not discuss nor define offenses included within the indictment and jury were not told what assault with intent to rape was nor how it was distinguished from rape and were not informed that a verdict of not guilty might be returned, there was prejudicial error. *Williams* v. *U. S.*, 1942 (131 F. 2d 21, 76 U. S. App. D. C. 299).

In prosecution for rape and robbery, where pistol which victim stated assailant used, clothing which he said he had stolen and money which he had taken were not found in possession of defendant, neighbors testified to good character of defendant and to his having a night job at which he worked regularly, and thorough examination by police failed to shake statement of defendant that he had never seen the prosecuting witness before, such circumstances were important enough to be called to the attention of the jury to be weighed together with evidence in support of legal presumption of innocence. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

In prosecution for rape and robbery, failure to instruct jury in precise terms that a not guilty verdict was necessary in event of failure by the government to prove each of the elements of the offenses charged beyond a reasonable doubt was error requiring reversal, notwithstanding the court instructed that defendant was presumed to be innocent and that the government was obliged to rebut the presumption by proof of guilt beyond a reasonable doubt. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

In prosecution for rape and robbery, where verity of identification of accused by prosecuting witness was point on which case turned, failure to instruct jury in plain words that if circumstances of identification were not convincing, jury should acquit accused was error. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

In prosecution for rape and robbery where court referring to conditions obtaining at time of prosecuting witness' identification of accused stated that the jury should take into consideration the attitude of the prosecuting witness upon coming in view of the accused and that they should search their reasoning power regarding what motivated the selection of the accused from among all others, in view of fact that verity of identification was the point on which the case turned, the court should have cautioned that if the motivation was not convincing beyond a reasonable doubt the jury should find the defendant not guilty. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

Nothing suggests that the jury did not understand and respect the action and instructions of the court for unless it appears to the contrary, jurors should be presumed to have understood and followed the court's instructions. *Hall* v. *United States* (C. A., D. C. 1948, 171 F. 2d 347, 84 U. S. App. D. C. 209).

Mental Capacity

After conviction of rape, a sanity inquisition was denied when it did not occur to either his counsel or to the court that he was mentally irresponsible; and that during his examination and cross-examination, it did not "suggest, in the slightest degree, that defendant was not fully and entirely responsible from a mental standpoint." *Jackson* v. *United States* (58 App. D. C. 125, 25 Fed (2d) 549).

Evidence regarding insanity of defendant was insufficient to justify reversal of conviction for rape. *Holloway* v. *U. S.* (App. D. C. 1945, 148 F. 2d 665, 80 U. S. App. D. C. 3, certiorari denied 68 S. Ct. 1507, 334 U. S. 852, 92 L. Ed. 1774).

Plea of Guilty

This section authorizing jury to recommend death penalty in a rape case does not deprive court of inherent jurisdiction to accept plea of guilty, but defendant does

not have absolute right to plead guilty. *U. S.* v. *Willis* (D. C., D. C. 1948, 75 F. Supp. 628).

Plea of guilty of carnal knowledge, avoiding possibility of death sentence, was accepted in exercise of trial court's discretion, upon recommendation of United States Attorney and in view of facts of particular case. *U. S.* v. *Willis* (D. C., D. C. 1948, 75 F. Supp. 628).

QUESTIONS FOR JURY

In rape cases and other cases of the nature of a sexual assault, delay in making complaint is a subject for consideration of jury and may seriously affect credibility of complaining witness. *Stitely* v. *U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

RES GESTAE

In prosecution for rape of child about five years old, the statements of the child made to her grandmother on the same day of crime was admissible as part of the res gestae. *Snowden* v. *United States* (2 App. D. C. 89).

SUFFICIENCY OF EVIDENCE

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Chapter 29.—ROBBERY

Sec.
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§ 22–2901 [6: 34]. Robbery.

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In prosecution for robbery of a watch, a purse, a key, and $37 in money, admission of a watch, purse, key, and

a $5 bill, without testimony either of prosecuting witness or officer who allegedly took the articles from defendant, constituted reversible error upon ground that identification of articles was insufficient. *Smith* v. *U. S.* (App. D. C. 1946, 157 F. 2d 705).

Where testimony connecting defendant with another crime which had no connection with armed robbery for which he was being tried, was elicited by defendant's own counsel on cross-examination, admission of the testimony was no ground for reversal of conviction. *Felton* v. *U. S.* (C. A., D. C. 1948, 170 F. 2d 153, certiorari denied 69 S. Ct. 18, 335 U. S. 831, 93 L. Ed. 385).

"Force and Violence"

Intent of this section is to denounce pocket picking and the like, together with common-law robbery, under the single general name of "robbery." It is true that the provision for "sudden and stealthy seizure or snatching" is preceded by the phrase "by force and violence"; but the requirement for force is satisfied within the sense of the statute by an actual physical taking of the property from the person of another even without his knowledge and consent, and though the property be unattached to his person. *Turner* v. *United States* (57 App. D. C. 39, 16 Fed. (2d) 535).

Under this section conviction for "robbery" may be had though victim did not have knowledge of the theft at the time, since "stealth" necessarily connotes lack of knowledge on part of victim. *Spencer* v. *U. S.*, 1940 (116 F. 2d 801, 73 App. D. C. 98).

The force used to remove money from victim's pocket is sufficient "force or violence" within statute defining "robbery" as a taking by "force or violence," whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear. *Spencer* v. *U. S.*, 1940 (116 F. 2d 801, 73 App. D. C. 98).

Habeas Corpus

Where petitioners were arrested in Pennsylvania, charged with committing certain crimes in the District of Columbia, habeas corpus proceedings would be proper to raise jurisdictional questions respecting their removal to the District. *U. S.* v. *Reing* (D. C. E. D. Pa. 1948, 81 F. Supp. 367).

Immediate Actual Possession

"Immediate actual possession," within statute defining robbery as a taking from the "immediate actual possession" of another, refers to an area within which victim could reasonably be expected to exercise some physical control over his property. *Spencer* v. *U. S.*, 1940 (116 F. 2d 801, 73 App. D. C. 98).

The word "possession" in robbery statute is not used in strict larcenous sense, but is used in a colloquial sense, meaning nothing more than custody or control. *Neufield* v. *U. S.*, 1941 (118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

Indictment

Indictment, containing a single count, charged, in part, the commission of the offense "by force and violence, and against resistance, and by putting in fear, and by sudden and stealthy seizure and snatching." This was a proper and sufficient charge to support the conviction. *Tomlinson* v. *United States* (68 App. D. C. 106, 93 Fed. (2d) 652, 114 A. L. R. 1315).

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

Where this section did not itself express all of the elements of the crime of robbery at common law but Congress meant to make robbery a crime and by "robbery" meant robbery in the usual common-law sense of the term except as expanded by this section it was necessary and permissible for indictment to overlap this section in order to charge crime of robbery. *Neufield* v. *U. S.*, 1941 (118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

It was proper to charge in robbery indictment that money taken from named individual was property of bank and that money was stolen, notwithstanding fact that robbery statute did not express the elements of common-law robbery that the property shall belong to some one other than the robber, and that it shall be stolen. *Neufield* v. *U. S.*, 1941 (118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

Instructions

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Where defendant's counsel had characterized person reporting alleged robbery as a "busybody," court's charge that it was duty of citizens to report felonies and that if there was a robbery persons reporting it could not be characterized as "busybodies" was proper. *Beck* v. *U. S.*, 1944 (140 F. 2d 169, 78 U. S. App. D. C. 10).

In prosecution for robbery, where defendants had denied that they were present at robbery, charge that if jury found that defendants were present jury could consider whether denial of presence was due to consciousness of guilt or some other reason was not improper. *Beck* v. *U. S.*, 1944 (140 F. 2d 169, 78 U. S. App. D. C. 10).

The absence from the trial of an eyewitness to the robbery of which defendant was convicted was not prejudicial, where court instructed the jury in effect that they might infer from the witness' absence that his testimony would not be favorable to the government. *Furqueron* v. *U. S.* (App. D. C. 1946, 158 F. 2d 193).

In robbery prosecution, where defendant's testimony was that a robbery occurred and that he participated in it, both before and after, with an interlude of nonparticipation, court's statement to jury that defendant claimed that he had repented and voluntarily withdrawn from robbery was not improper. *Vinci* v. *U. S.* (App. D. C. 1947, 159 F. 2d 777).

Purpose

The purpose of Congress in enacting this section was to expand the common-law definition of robbery so that

it would comprehend the taking by sudden or stealthy seizure or snatching. *Neufield* v. *U. S.*, 1941 (118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

SENTENCE

Application for habeas corpus was premature when it challenged the validity of consecutive sentences as the first sentence of robbery had not expired. *Johnson* v. *Aderhold* ((C. C. A. 5), 73 Fed. (2d) 102).

What is maximum sentence for robbery. *McDonald* v. *Johnston* ((C. C. A. 9), 86 Fed. (2d) 329).

SUFFICIENCY OF EVIDENCE

Evidence sustained conviction for robbery. *Bullock* v. *U. S.* (App. D. C. 1946, 157 F. 2d 702).

In robbery prosecution, where defendant claimed that he acted under compulsion by another after having intended only an extortion, evidence justified conviction. *Vinci* v. *U. S.* (App. D. C. 1947, 159 F. 2d 777).

TRIAL PROCEDURE

In prosecution for rape, and for robbery of cleaning establishment, where court warned defendant's counsel that if he asked question of witness regarding whether defendant had been identified as the man who robbed another cleaning establishment about a week prior to the commission of the offenses involved, he would do so at his peril, refusal to allow the contradiction of witness' answer was proper. *McKenzie* v. *U. S.*, 1942 (126 F. 2d 533, 75 U. S. App. D. C. 270).

§ 22–2902 [6: 35]. Attempt to commit robbery.

Whoever attempts to commit robbery, as defined in section 22–2901, by an overt act, shall be imprisoned for not more than three years or be fined not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 811.)

CROSS REFERENCE

Possession of fire arm, additional penalty, §§ 22–3201, 22–3202.

NOTES TO DECISIONS

ACQUITTAL ON ONE COUNT, EFFECT

Under this section and § 22–2901, attempted robbery or actual robbery is possible without assault, and acquittal of assault with intent to rob does not require acquittal of attempted robbery. *Pope* v. *Huff*, 1944 (141 F. 2d 727, 79 U. S. App. D. C. 18).

INDETERMINATE SENTENCE ACT

Sentence fixing a maximum of twelve years conformed with the act of July 15, 1932, as did the minimum period of three years, being for a minimum period "not exceeding one-fifth of the maximum period fixed by law." *McDonald* v. *Johnston* ((C. C. A. 9), 86 Fed. (2d) 329).

INDICTMENT

Under this section robbery includes taking by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, and to charge a taking "by force and violence, and by sudden and stealthy seizure, and against resistance, and by putting in fear" did not constitute a misjoinder of actions in a single count. *Turner* v. *United States* (57 App. D. C. 39, 16 Fed. (2d) 535).

INFAMOUS CRIME

Robbery is an infamous crime, and must be prosecuted by indictment. *United States* v. *Evans* (28 App. D. C. 264).

Chapter 30.—SEDUCTION

Sec.
22–3001. Seduction.
22–3002. Seduction by teacher.

§ 22–3001 [6: 172]. Seduction.

If any person shall seduce and carnally know any female of previous chaste character, between the ages of sixteen and twenty-one years, out of wedlock, such seduction and carnal knowledge shall be deemed a misdemeanor, and the offender, being convicted thereof, shall be punished by imprisonment for a term not exceeding three years, or fined not exceeding two hundred dollars or may be punished by both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 873.)

NOTES TO DECISIONS

CHASTITY

Virginity is the test of chastity *Bray* v. *United States* (39 App. D. C. 600)

EVIDENCE

Subsequent misconduct of prosecutrix with others is inadmissible "unless, perhaps, when improper relations with others follow closely upon the commission of the offense by the accused, and are preceded by proof of circumstances tending to show that the prosecutrix had not been previously chaste." *Bray* v. *United States* (39 App. D. C. 600).

PROMISE OF MARRIAGE

"The object of the statute is to protect the chaste virgin against betrayal from an honest belief in the betrayer's protestations of love and affection, or an existing promise of marriage, or a present unqualified promise of marriage as an inducement for the commission of the act," but does not cover a promise of marriage contingent upon pregnancy resulting from the intercourse. *Hamilton* v. *United States* (41 App. D. C. 359).

SUBSEQUENT MARRIAGE

Subsequent marriage of the parties is no bar to prosecution. *Bray* v. *United States* (39 App. D. C. 600).

§ 22–3002 [6: 173]. Seduction by teacher.

Any male person, over twenty-one years of age, who is superintendent, tutor, or teacher in any public or private school, seminary, or other institution, or instructor of any female in any branch of instruction, who has sexual intercourse with any female under twenty-one years of age and not under sixteen years of age, with her consent, while under his instruction during the term of his engagement as superintendent, tutor, or teacher, shall be imprisoned for not less than one year nor more than ten. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 871; June 30, 1902, 32 Stat. 535, ch. 1329.)

AMENDMENT

The act of 1902 inserted the words "and not under sixteen years of age."

Chapter 31.—TRESPASS—INJURIES TO PROPERTY

Sec.
22–3101. Forcible entry and detainer.
22–3102. Unlawful entry on private property.
22–3103. Grave robbery—Buying or selling dead bodies.
22–3104. Depredation on fixtures in houses.
22–3105. Placing explosives with intent to destroy or injure property.
22–3106. Stealing or injuring books, manuscripts, publications, works of art.
22–3107. Destroying or defacing public records.
22–3108. Cutting down or destroying things growing on the land of another.
22–3109. Destroying boundary trees.
22–3110. Destroying trees or protections thereto on public grounds—Fastening horses thereto.
22–3111. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.
22–3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

Sec.
22–3113. Destroying or defacing building material for streets.
22–3114. Destroying cemetery railing or tomb.
22–3115. Offenses against property of electric lighting, heating, or power companies.
22–3116. Tapping gas pipes.
22–3117. Tapping or injuring water-pipes—Tampering with water meters.
22–3118. Maliciously making water impure.
22–3119. Placing obstructions on or displacement of railway tracks.
22–3120. Obstructing public road—Removing milestones.
22–3121. Obstructing public highway.
22–3122. Fines under section 22–3121 to be collected in name of United States.

§ 22–3101 [6: 56]. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than one year or a fine of not more than one hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 851.)

CROSS REFERENCES

Jurisdiction of municipal court, § 11–735.
Trespassing for purpose of shooting or hunting, § 22–1617.

§ 22–3102 [6: 57]. Unlawful entry on private property.

Any person who, without lawful authority, shall enter, or attempt to enter, a private dwelling or building against the will of the lawful occupant thereof, or being therein, without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful occupant thereof; or any person who, without lawful authority, shall enter, or attempt to enter, an unoccupied private dwelling or building against the will or consent of the lawful owner thereof, or his duly authorized agent, or being therein, without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful owner thereof, or his duly-authorized agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars or imprisonment in the jail for not more than six months, or both, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 824; Mar. 4, 1935, 49 Stat. 37, ch. 23.)

AMENDMENT

The act of 1935 added the clause relating to unlawful entry of an unoccupied private dwelling. The penalty was the same.

NOTES TO DECISIONS

JURISDICTION OF COURTS

Under section 603 of Title 11, the police court had jurisdiction of information charging that accused unlawfully entered and unlawfully declined to leave dwelling house in District of Columbia. *Fletcher* v. *McMahon,* 1941 (121 F. 2d 729, 73 App. D. C. 263, certiorari denied 62 S. Ct. 131, 314 U. S. 662, 86 L. Ed. 531).

JURISDICTION TO SENTENCE

Appellant having been convicted in police court under this section appealed the case and by so doing deprived lower court of jurisdiction, and they had no power to commit appellant to jail. *Prioleau* v. *Superintendent of Wash. Asylum and Jail* (55 App. D. C. 99, 2 Fed. (2d) 317).

§ 22–3103 [6: 269]. Grave robbery—Buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 891.)

CROSS REFERENCE

Other provision concerning unlawful traffic in dead bodies, § 2–206.

§ 22–3104 [6: 58]. Depredation on fixtures in houses.

Whoever shall wilfully and without color of right enter into any occupied or unoccupied dwelling-house or other building, property of another, and shall cut, break, or tear from its place any gas-pipe, water-pipe, door-bell, or other fixture therein; or whoever shall in such dwelling-house or other building wilfully and without color of right cut, break, or tear down any wall or part of a wall, or door, with intent to cut, break, or tear from its place any pipe or fixture therein, shall be fined not more than two hundred dollars, or be imprisoned not more than two years, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 825.)

§ 22–3105 [6: 59]. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding ten years. (Mar. 3, 1905, 33 Stat. 1033, ch. 1461, § 825a.)

§ 22–3106 [6: 63]. Stealing or injuring books, manuscripts, publications, works of art.

Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the District of Columbia or of any individual or corporation in said District, or who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, print, engraving, medal, newspaper, or work of art, the property of the United States, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than ten dollars nor more than one thousand dollars, and by imprisonment for not less than one month nor more than one year, or both, for every such offense. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 849; June 30, 1902, 32 Stat. 535, ch. 1329.)

AMENDMENT

The act of 1902 inserted after the words "United States" the words "or of the District of Columbia."

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 102.

§ 22–3107 [6: 87]. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than three hundred dollars or imprisoned not more than two years or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 844.)

§ 22–3108 [6: 91]. Cutting down or destroying things growing on the land of another.

Whoever maliciously cuts down or destroys by girdling or otherwise, any standing or growing vine, bush, shrub, sapling, or tree on the land of another, or severs from the land of another any product standing or growing thereon, or any other thing attached thereto, shall, if the value of the thing destroyed or the amount of damage done to any such thing or to the land is fifty dollars or more, be imprisoned for not less than one year nor more than three years, or, if such value or amount is less than that sum, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 847; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

COMPILER'S NOTE

This section may partially supersede § 22–3110.

AMENDMENT

The act of 1937 increased the value from $35 to $50.

§ 22–3109 [6: 92]. Destroying boundary trees.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person's own land so cutting down and destroying the same, shall be fined not more than one thousand dollars and imprisoned not exceeding one year. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 880.)

§ 22–3110 [6: 93]. Destroying trees or protections thereto on public grounds—Fastening horses thereto.

It shall not be lawful for any person or persons to girdle, break, wound, destroy, or in any manner injure any of the trees growing or planted and set, or which may hereafter be planted and set on any of the public grounds, open space, or squares or on any private lot, or on any of the streets, or avenues, roads or highways, in the District of Columbia, or any of the boxes, stakes, or any other protection thereof, under a penalty of not exceeding fifty dollars for each and every such offense; and if any person or persons shall tie or in any manner fasten a horse or horses to any of the trees, boxes, or other protection thereof on any streets or avenues, roads, or highways, on any of the public grounds belonging to the United States, or on any of the streets, avenues, or alleys, in the District of Columbia, each and every such offender shall forfeit and pay for each offense a sum not exceeding ten dollars. (July 29, 1892, 27 Stat. 324, ch. 320, § 13.)

COMPILER'S NOTE

This section is superseded in part by § 22–3108.

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–3111 [6: 94]. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall, upon conviction thereof, be fined not more than fifty dollars. (July 29, 1892, 27 Stat. 325, ch. 320, § 15.)

COMPILER'S NOTE

This section contains the last part of the Act of July 29, 1892, 27 Stat. 325, ch. 320, § 15. The first part of § 15 of said act appears herein as § 4–120.

CROSS REFERENCE

Prosecutions, § 22–109.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 101. The remainder of the section says: "The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and to the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia."

§ 22–3112 [6: 95]. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

It shall not be lawful for any person or persons to wilfully or wantonly destroy, injure, disfigure, cut, chip, break, deface, or cover or rub with or otherwise place filth or excrement of any kind upon any property, public or private, in the District of Columbia, or any public or private building, statue, monument, office, dwelling or structure of any kind, or which may be in course of erection, or the doors, windows, steps, railing, fencing, balconies, balustrades, stairs, porches, or halls, or the walls or sides, or the walls of any inclosure thereof; or to write, mark, or paint obscene or indecent words or language thereon, or to draw, paint, mark, or write obscene or indecent figures representing obscene or indecent objects; or to write, mark or draw, or paint any other word, sign, or figure thereon, without the consent of the owner or proprietor thereof, or, in case of public property, of the person having charge, custody, or control thereof, under penalty of a fine not to exceed one hundred dollars, or imprisonment not to exceed six months, or both such fine and impris-

onment. (July 29, 1892, 27 Stat. 322, ch. 320, § 1; July 8, 1898, 30 Stat. 723, ch. 638; Apr. 21, 1906, 34 Stat. 126, ch. 1647.)

AMENDMENTS

The 1898 act repealed this section.

The 1906 amendment added the words "wilfully or wantonly" and increased the penalty from a fine of $50 to that set out in this section.

CROSS REFERENCE

Prosecution, § 22–109.

NOTES TO DECISIONS

APPLICATION OF SECTION

This section does not apply to the destruction of movable property (see § 22–403). *Nation* v. *District of Columbia* (34 App. D. C. 453, 26 L. R. A. (N. S.) 996).

INDICTMENT OR INFORMATION

The value of the injured property need not be alleged or proved in prosecutions under this section. *Nation* v. *District of Columbia* (34 App. D. C. 453, 26 L. R. A. (N. S.) 996).

§ 22–3113 [6: 96]. Destroying or defacing building material for streets.

It shall not be lawful for any person or persons to destroy, break, cut, disfigure, deface, burn, or otherwise injure any building materials, or materials intended for the improvement of any street, avenue, alley, foot pavement, roads, highways, or inclosure, whether public or private property, or remove the same (except in pursuance of law or by consent of the owner) from the place where the same may be collected for purposes of building or improvement as aforesaid; or to remove, cut, destroy, or injure any scaffolding, ladder, or other thing used in or about such building or improvement, under a penalty of not more than twenty-five dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 2.)

CROSS REFERENCE

Prosecutions, § 22–109.

§ 22–3114 [6: 97]. Destroying cemetery railing or tomb.

If any person shall maliciously cut down, demolish, or otherwise injure any railing, fence, or inclosure around or upon any cemetery, or shall injure or deface any tomb or inscription thereon, he shall be fined not more than one hundred dollars. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 850.)

§ 22–3115 [6: 72]. Offenses against property of electric lighting, heating, or power companies.

Whoever shall knowingly connect or disconnect any electrical conductor belonging to any company using or engaged in the manufacture and supply of electric current for purposes of light, heat, and power, or either of them, or makes any connection with any such electrical conductor for the purpose of using or wasting the electric current, or who in any wise tampers with any meter used to register current consumed, or who interferes with the operating of any dynamo or other electrical appliance of such company, or tampers with or interferes with the poles, wires, conduits, or other apparatus used by such companies, unless such person or persons shall be duly authorized by or be in the employ of such company, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both. (June 30, 1902, 32 Stat. 534, ch. 1329, § 826a.)

§ 22–3116 [6: 73]. Tapping gas pipes.

Any person who, with intent to injure or defraud any gas company in the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same, or cause it to be connected with any main service pipe or other pipe for conducting or supplying illuminating gas in such manner as to connect with and be calculated to supply illuminating gas to any burner or orifice by which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering of the quantity of gas there consumed, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months or by fine not exceeding two hundred and fifty dollars. (June 23, 1874, 18 Stat. 280, ch 480, § 15.)

§ 22–3117 [6: 74]. Tapping or injuring water-pipes—Tampering with water meters.

Any person who, with intent to injure or defraud the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same or cause it to be connected with any water main or service pipe or other pipe for conducting or supplying Potomac water, in such manner as to pass or carry the water, or any portion thereof, around or without passing through the meter provided for the measuring and registering of the Potomac water supplied to any premises, or who shall, without permission from the commissioners of the District of Columbia, tamper with or break any water meter or break the seal thereof, or in any manner change the reading of the dial thereof, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months, or by fine not exceeding two hundred and fifty dollars. (Apr. 5, 1892, 27 Stat. 14, ch. 34.)

§ 22–3118 [6: 74a]. Maliciously making water impure.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the city of Washington, becomes impure, filthy, or unfit for use, shall be fined not less than $500 nor more than $1,000, or imprisoned at hard labor not more than three years nor less than one year. (R. S., § 1806; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

COMPILER'S NOTE

This section was not contained in the 1929 code but appeared in the supplement thereto.

STATUTORY REFERENCE

This section is in U. S. C., title 40, § 58.

§ 22–3119 [6: 90]. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or

displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than ten years. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 846.)

§ 22–3120 [6: 310]. Obstructing public road—Removing milestones.

If any person shall alter or in any manner obstruct or encroach on a public road, or cut, destroy, deface, or remove any milestones set up on such road, or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted, and, upon conviction thereof before the proper court, shall be fined or imprisoned, in the discretion of the court, according to the nature of the offense. (R. S., D. C., § 268.)

§ 22–3121 [6: 311]. Obstructing public highway.

Any person who, without lawful authority, shall obstruct the free use of any of the public highways, which had been used and recognized as public county roads for twenty-five years prior to May 3, 1862, and which were thereafter duly surveyed, recorded, and declared public highways according to law, shall be subject to a fine for each offense of not less than one hundred nor more than two hundred and fifty dollars and be imprisoned till the fine and the costs of suit and collection of the same are paid. (R. S., D. C., § 269.)

§ 22–3122 [6: 312]. Fines under section 22–3121 to be collected in name of United States.

The fines provided for in section 22–3121 shall be collected in the name of the United States. (R. S., D. C., §§ 1, 2, 96, 270; June 11, 1878, 20 Stat. 102, ch. 180.)

NOTES TO DECISIONS

NEGLIGENCE OF MUNICIPAL OFFICERS

District of Columbia is a municipal corporation and is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks, as resulted in personal injuries to individuals. *District of Columbia* v. *Woodbury* (136 U. S. 450, 34 L. Ed. 472, 10 Sup. Ct. 990).

Chapter 32.—WEAPONS

Sec.

22–3201. Possession, sale, transfer, and use of dangerous weapons—Definition.
22–3202. Committing crime when armed—Added punishment.
22–3203. Persons convicted of crime forbidden to possess a pistol.
22–3204. Carrying concealed weapons.
22–3205. Exceptions to section 22–3204.
22–3206. Issue of licenses to carry pistol.
22–3207. Selling pistol to minors and others.
22–3208. Transfers of firearms regulated.
22–3209. Dealers of weapons to be licensed.
22–3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.
22–3211. False information forbidden in sale of weapons.
22–3212. Alteration of identifying marks of weapons prohibited.
22–3213. Exceptions.
22–3214. Possession of certain dangerous weapons prohibited—Exceptions.
22–3215. Penalties.
22–3216. Constitutionality.

§ 22–3201 [6: 116a]. Possession, sale, transfer, and use of dangerous weapons—Definition.

"Pistol," as used in this chapter, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this chapter, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this chapter, means any firearm which shoots automatically or semi-automatically more than twelve shots without reloading.

"Person," as used in this chapter, includes individual, firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this chapter, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence," as used in this chapter, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary. (July 8, 1932, 47 Stat. 650, ch. 465, § 1.)

COMPILER'S NOTE

Section 17 of the act of July 8, 1932, 47 Stat. 654, ch. 465 repealed §§ 855 to 857 of the "Code of Law for the District of Columbia, 1919." This is obviously an error and was meant to repeal §§ 855 to 857 of the Code of 1901. These sections were compiled in the 1929 edition of the Code as title 6, §§ 114 to 116.

CROSS REFERENCE

Other provisions concerning regulations of firearms, § 1–227 and notes.

§ 22–3202 [6: 116b]. Committing crime when armed—Added punishment.

If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years. (July 8, 1932, 47 Stat. 650, ch. 465, § 2.)

NOTES TO DECISIONS

INDICTMENT

The words "said defendants being then and there armed with a certain pistol" were considered as mere surplusage to an indictment for robbery and not to charge a sepa-

rate offense for the purpose of increasing the punishment. *Tomlinson* v. *United States* (68 App. D. C. 106, 93 Fed. (2d) 652, 114 A. L. R. 1315).

§ 22–3203 [6: 116c]. Persons convicted of crime forbidden to possess a pistol.

No person who has been convicted in the District of Columbia or elsewhere of a crime of violence shall own or have in his possession a pistol, within the District of Columbia. (July 8, 1932, 47 Stat. 651, ch. 465, § 3.)

§ 22–3204 [6: 116d]. Carrying concealed weapons.

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed: *Provided,* That arrests, without a warrant, and searchers and seizures pursuant thereto, may be made for violation of this section, by police officers, as in the case of a felony, upon probable cause that the person arrested is violating this section at the time of the arrest; but no evidence discovered in the course of any arrest, search, or seizure authorized by this proviso shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was carrying a pistol or other dangerous weapon on or about his person. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469.)

AMENDMENTS

The act of Nov. 4, 1943, cited to text, amended section by inserting word "either openly or" preceding "concealed on or about", and by adding "capable of being so concealed" following "deadly or dangerous weapon."

Act of Aug. 4, 1947, cited to text, added the proviso.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

"The defendant had a right to carry the revolver, loaded or unloaded, from the place of purchase to his home; and whether he had it on his person at the time of his arrest, for that purpose only, or for some unlawful purpose as well, was a question of fact, which should have been submitted to the jury." *Bell* v. *United States* (49 App. D. C. 367, 265 Fed. 1007).

D. C. 1929, title 6, § 114, permitted the carrying of a dangerous or deadly weapon from the place of purchase to the purchaser's dwelling or place of business, especially when person was conducting himself in a quiet, peaceable, and orderly manner. *Bolt* v. *United States* (55 App. D. C. 120, 2 Fed. (2d) 922).

BURDEN OF PROOF

The elements of the crime being the carrying of a pistol, without a license, the burden of proceeding does not shift to the defendant once the prima facie case of carrying the weapon has been established but remains with the prosecution. *Brown* v. *United States* (D. C. Mun. App. 1949, 66 A. 2d 491).

CONCEALED ABOUT HIS PERSON

"The words 'concealed about his person,' as used in the statute, were intended to mean and do mean concealed in such proximity to the person as to be convenient of access and within reach." *Brown* v. *United States* (58 App. D. C. 311, 30 Fed. (2d) 474).

CONSTRUCTION

The statute being criminal, penal, prohibitive and in derogation of the common law it must be given a strict rather than liberal construction. *Brown* v. *United States* (D. C. Mun. App. 1949, 66 A. 2d 491).

The qualifying phrase "without a license" is not to be treated as an exception to the statute but rather as a descriptive part of the offense, an "adjectival" or descriptive negative defining the corpus delicti. The phrase is incorporated in the definition forming an integral element of the crime. *Brown* v. *United States* (D. C. Mun. App. 1949, 66 A. 2d 491).

EVIDENCE

In prosecution for carrying a pistol without a license, prosecution need not prove that pistol was carried openly or was concealed, in view that it is an offense under this section to carry a pistol without a license irrespective of whether pistol was carried openly or concealed. *U. S.* v. *Waters* (D. C., D. C. 1947, 73 F. Supp. 72, 175 F. 2d 340, 84 U. S. App. D. C. 127, appeal dismissed 69 S. Ct. 168, 335 U. S. 869, 93 L. Ed. 413).

Evidence that defendant taxicab driver did not need to move from front seat of his taxicab to obtain his pistol established that he had pistol "about his person" within this section prohibiting a party from carrying about his person a pistol without license. *U. S.* v. *Waters* (D. C., D. C. 1947, 73 F. Supp. 72, 175 F. 2d 340, 84 U. S. App. D. C. 127, appeal dismissed 69 S. Ct. 168, 335 U. S. 869, 93 L. Ed. 413).

INDICTMENT

Indictment charging defendant with carrying a pistol but failing to charge, as required by this section, that pistol was carried by defendant without a license failed to charge an offense. *U. S.* v. *Waters* (D. C., D. C. 1947, 73 F. Supp. 72, 175 F. 2d 340, 84 U. S. App. D. C. 127, appeal dismissed 69 S. Ct. 168, 335 U. S. 869, 93 L. Ed. 413).

PLACE OF BUSINESS

Provision of this section prohibiting a person from carrying a pistol without a license "except in his dwelling house or place of business or on other land possessed by him" manifests the intent that the "place of business" referred to is land, and would not apply so as to exempt a taxicab driver who carried a pistol without a license while in his taxicab, since the cab would not be the driver's "place of business". *U. S.* v. *Waters* (D. C., D. C. 1947, 73 F. Supp. 72, 175 F. 2d 340, 84 U. S. App. D. C. 127, appeal dismissed 69 S. Ct. 168, 335 U. S. 869, 93 L. Ed. 413).

POSSESSION OF FIREARMS

This section clearly establishes that possession of a firearm in one's home is not a crime. *Morton* v. *United States* (C. A. D. C. 1950, 183 F. 2d 844).

§ 22–3205 [6: 116e]. Exceptions to section 22–3204.

The provisions of section 22–3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in

moving goods from one place of abode or business to another. (July 8, 1932, 47 Stat. 651, ch. 465, § 5.)

§ 22–3206 [6: 116f]. Issue of licenses to carry pistol.

The superintendent of police of the District of Columbia may, upon the application of any person having a bona fide residence or place of business within the District of Columbia or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol within the District of Columbia for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed. The license shall be in duplicate, in form to be prescribed by the commissioners of the District of Columbia and shall bear the name, address, description, photograph, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, and the duplicate shall be retained by the superintendent of police of the District of Columbia and preserved in his office for six years. (July 8, 1932, 47 Stat. 651, ch. 465, § 6.)

§ 22–3207 [6: 116g]. Selling pistol to minors and others.

No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is a drug addict, or is a person who has been convicted in the District of Columbia or elsewhere of a crime of violence or, except when the relation of parent and child or guardian and ward exists, is under the age of eighteen years. (July 8, 1932, 47 Stat. 652, ch. 465, § 7.)

§ 22–3208 [6: 116h]. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law-enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number of the pistol to be purchased and a statement that he has never been convicted in the District of Columbia or elsewhere of a crime of violence. The seller shall, within six hours after such application, sign and attach his address and deliver one copy to such person or persons as the superintendent of police of the District of Columbia may designate, and shall retain the other copy for six years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22–3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers. (July 8, 1932, 47 Stat. 652, ch. 465, § 8.)

§ 22–3209 [6: 116i]. Dealers of weapons to be licensed.

No retail dealer shall within the District of Columbia sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as provided in section 22–3210. No wholesale dealer shall, within the District of Columbia, sell, or have in his possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack. (July 8, 1932, 47 Stat. 652, ch. 465, § 9.)

COMPILER'S NOTE

This section may supersede § 47–2340.

CROSS REFERENCE

License fee prescribed, § 47–2440.

§ 22–3210 [6: 116j]. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

The commissioners of the District of Columbia may, in their discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in section 22–3209, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is a drug addict or has been convicted in the District of Columbia or elsewhere of a crime of violence or is under the age of eighteen years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22–3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia.

4. A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the commissioners, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

5. A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for

the purpose, the form of which may be prescribed by the commissioners of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model. and manufacturer's number of the weapon, and a statement signed by the purchaser that he has never been convicted in the District of Columbia or elsewhere of a crime of violence. One copy of said record shall, within seven days, be forwarded by mail to the superintendent of police of the District of Columbia and the other copy retained by the seller for six years.

6. No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section. (July 8, 1932, 47 Stat. 652, ch. 465, § 10.)

CROSS REFERENCE

Annual dealer's license, § 47–2340.

§ 22–3211 [6: 116k]. False information forbidden in sale of weapons.

No person shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine gun, sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his identity. (July 8, 1932, 47 Stat. 653, ch. 465, § 11.)

§ 22–3212 [6: 116*l*]. Alteration of identifying marks of weapons prohibited.

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia: *Provided, however*, That nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work. (July 8, 1932, 47 Stat. 653, ch. 465, § 12.)

§ 22–3213 [6: 116m]. Exceptions.

This chapter shall not apply to toy or antique pistols unsuitable for use as firearms. (July 8, 1932, 47 Stat. 653, ch. 465, § 13.)

§ 22–3214 [6: 116n]. Possession of certain dangerous weapons prohibited—Exceptions.

No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a black-jack, slung shot, sand club, sandbag, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: *Provided, however,* That machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law-enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money. securities, or other valuables, wholesale dealers and retail dealers licensed under section 22–3210. (July 8, 1932, 47 Stat. 654, ch. 465, § 14.)

§ 22–3215 [6: 116*o*]. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both. (July 8, 1932, 47 Stat. 654, ch. 465, § 15.)

§ 22–3216 [6: 116p]. Constitutionality.

If any part of this chapter is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this chapter. (July 8, 1932, 47 Stat. 654, ch. 465, § 16.)

Chapter 33.—VAGRANCY

Sec.
22–3301. Repealed.
22–3302. "Vagrants" defined.
22–3303. Prosecutions—Burden of proof to show lawful employment.
22–3304. Penalty—Conditions imposed by court.
22–3305. Prosecutions.
22–3306. Right to strike or picket not abrogated.

§ 22–3301. Repealed. Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.

Section was based on Act July 29, 1892, 27 Stat. 323, ch. 320, § 8; July 8, 1898, 30 Stat. 723, ch. 638; Mar. 3, 1909, 35 Stat. 711, ch. 250, and is now covered by remainder of this chapter.

§ 22–3302. "Vagrants" defined.

The following classes of persons shall be deemed vagrants in the District of Columbia:

(1) Any person known to be a pickpocket, thief, burglar, confidence operator, or felon, either by his own confession or by his having been convicted in the District of Columbia or elsewhere of any one of such offenses or of any felony, and having no lawful employment and having no lawful means of support realized from a lawful occupation or source, and not giving a good account of himself when found loitering around in any park, highway, public building, or other public place, store, shop, or reservation, or at any public gathering or assembly.

(2) Any person upon whom shall be found any instrument, tool, or other implement for picking locks or pockets or that is usually employed or reasonably may be employed in the commission of any crime who shall fail satisfactorily to account for the possession of the same.

(3) Any person leading an immoral or profligate life who has no lawful employment and who has no

lawful means of support realized from a lawful occupation or source.

(4) Any person who keeps, operates, frequents, lives in, or is employed in any house or other establishment of ill fame, or who (whether married or single) engages in or commits acts of fornication or perversion for hire.

(5) Any person who frequents or loafs, loiters, or idles in or around or is the occupant of or is employed in any gambling establishment or establishment where intoxicating liquor is sold without a license.

(6) Any person wandering abroad and lodging in any grocery or provision establishment, vacant house, or other vacant building, outhouse, market place, shed, barn, garage, gasoline station, parking lot, or in the open air, and not giving a good account of himself.

(7) Any person wandering abroad and begging, or who goes about from door to door or places himself in or on any highway, passage, or other public place to beg or receive alms.

(8) Any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself.

(9) And all persons who by the common law are vagrants, whether embraced in any of the foregoing classifications or not. (Dec. 17, 1941, 55 Stat. 808, ch. 589, § 1.)

REPEALS

Sec. 5 of the act of Dec. 17, 1941, cited to text, repealed § 22–2702 and § 22–3301.

It is also provided: "This act shall not be construed as repealing or amending any other acts of Congress, but shall be taken as supplementary thereto."

NOTES TO DECISIONS

AUTHORITY OF POLICE OFFICER

Police officer who saw defendant loitering around bus terminal and mingling with the crowd and recognized him as a professional pickpocket was authorized, under subsec. (1) of this section, to question defendant, and, upon defendant's failure to give a good account of himself, to place defendant under arrest. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

CONFESSION

In vagrancy prosecution, on conflicting evidence regarding whether statement voluntarily given by defendant immediately after her arrest was intended for health department only, trial judge was justified in admitting the statement as a "confession." *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

This section should not be so construed as to bar from society or intercourse with other human beings persons who have been convicted of crime and have served the sentence imposed. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

In prosecution for vagrancy, where arresting officer, who was sole witness, testified that defendant was loitering at bus terminal and mingling with the crowd and that officer recognized defendant as a professional pickpocket and that defendant, after his arrest, admitted that federal bureau of investigation record showing prior convictions was correct, conviction did not depend solely upon an uncorroborated "confession." *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

CONSTRUCTION

This section is in nature of a police regulation to prevent crime, and was enacted for the enforcement of good order and public safety, and must be construed in view of that purpose. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

The purpose of this chapter is to prevent crimes which may likely flow from vagrant's mode of life. *District of Columbia* v. *Hunt* (App. D. C. 1947, 163 F. 2d 833, 82 U. S. App. D. C. 159).

CONTINUANCE

In prosecution for vagrancy, the continuance of defendant's trial for three days at request of prosecution was a matter in discretion of trial court which was not unreasonably exercised. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

DEFENSES

The mere irregularity of trying accused on vagrancy charge after he was validly arrested on a warrant charging disorderly conduct was no defense to the vagrancy charge. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

DEGREE OF PROOF

To convict under this section, it must be shown that defendant was found prowling around one of the public places mentioned in this section, and that he was doing so while having no visible and lawful means of support, and that he was a person known to be pickpocket, thief or burglar. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

In prosecution for vagrancy, defendant has no burden to prove lawful employment or means of support until government has first proved other elements of offense. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

Where vagrancy information charged that each defendant was a person who frequented and was employed in a house of ill fame and who engaged in and who committed acts of fornication for hire, statement of intermediate appellate court that government was required to prove that each individual frequented the house and that each engaged in acts of fornication for hire was erroneous. *District of Columbia* v. *Hunt* (App. D. C. 1947, 163 F. 2d 833, 82 U. S. App. D. C. 159).

Appellant's own admission, not only to the officers but at the trial that she was "living" at the premises which were shown to be a house of ill fame, was sufficient to establish her guilt of "frequenting" such an establishment. *Wilson* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

DOUBLE JEOPARDY

Fact that defendant, who allegedly sold liquor in railroad station without a license, was previously prosecuted for disorderly conduct, indecent exposure, solicitation to prostitution, violation of the A. B. C. Laws, and drinking in public, and was convicted of some of such offenses, did not preclude subsequent prosecution for vagrancy, on ground that such prosecution constituted double jeopardy, though testimony and witnesses employed in prior prosecutions were the same as those used in the vagrancy prosecution. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

EVIDENCE

In vagrancy prosecution, testimony of arresting officer regarding character of certain women with whom defendant had been seen was admissible. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

In vagrancy prosecution where defendant's witness testified that defendant had been working for witness, question whether witness carried a number of girls on his pay roll for purpose of showing that they worked for him when in fact they were nothing more than prostitutes constituted proper cross-examination. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

Evidence was sufficient to sustain conviction on charge of vagrancy. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

Where defendant was arrested for vagrancy on Sunday, July 4, but criminal division of the Municipal Court was in session Monday notwithstanding that Monday was a

legal holiday and defendant was not taken into court until Tuesday, defendant's detention was unlawful and testimony of arresting officer in vagrancy prosecution as to admissions made to him by defendant after arrest was improperly admitted. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, evidence that defendant was moving about after midnight in a crowd on a loading platform at bus terminal, and that defendant was observed mingling with crowds on loading platform at a second bus terminal on two other occasions on same night, established that defendant was "loitering" and failed to give a good account of himself within this section. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, defendant's admission at trial of accuracy of his criminal record produced by prosecution satisfied burden of prosecution of proving by confession or conviction defendant's criminal record. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, in absence of any proof on behalf of defendant of lawful employment or means of support, evidence which was adequate to prove other elements of the offense justified conviction. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

Where defendant was arrested without warrant Friday evening and could have been taken to court for arraignment on Saturday but was not taken into court until Tuesday, the detention was unlawful, and, in prosecution for vagrancy which followed, admission of statements made by defendant to arresting officer was error notwithstanding statements were made at time of arrest and while detention was still lawful. *Hayes* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

In vagrancy prosecution based on defendant's acts in railroad station, employees at station were properly permitted to testify for the government, over objection that they were biased. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

Evidence that defendant had offered girls in railroad station money to commit an immoral act, that he had looked into a window of a girls' dormitory, that he had entered women's restroom, and that he sold liquor in railroad station without a license, was sufficient to establish that he led an "immoral or profligate life" within meaning of paragraph (3) of this section. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

One standing on a platform for the primary purpose of picking a pocket is loitering within the meaning of the statute. *Williams* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).

Statements made by the operator of house of ill fame, in appellant's presence while they were both under arrest, to the effect that appellant was visiting her and that she was operating a house of ill fame, were hearsay, but since such statements were received without objection, the trial judge had a right to consider them along with defendant's silence. *Wilson* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

Contention that trial court erred in basing conviction for act of fornication for hire, when there had been no direct proof, is without merit under the rule of *District of Columbia* v. *Hunt* (82 U. S. App. D. C. 159, 163 F. 2d 833), since government's failure to prove expressly that she engaged in acts of fornication or perversion for hire is not fatal to prosecution so long as proof of the other violation is sufficient to sustain the conviction. *Wilson* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

Facts produced at the trial and all reasonable inferences therefrom do not support a conviction for vagrancy. *Hainsworth* v. *District of Columbia* and *Dawson* v. *District of Columbia* (D. C. Mun. App. 1950, 72 A. 2d 776).

Harmless or Prejudicial Error

In prosecution for vagrancy, where elements of offense required by this chapter to be established by prosecution were prima facie proven by record of defendant's convictions, and evidence of loitering and circumstantial incidents of defendant's conduct immediately before arrest and any possible deficiency was supplied by defendant's own testimony, error in admitting testimony of arresting officer as to admissions made to him by defendant after arrest, by reason of defendant's unlawful detention, did not require a reversal. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

Jury Trial

In vagrancy prosecution, the defendant was not entitled to a jury trial. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

Nature of Vagrancy

"Vagrancy" is a status or condition and this section punishes one for being a certain kind of person, not for doing of an overt act, and crime is personal and individual and cannot be committed jointly or in concert, since in essence it is a personal condition arrived at not instantaneously but by a mode of living. *Hunt* v. *District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

This section denounces and makes punishable being in a state of vagrancy rather than the particular conduct enumerated in this section as evidencing or characterizing such condition. *District of Columbia* v. *Hunt* (App. D. C. 1947, 163 F. 2d 833, 82 U. S. App. D. C. 159).

Statute prescribes as an element of the offense of vagrancy (a) defendant's notoriety as a pickpocket, etc., either by his own confession or by earlier conviction, and (b) his not giving a good account of himself when found loitering and apprehended. When these elements have been established, the statute says that defendant shall have the burden of showing that he has lawful employment or lawful means of support realized from a lawful occupation or source. *Williams* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).

Waiver

In vagrancy prosecution, motion of defendant for dismissal, made at conclusion of Government's case, was "waived" when defendant offered testimony in her own behalf. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

In vagrancy prosecution, motion of defendant for a finding of not guilty at conclusion of government's case, apparently denied by trial court, was not error where the record did not show that such a motion was made; and even if made, it was waived when defendant offered testimony in her own behalf. *Wilson* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

§ 22–3303. Prosecutions—Burden of proof to show lawful employment.

In all prosecutions under paragraphs 1 or 3 of section 22–3302 the burden of proof shall be upon the defendant to show that he has lawful employment or has lawful means of support realized from a lawful occupation or source. (Dec. 17, 1941, 55 Stat. 809, ch. 589, § 2.)

NOTES TO DECISIONS

Generally

In vagrancy prosecutions, the burden was on defendant to establish, and not on the Government to disprove, legitimacy of defendant's employment. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

Constitutionality

Provision of this section placing on defendant the burden of proving lawful employment or lawful means of support realized from a lawful occupation or source, after prosecution has first proved, or offered evidence tending to prove, the other elements of the offense, is constitutional. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

Provision of this section placing on defendant the burden of proving lawful employment or lawful means of support realized from a lawful occupation or source, after prosecution has first proved, or offered evidence tending to prove, the other elements of the offense, is constitutional. *Rogers* v. *District of Columbia* (D. C. 1943, 31 A. 2d 649).

EVIDENCE

In prosecution for vagrancy where government established a prima facie case, defendant's uncontradicted and uncorroborated statement that he had been doing light work on his father-in-law's farm, in absence of testimony as to details of work or compensation or as to when work ceased was insufficient to discharge defendant's burden of proving that he had lawful means of support realized from a lawful occupation or source. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

Where appellant says he was entitled to an acquittal because he offered evidence to show "lawful employment," when taken with the government's testimony, presented a question of fact, and we cannot say the trial judge decided incorrectly. *Williams* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).

GOVERNMENT'S BURDEN

In prosecution against three defendants for vagrancy for frequenting and being employed in a house of ill-fame, government had burden of proving that each defendant frequented the house and that each engaged in acts of fornication for hire. *Hunt* v. *District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

In vagrancy prosecution, wherein evidence was introduced that defendant sold liquor in railroad station without a license, burden was shifted to defendant to establish, and was not on the government to disprove, legitimacy of employment. *Davenport* v. *District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

§ 22–3304. Penalty—Conditions imposed by court.

Any person convicted of vagrancy under the provisions of sections 22–3302 to 22–3306 shall be punished by a fine of not more than $300 or imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. The court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The health officer of the District of Columbia, the Women's Bureau of the Police Department, the Board of Public Welfare, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Dec. 17, 1941, 55 Stat. 809, ch. 589, § 3.)

§ 22–3305. Prosecutions.

All prosecutions under sections 22–3302 to 22–3306 shall be in the police court of the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. (Dec. 16, 1941, 55 Stat. 810, ch. 589, § 4.)

NOTES TO DECISIONS

CONSOLIDATION OF TRIALS

Where information charged accused with vagrancy in being employed in house of ill fame, and informations charging other two defendants were similar except that period of time over which alleged vagrancy had continued differed in each case, and only common ground between the acts of all defendants was that they took place at designated address and "divers other places in the District of Columbia," and there was no conspiracy or joint commission of crime alleged, granting consolidation of trials against all defendants was error. *Hunt* v. *District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

Where information charged accused with vagrancy in being a person leading an immoral and profligate life and in being employed in house of ill fame, and vagrancy informations against two other defendants charged some similar acts, granting consolidations of trials against all defendants was error. Rules Regulating Practice before Criminal Division of Municipal Court for District. *District of Columbia* v. *Hunt* (App. D. C. 1947, 163 F. 2d 833, 82 U. S. App. D. C. 159).

§ 22–3306. Right to strike or picket not abrogated.

Nothing in sections 22–3302 to 22–3306 shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right to picket. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 6.)

Chapter 34.—MISCELLANEOUS

Sec.
22–3401. "Gift enterprise" defined.
22–3402. Gift enterprise—Prohibited.
22–3403. Gift enterprise—Penalty.
22–3404. Kosher meat—Sale—Labeling—Signs displayed where kosher and nonkosher meats are sold.
22–3405. Kosher meat—"Meat"—"Person"—Definition.
22–3406. Kosher meat—Penalties.
22–3407. Limitation of hours of daily service for laborers and mechanics on public works.
22–3408. Penalty for violation of section 22–3407.
22–3409. Mislabelling potatoes.
22–3410. Mislabelling potatoes—Sign to show grade.
22–3411. Mislabelling potatoes—Law not applicable to seed potatoes.
22–3412. Mislabelling potatoes—Penalties.
22–3413. Procuring enlistment of criminals.
22–3414 Use of flag for advertising purposes—Mutilation of flag.
22–3415. Discrimination by proprietors of theaters against persons wearing uniform of Army, Navy, Coast Guard, or Marine Corps.
22–3416. Sale of unwholesome food prohibited.
22–3417. "Food" defined.
22–3418. Duty of health officer.
22–3419. Commissioners to make rules and regulations.
22–3420. Prosecutions for violations.
22–3421. Penalty for violation.
22–3422. Sections 22–3416 to 22–3422 supplemental to Federal Food, Drug, and Cosmetic Act.

§ 22–3401 [6: 313]. "Gift enterprise" defined.

Every person who shall sell or offer for sale any real estate or article of merchandise of any description whatever, or any ticket of admission to any exhibition or performance, or other place of amusement, with a promise, expressed or implied, to give or bestow, or in any manner hold out the promise of gift or bestowal, of any article or thing, for and in consideration of the purchase by any person of any other article or thing, whether the object shall be for individual gain or for the benefit of any institution of whatever character, or for any purpose whatever, shall be regarded as a gift enterprise. (Leg. Assem., Aug. 23, 1871, p. 96, ch. 69, § 21.)

§ 22–3402 [6: 314]. Gift enterprise—Prohibited.

It shall be unlawful for any person or persons to engage in said gift enterprise business in any manner

as defined in section 22–3401 of this title or otherwise. (R. S., D. C., § 1176.)

§ 22–3403 [6: 315]. Gift enterprise—Penalty.

Every person who shall in any manner engage in any gift-enterprise business in the District shall, on conviction thereof in the police court, on information filed for and on behalf of the District, pay a fine not exceeding one thousand dollars, or be imprisoned in the District jail not less than one nor more than six months, or both, in the discretion of the court. (R. S., D. C., § 1177.)

§ 22–3404 [6: 261]. Kosher meat — Sale — Labeling — Signs displayed where kosher and nonkosher meats are sold.

It shall be unlawful for any person—

(a) To sell or offer for sale within the District of Columbia as kosher, any meat which is not kosher;

(b) To label or brand as kosher any meat, or the package containing any meat, sold or offered for sale or prepared within the District of Columbia, which is not kosher; or

(c) To sell or offer for sale within the District of Columbia in the same place of business both kosher and nonkosher meats, (1) without displaying conspicuously in said place of business a sign in block letters at least four inches in height containing the words "kosher and nonkosher meat sold here," and (2) without displaying over such kosher meat the words "kosher meat" and over such nonkosher meat the words "nonkosher meat," in block letters at least four inches in height. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 1.)

§ 22–3405 [6: 262]. Kosher meat—"Meat"—"Person"—Definition.

As used in sections 22–3404 to 22–3406—

(a) The term "meat" includes raw meat and meat prepared for human consumption, whether alone or in combination with other products;

(b) The term "person" means individual, partnership, corporation, or association. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 2.)

§ 22–3406 [6: 263]. Kosher meat—Penalties.

Any person who violates any provision of sections 22–3404 to 22–3406 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment; but no person shall be convicted of any such violation in respect of any meat which was not kosher at the time he acquired such meat, if he acquired it in good faith as kosher from a person duly authorized in accordance with the orthodox Hebrew ritual to prepare kosher. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 3.)

§ 22–3407 [6: 307]. Limitation of hours of daily service for laborers and mechanics on public works.

The service and employment of all laborers and mechanics who were on March 3, 1901, or may thereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day; and it shall be unlawful for any officer of the United States Government or of the District of Columbia, or any such contractor or subcontractor, whose duty it shall be to employ, direct, or control the service of such laborers or mechanics, to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 892.)

STATUTORY REFERENCE

For similar provisions, see U. S. C., title 40, § 321.

NOTES TO DECISIONS

CONSTITUTIONALITY

Act March 3, 1901, similar to this act, was held constitutional. *Penn Bridge Co.* v. *United States* (29 App. D. C. 452).

EXTRAORDINARY EMERGENCY

"In this statute the term 'extraordinary emergency' imports a sudden and unexpected happening; an unforeseen occurrence or condition calling for immediate action to avert imminent danger to health, or life, or property; an unusual peril, actual and not imaginary, suddenly creating a situation so different from the usual or ordinary course in the prosecution of the public work that the court may and must conclude that Congress contemplated excepting from the operation of this law such an occurrence, so sudden, rare, and unforeseen." *Penn Bridge Co.* v. *United States* (29 App. D. C. 452).

Whether the evidence offered tends to prove the existence of such an emergency is a question of law for the court. *Penn Bridge Co.* v. *United States* (29 App. D. C. 452).

§ 22–3408 [6: 308]. Penalty for violation of section 22–3407.

Any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor, whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of section 22–3407 for each and every such offense shall be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or both. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 893.)

STATUTORY REFERENCE

For similar provisions, see U. S. C., title 40, § 322.

§ 22–3409 [6: 162]. Mislabelling potatoes.

No person, firm, or corporation shall sell, offer for sale, keep, or expose for sale in the District of Columbia potatoes in any package which is not plainly marked or labeled with the name of the United States grade which represents a standard no higher than the actual grade of potatoes contained therein: *Provided, however,* That the term "unclassified" or "ungraded" may be used. The superintendent of weights, measures, and markets shall administer sections 22–3409 to 22–3412 and the commissioners of the District of Columbia are authorized to establish necessary rules and regulations therefor. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 1.)

CROSS REFERENCE

Rules and regulations, publication and effect, §§ 4–177, 4–178.

§ 22–3410 [6: 162a]. Mislabelling potatoes — Sign to show grade.

No person, firm, or corporation shall sell, offer for sale, keep or expose for sale in the District of Columbia any potatoes otherwise than in packages as provided in section 22–3409 without having plainly and conspicuously displayed in proximity to said potatoes a printed sign where it may readily be seen and in letters of not less than one-half inch high printed in Gothic type clearly and distinctly stating the United States grade of said potatoes. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 2.)

§ 22–3411 [6: 162b]. Mislabelling potatoes—Law not applicable to seed potatoes.

The provisions of sections 22–3409 to 22–3412 shall not apply to officially certified seed potatoes which meet the grade or certification requirements as labeled and which are sold exclusively for seed purposes, provided they are sold in original packages and bear the official seal and certification of the department of agriculture of the State or country where the potatoes were grown. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 3.)

§ 22–3412 [6: 162c]. Mislabelling potatoes—Penalties.

Any person, firm, or corporation which shall violate any provisions of sections 22–3409 to 22–3412 shall be fined not more than $50 for the first offense and not more than $200 for each subsequent offense. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 4.)

§ 22–3413 [6: 316]. Procuring enlistment of criminals.

It shall be unlawful for any person, with knowledge of the fact, to present or offer to any recruiting agent or officer, or any muster-in officer in the United States military or naval service, either as a volunteer or as a substitute for any person, any person charged with the commission of any criminal offense, and confined or held on bail for the trial of such offense within the District; and it shall in like manner be unlawful for any person, in any way or manner, to abet, aid, or assist in procuring the offer or acceptance of any person so charged or held for trial, or released on bail and awaiting trial, either as a volunteer or as a substitute for any person drafted, or liable to draft, in the military or naval service of the United States, whether the person so drafted, or liable to draft, shall be a resident of the District, or shall reside elsewhere. And any person who shall knowingly offend against any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than two hundred and fifty dollars and not more than one thousand dollars, and by imprisonment in the District jail for a term not less than six months nor more than one year. (R. S., D. C., § 1179.)

§ 22–3414 [6: 268]. Use of flag for advertising purposes—Mutilation of flag.

Any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, colors or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, colors or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words "flag, standard, colors, or ensign," as used herein, shall include any flag, standard, colors, ensign or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. (Feb. 8, 1917, 39 Stat. 900, ch. 34.)

STATUTORY REFERENCE

This section is in U. S. Code, title 4, § 3.

§ 22–3415. Discrimination by proprietors of theaters against persons wearing uniform of Army, Navy, Coast Guard, or Marine Corps.

No proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia shall make, or cause to be made, any discrimination against any person lawfully wearing the uniform of the Army, Navy, Coast Guard, or Marine Corps of the United States because of that uniform, and any person making, or causing to be made, such discrimination shall be guilty of a misdemeanor, punishable by a fine not exceeding $500. (Mar. 1, 1911, 36 Stat. 963, ch. 187; Aug. 24, 1912, 37 Stat. 512, ch. 387, § 1; Jan. 28, 1915, 38 Stat. 800, ch. 20.)

AMENDMENTS

The 1911 act referred to the District of Alaska.

The Territory of Alaska was organized by the 1912 act cited to the text.

The 1915 act created the Coast Guard Service by combining the existing Life-Saving Service and the Revenue-Cutter Service.

§ 22–3416. Sale of unwholesome food prohibited.

No person shall sell, or cause to be sold, or offer for sale any food which is unwholesome or unfit for use. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 1.)

NOTES TO DECISIONS

CONSTRUCTION WITH OTHER LAWS

This section prohibiting the sale of unwholesome food in the District of Columbia does not, as does the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. § 331 (a, g), cover manufacture as well as sale, and it does not, as does 21 U. S. C. § 342 (a) (3, 4), cover food which is adulterated without being unwholesome or unfit for use. *Rubenstein v. U. S.* (App. D. C. 1946, 153 F. 2d 127).

§ 22–3417. "Food" defined.

For the purposes of sections 22–3416 to 22–3422 the term "food" means any article used for consumption by a human being or an animal. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 2.)

§ 22–3418. Duty of health officer.

It shall be the duty of the health officer of the District of Columbia, and he or his duly appointed agent is hereby authorized, to inspect all food possessed or offered for sale, and condemn, denature, destroy, seize or remove such food as may be unfit for consumption. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 3.)

§ 22–3419. Commissioners to make rules and regulations.

The Commissioners of the District of Columbia are authorized to make such rules and regulations as may be necessary to carry out the provisions of sections 22–3416 to 22–3422. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 4.)

§ 22–3420. Prosecutions for violations.

Prosecutions for violations of any of the provisions of sections 22–3416 to 22–3422 or of any regulations promulgated thereunder shall be on information in the police court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 5.)

§ 22–3421. Penalty for violation.

Any person violating any of the provisions of sections 22–3416 to 22–3422 or any of the regulations promulgated thereunder shall, upon conviction, be fined not more than $300 or imprisoned for not more than ninety days. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 6.)

§ 22–3422. Sections 22–3416 to 22–3422 supplemental to Federal Food, Drug, and Cosmetic Act.

Sections 22–3416 to 22–3422 shall in no respect be considered as a repeal of any of the provisions of the Federal Food, Drug, and Cosmetic Act, but shall be construed as supplemental thereto. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 7.)

Chapter 35—SEXUAL PSYCHOPATHS

Sec.
22–3501. Indecent acts—Children.
22–3502. Sodomy.
22–3503. Definitions.
22–3504. Filing of statement.
22–3505. Right to counsel.
22–3506. Examination by psychiatrists.
22–3507. When hearing is required.
32–3508. Hearing—Commitment to Saint Elizabeths hospital.
22–3509. Parole—Discharge.
22–3510. Stay of criminal proceedings.
22–3511. Criminal law unchanged.

§ 22–3501. Indecent acts—Children.

(a) Any person who shall take, or attempt to take any immoral, improper, or indecent liberties with any child of either sex, under the age of sixteen years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child shall be imprisoned in a penitentiary, not more than ten years.

(b) Any such person who shall, in the District of Columbia, take any such child or shall entice, allure, or persuade any such child, to any place whatever for the purpose either of taking any such immoral, improper, or indecent liberties with such child, with said intent or of committing any such lewd, or lascivious act upon or with the body, or any part or member thereof, of such child with said intent, shall be imprisoned in the penitentiary not more than five years.

(c) Consent by a child to any act or conduct prescribed by subsection (a) or (b) shall not be a defense, nor shall lack of knowledge of the child's age be a defense.

(d) The provisions of this section shall not apply to the offenses covered by section 22–2801. (June 9, 1948, 62 Stat. 347, ch. 428, title I, § 103.)

§ 22–3502. Sodomy.

(a) Every person who shall be convicted of taking into his or her mouth or anus the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth or anus of any other person or animal, or who shall be convicted of having carnal copulation in an opening of the body except sexual parts with another person, shall be fined not more than $1,000 or be imprisoned for a period not exceeding ten years. Any person convicted under this section of committing such act with a person under the age of sixteen years shall be fined not more than $1,000 or be imprisoned for a period not exceeding twenty years. And in any indictment for the commission of any of the acts, hereby declared to be offenses, it shall not be necessary to set forth the particular unnatural or perverted sexual practice with the commission of which the defendant may be charged, nor to set forth the

particular manner in which said unnatural or perverted sexual practice was committed, but it shall be sufficient if the indictment set forth that the defendant committed a certain unnatural and perverted sexual practice with a person or animal, as the case may be: *Provided,* That the accused, on motion, shall be entitled to be furnished with a bill of particulars, setting forth the particular acts which constitute the offense charged.

(b) Any penetration, however slight, is sufficient to complete the crime specified in this section. Proof of emission shall not be necessary. (June 9, 1948, 62 Stat. 347, ch. 428, title I, § 104.)

§ 22–3503. Definitions.

For the purposes of this chapter—

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his desire.

(2) The term "court" means the District Court of the United States for the District of Columbia, the criminal branch of the municipal court for the District of Columbia, or the juvenile court of the District of Columbia as the case may be.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from (A) the time the person is indicted, charged by an information, or charged with an offense in the juvenile court of the District of Columbia, to (B) the entry of judgment, or, if the person is granted probation, the completion of the period of probation. (June 9, 1948, 62 Stat. 347, ch. 428, title II, § 201.)

§ 22–3504. Filing of statement.

(a) Whenever it shall appear to the United States attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such attorney may file with the clerk of the District Court of the United States for the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

(b) Whenever it shall appear to the United States attorney for the District of Columbia that any defendant in any criminal proceeding prosecuted by such attorney or any of his assistants is a sexual psychopath, such attorney may file with the clerk of the court in which such proceeding is pending a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(c) Whenever it shall appear to any court that any defendant in any criminal proceeding pending in such court is a sexual psychopath, the court may, if it deems such procedure advisable, direct the officer prosecuting the defendant to file with the clerk of such court a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(d) Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) may be filed only (1) before trial, (2) after conviction or plea of guilty but before sentencing, or (3) after conviction or plea of guilty but before the completion of probation.

(e) This section shall not apply to an individual in a criminal proceeding who is charged with rape or assault with intent to rape. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 202.)

§ 22–3505. Right to counsel.

A patient shall have the right to have the assistance of counsel at every stage of the proceeding under this title. Before the court appoints psychiatrists pursuant to section 22–3506 it shall advise the patient of his right to counsel and shall assign counsel to represent him unless the patient is able to obtain counsel or elects to proceed without counsel. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 203.)

§ 22–3506. Examination by psychiatrists.

(a) When a statement has been filed with the clerk of any court pursuant to section 22–3504, such court shall appoint two qualified psychiatrists to make a personal examination of the patient. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file a written report of the examination, which shall include a statement of his conclusion as to whether the patient is a sexual psychopath.

(b) The counsel for the patient shall have the right to inspect the reports of the examination of the patient. No such report and no evidence resulting from the personal examination of the patient shall be admissible against him in any judicial proceeding except a proceeding under this title to determine whether the patient is a sexual psychopath. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 204.)

§ 22–3507. When hearing is required.

If, in their reports filed pursuant to section 22–3506, both psychiatrists state that the patient is a sexual psychopath, or if both state that they are unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, or if one states that the patient is a sexual psychopath and the other states that he is unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, then the court shall conduct a hearing in the manner provided in section 22–3508 to determine whether the patient is a sexual psychopath. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court shall enter an order dismissing the proceeding

under this chapter to determine whether the patient is a sexual psychopath. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 205.)

§ 22–3508. Hearing—Commitment to Saint Elizabeths Hospital.

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within fifteen days after the date on which the second report is filed pursuant to section 22–3506, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him to Saint Elizabeths Hospital to be confined there until released in accordance with section 22–3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 206.)

§ 22–3509. Parole—Discharge.

Any person committed under this Chapter may be released from confinement when the Superintendent of Saint Elizabeths Hospital finds that he has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefor, the Superintendent of the hospital shall give notice thereof to the judge of the criminal court and deliver him to the court in obedience to proper precept. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 207.)

§ 22–3510. Stay of criminal proceedings.

Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of section 22–3504 shall stay such criminal proceeding until whichever of the following first occurs:

(1) The proceeding under this chapter to determine whether the patient is a sexual psychopath is dismissed pursuant to section 22–3507 or withdrawn;

(2) It is determined pursuant to section 22–3508 that the patient is not a sexual psychopath; or

(3) The patient is discharged from Saint Elizabeths Hospital pursuant to section 22–3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 208.)

§ 22–3511. Criminal law unchanged.

Nothing in this chapter shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of the District of Columbia. (June 9, 1948, 62 Stat. 350, ch. 428, title II, § 209.)

TITLE 23.—CRIMINAL PROCEDURE

Chap.		Sec.
1.	General provisions	23–101
2.	Indictments	23–201
3.	Search warrants	23–301
4.	Fugitives from justice	23–401
5.	Uniform act on fresh pursuit	23–501
6.	Professional bondsmen	23–601
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Chapter 1.—GENERAL PROVISIONS

Sec.
23–101. Conduct of prosecutions—Party plaintiff.
23–102. Conduct of prosecutions—Certification to Court of Appeals.
23–103. Conduct of prosecutions—Jurisdiction as between District and police courts.
23–104. Abandonment of prosecution—Enlargement of time for taking action.
23–105. Appeals by United States and District of Columbia.
23–106. Bail—Deposit—Forfeiture.
23–107. Peremptory challenges.
23–108. Cause of challenge not available to set aside verdict—Exception.
23–109. Witnesses for defense—Fees.
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23–111. Depositions.
23–112. Commission to take depositions—Issuance and return.
23–113. Sentence—Postponement for appeal.
23–114. Time of execution of sentence of death.

§ 23–101 [6: 351]. Conduct of prosecutions—Party plaintiff.

The attorney for the District of Columbia shall be known as the corporation counsel.

Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia and by the corporation counsel or his assistants. All other criminal prosecutions shall be conducted in the name of the United States and by the attorney of the United States for the District of Columbia or his assistants. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329.)

Amendment

The 1902 amendment changed "attorney for the United States" to "attorney of the United States," and changed "city solicitor" to "corporation counsel."

Cross References

Duties of corporation counsel, § 1–301 and notes.

Duties of district attorney, § 11–1001 and notes.

Provisions in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, §§ 13–312 to 13–319.

NOTES TO DECISIONS

Authority of Corporation Counsel

Corporation counsel "has no authority to prosecute offenses where the maximum punishment may be both a fine and imprisonment." *District of Columbia* v. *Simpson* (40 App. D. C. 498), citing *Nation* v. *District of Columbia* (34 App. D. C. 453).

Indictment by Grand Jury

Indictment was not vitiated by presence of assistant to Attorney-General in grand jury room in oil lease case. *United States* v. *Fall* (56 App. D. C. 83, 10 Fed. (2d) 648); *United States* v. *Doheny* (56 App. D. C. 86, 10 Fed. (2d) 651).

Proof of Different Offense

A person cannot be convicted of one offense by proof that he committed another. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

Evidence of a separate offense other than one for which accused is on trial is admissible as an exception to the general rule, when the several offenses are so closely connected in time and locality as to be but parts of a single continuing transaction. *Posey* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

Prosecutions for Refilling Registered Containers

Prosecutions under 1901 Code, § 878c (§ 48–303), should be conducted by the district attorney in the name of the United States. *District of Columbia* v. *Simpson* (40 App. D. C. 498).

Prosecution of Bucket-Shops

Prosecutions under D. C. Code of 1901, § 869a (§ 22–1509) et seq. should be in the name of the United States. *United States* v. *Cella* (37 App. D. C. 423, cert. den. 223 U. S. 728, 56 L. Ed. 633, 32 Sup. Ct. 526).

Prosecution of Perjury

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in District of Columbia must be prosecuted by corporation counsel, under Motor Vehicle Lien Law, § 40–714, rather than by the United States Attorney in name of United States under general perjury statute. *Shelton* v. *U. S.* (App. D. C. 1948, 165 F. 2d 241).

Prosecution of Second-Degree Murder

Prosecution in District of Columbia for second-degree murder was properly conducted in name of the United States rather than in name of District of Columbia. *Morton* v. *Welch* (C. C. A. Va. 1947, 162 F. 2d 840, certiorari denied 68 S. Ct. 44, 332 U. S. 779, 92 L. Ed. 363, 68 S. Ct. 1498, 334 U. S. 848, 92 L. Ed. 1771).

Prosecution of Street Railway Companies

Prosecutions under section 16 of the Act of May 23, 1908 (35 Stat. 246) (see §§ 44–202, 44–203, 44–206, 44–207) should be conducted by the corporation counsel in the name of the District of Columbia. *United States* v. *Capital Trac. C.* (38 App. D. C. 469).

Traffic Violations

Under this section Congress intended that all prosecutions for violations of the traffic act, except for violation of the smoke screen provision of § 11, should be at instance of corporation counsel and in name of District of Columbia *District of Columbia* v. *Moyer* (68 App. D. C. 98, 93 Fed. (2d) 527).

All traffic violations should be prosecuted by information filed by corporation counsel. *Persham* v. *United States* (70 App. D. C. 116, 104 Fed. (2d) 249).

§ 23–102 [6: 352]. Conduct of prosecutions—Certification to Court of Appeals.

If in any case any question shall arise as to whether under section 23–101 the prosecution should be conducted by the corporation counsel or by the

attorney of the United States for the District of Columbia, the presiding justice shall forthwith, either of his own motion or upon suggestion of the corporation counsel or the attorney of the United States, certify the case to the United States Court of Appeals for the District of Columbia, which court shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the United States Court of Appeals for the District of Columbia. The decision of such court shall be final. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 933; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 amendment substituted the words "corporation counsel" for the words "city solicitor."

NOTES TO DECISIONS

CERTIFICATION BY JUDGE

Defendant cannot compel certification to court of appeals. "We think the language used means that whenever the judge or either of the officials named shall entertain a doubt as to who should conduct the prosecution, the question shall be certified to this court, and not otherwise. * * * If it is not so certified it becomes part of his regular defense." *Mullowny* v. *Mowatt* (43 App. D. C. 49)

§ 23–103 [6: 353]. Conduct of prosecutions—Jurisdiction as between District and police courts.

Except as otherwise provided in sections 11–901 to 11–939, when the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the District Court of the United States for the District of Columbia; when the maximum punishment is a fine only or imprisonment for one year or less the prosecution may be in the police court. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934; June 30, 1902, 32 Stat. 537, ch. 1329.)

COMPILER'S NOTE

The words "Except as otherwise provided in §§ 11–901 to 11–919" at the beginning of this section were inserted by the compilers.

AMENDMENT

This section was amended by the 1902 act by inserting after the word "is" the words "a fine only or."

CROSS REFERENCES

Jurisdiction of District Court, § 11–308 and notes.
Jurisdiction of police court, §§ 11–602, 11–606 and notes.

§ 23–104 [6: 354]. Abandonment of prosecution—Enlargement of time for taking action.

If any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury, and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment into the proper court, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: *Provided, however,* That the District Court of the United States for the District of Columbia holding a special term as a criminal court, or, in vacation, any justice of said court, upon good cause shown in writing, and, when practicable, upon due notice to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury. (Mar. 3, 1901, 31 Stat. 1342, ch. 854, § 939.)

CROSS REFERENCE

Other provisions concerning bail, § 11–606 and notes.

NOTES TO DECISIONS

INDICTMENT AFTER 9-MONTH PERIOD

By this section prosecution of the offense is not finally barred so that accused may not be held to answer upon an indictment found after the 9-month period within which the grand jury may act has elapsed. The general statute of limitations has not been repealed or modified. *United States* v. *Cadarr* (197 U. S. 475, 49 L. Ed. 842, 25 Sup. Ct. 487, revg. 24 App. D. C. 143, followed in *Arnstein* v. *United States* (54 App. D. C. 199, 296 Fed. 946).

RELEASE OF PRISONERS

This is not a statute of limitations. "The result of the failure to prosecute has reference solely to the right in the pending prosecution to be freed, if imprisoned, or released from bail, if under bond." *United States* v. *Cadarr* (197 U. S. 475, 49 L. Ed. 842, 25 Sup. Ct. 487), revg. (24 App. D. C. 143).

§ 23–105 [6: 355]. Appeals by United States and District of Columbia.

In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 935.)

CROSS REFERENCE

Appeals from police court, § 17–103.

NOTES TO DECISIONS

APPEAL BY UNITED STATES

United States may appeal cases and it need not be taken directly to the Supreme Court. *United States* v. *Burroughs* (62 App. D. C. 163, 65 Fed. (2d) 796).

APPEAL TO CIRCUIT COURT

Where the trial court's decision is one arresting a judgment of conviction in a criminal case, it is not appealable unless such decision is for insufficiency of the indictment and based upon the invalidity or construction of the statutes, in which event, the appeal is taken directly to the Supreme Court. Accordingly, the Government should have appealed this case to the Supreme Court and we must certify the case to that court. *United States* v. *Waters* (C. A. D. C. 1948, 175 F. 2d 340, 84 U. S. App. D. C. 127).

ARREST OF JUDGMENT OF CONVICTION

Where the trial court's decision was one arresting a judgment of conviction in a criminal case, it is not appealable unless such decision was for insufficiency of the indictment and based upon the invalidity or construction of the statutes, in which event, the appeal is taken directly to the Supreme Court. Accordingly, the Government should have appealed this case to the Supreme Court and the case must be certified to that court. *United States* v. *Waters* (C. A., D. C. 1948, 175 F. 2d 340, 84 U. S. App. D. C. 127).

JURISDICTION OF COURT OF APPEALS

The appellate jurisdiction of the United States Court of Appeals for the District of Columbia in criminal cases is not affected by the act of 1907. *United States* v. *Burroughs* (289 U. S. 159, 77 L. Ed. 1096, 53 Sup. Ct. 574).

ORDER QUASHING INDICTMENT

Government may appeal from order quashing indictment and discharging defendant without day. *Cadarr*

v. *United States* (24 App. D. C. 143, revd. on other grounds 197 U. S. 475, 49 L. Ed. 842, 25 Sup. Ct. 487).

ORDER QUASHING WARRANT OF ARREST

Under § 11–772 providing that any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia may appeal to the Municipal Court of Appeals, such court has jurisdiction of government's appeal from an order of the municipal court for such district quashing a warrant of arrest in a disorderly house case, in view of this section entitling the government to appeal in criminal prosecutions. *U. S.* v. *Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

An order quashing a warrant of arrest in a disorderly house case was appealable. *U. S.* v. *Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

ORDER SUSTAINING DEMURRER

Government may appeal from order sustaining demurrer to indictment for violation of 1901 code, § 869a et seq. (§ 22–1509). *United States* v. *Cella* (37 App. D. C. 423, cert. den. 233 U. S. 728, 56 L. Ed. 633, 32 Sup. Ct. 526), citing *United States* v. *Cadarr* (24 App. D. C. 143, revd. 197 U. S. 475, 49 L. Ed. 842, 25 Sup. Ct. 487; *Evans* v. *United States* (30 App. D. C. 58, cert. quashed 213 U. S. 297, 53 L. Ed. 803, 29 Sup. Ct. 507).

VERDICTS OF NOT GUILTY

This section does not authorize an appeal by the government from a verdict of not guilty in a criminal case, because only the determination of a moot question is involved, which is not a judicial function and cannot be required by Congress of a federal court. *United States* v. *Evans* (30 App. D. C. 58, cert. quashed 213 U. S. 297, 53 L. Ed. 803, 29 Sup. Ct. 507), citing *United States* v. *Ainsworth* (3 App. D. C. 483), and distinguishing *District of Columbia* v. *Lynham* (16 App. D. C. 85); *District of Columbia* v. *Garrison* (25 App. D. C. 563); *District of Columbia* v. *Gant* (28 App. D. C. 186).

Court of appeals has no power to review, by writ of error, a judgment of not guilty rendered by the police court. *District of Columbia* v. *Burns* (32 App. D. C. 203).

This section provided that in criminal prosecutions the United States or the District should have the same right of appeal as the defendant had, including a bill of exceptions, but provided that if there was error in the rulings of the court during the trial, a verdict for defendant should not be set aside. *District of Columbia* v. *Kendall* (57 App. D. C. 271, 20 Fed. (2d) 287).

§ 23–106 [6: 356]. Bail—Deposit—Forfeiture.

Whenever a person charged with crime is held to bail the court shall have power to allow a deposit with the clerk of such court of money in the amount of the bail instead of requiring a bond or recognizance, and in case of default to declare such deposit forfeited to the United States or the District of Columbia as the case may be. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 938.)

CROSS REFERENCE

Other provisions concerning bail, § 11–606 and notes.

NOTES TO DECISIONS

APPEAL FROM CONVICTION FOR CONTEMPT

Pending an appeal from an order refusing to discharge defendant on habeas corpus from conviction for contempt, defendant is entitled to bail. *In re Moss* (23 App. D. C. 474).

§ 23–107 [6: 366]. Peremptory challenges.

In all trials for capital offenses the accused and the United States shall each be entitled to twenty peremptory challenges. In trials for offenses punishable by imprisonment in the penitentiary the accused and the United States shall each be entitled to ten peremptory challenges. In all other cases, civil as well as criminal, in which the plaintiff is the United States or the District of Columbia, each party shall be entitled to three peremptory challenges; and if there are several defendants, they shall be treated as one person in the allowance of such challenges. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 918; June 30, 1902, 32 Stat. 536, ch. 1329.)

COMPILER'S NOTE

This section is affected by § 11–1421 insofar as alternate jurors are concerned.

AMENDMENT

The 1902 amendment added the words "or the District of Columbia."

NOTES TO DECISIONS

CASES CONSOLIDATED FOR TRIAL

When cases are consolidated for trial under U. S. R. S. § 1024, defendant is entitled, in cases of felony, to 10 peremptory challenges only. *Miller* v. *United States* (38 App. D C. 361)

To same effect as original annotation, see *Nestlerode* v. *U. S.*, 1941 (122 F. 2d 56, 74 App. D. C. 276).

CONSTITUTIONAL LAW

There is nothing in the Constitution which requires the Congress to grant peremptory challenges to defendants in criminal cases, and regulations are left to common law or enactments of Congress. *United States* v. *Wood* (299 U. S. 123, 81 L. Ed. 78, 57 Sup. Ct. 177).

While accused has a constitutional right to a speedy trial by an inpartial jury, it does not follow that the rejection of qualified persons for insufficient cause would deprive appellant of that right. It is significant in this respect that although appellant was entitled to ten peremptory challenges he had not used any of them. *Shettel* v. *United States* (72 App. D. C. 250, 113 Fed. (2d) 34).

EXCLUSION OF NEGROES

Fact that 19 members of jury panel selected in prosecution of three Negroes jointly indicted on charge of murder in perpetration of robbery were members of Negro race indicated that Negroes had not been systematically excluded from panel in violation of Fifth Amendment, and defendants could not complain that thereafter Government peremptorily challenged every Negro juror who had been called to sit in the panel. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U. S. 839, 93 L. Ed. 391).

JOINT DEFENDANTS

Five defendants jointly indicted for conspiracy are entitled to only 10 peremptory challenges to be shared between them. *Lorenz* v. *United States* (24 App. D. C. 337, cert. den. 196 U. S. 640, 49 L. Ed. 631, 25 Sup. Ct. 796).

PURPOSE

"Peremptory challenges" are exercised by party in rejection, and not in selection of jurors, and is not aimed at disqualification but is exercised upon qualified jurors as a matter of favor to challenger. *Hall* v. *U. S.* (App. D. C. 1948, 168 F. 2d 161, certiorari denied 68 S. Ct. 1508, 334 U. S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U. S. 839, 93 L. Ed. 391).

RIGHT TO NEW PANEL

Defendant charged with adultery is entitled to a new jury panel when it appears that 12 members of the current panel acted as jurors in another case involving the keeping of a disorderly house, in which case it was shown that the defendant frequented that house for immoral purposes. *Kleindienst* v. *United States* (48 App. D. C. 190).

A failure to exhaust the peremptory challenges and to examine the jurors on the voir dire is no waiver of defendant's right to a new panel when such right exists. *Kleindienst* v. *United States* (48 App. D. C. 190).

§ 23–108 [6: 367]. Cause of challenge not available to set aside verdict—Exception.

No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury are sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, and such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 919.)

CROSS REFERENCES

Provisions in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, §§ 13–312 to 13–319.

Qualifications of jurors, see § 11–1417 and notes.

NOTES TO DECISIONS

NEW TRIAL DENIED

This section "gives no new right to the defendant, and adds nothing to the discretionary powers which the courts have always exercised in such cases. If not declaratory merely of a long-existing rule of practice, it would seem rather a limitation, than otherwise, of the ordinary discretionary power of the courts to grant new trials." *Paolucci* v. *United States* (30 App. D. C. 217, cert. den 208 U. S. 617, 52 L. Ed. 646, 28 Sup. Ct. 568).

A challenge to the jury panel because it contains names of women, made for first time on motion for new trial, will not be reviewed. *Nelson* v. *United States* (60 App. D. C. 323, 53 Fed. (2d) 935).

§ 23–109 [6: 368]. Witnesses for defense—Fees.

In any criminal trial the justice trying the case may allow such number of witnesses on behalf of the defendant as may appear to be necessary, the fees of such witnesses to be paid in the same manner as the fees of the witnesses for the government: *Provided,* That the defendant makes application under oath before the trial, or, in cases of manifest necessity, during the trial, setting forth that he is not possessed of sufficient means and is actually unable to pay the fees of such witnesses, and setting forth also the names of such witnesses and what he expects to prove by them, in order that the court may be advised whether or not the testimony be material to the issue. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 920.)

CROSS REFERENCES

Competency and credibility of witnesses who have been convicted of crime, § 14–305.

Immunity of witnesses in cases against prostitution, § 22–2718.

§ 23–110 [6: 369]. Discharging joint defendant during trial in order to be witness—Bar to another prosecution.

When two or more persons are jointly indicted the court may, before a defendant has gone into his defense, direct any such defendant to be discharged, that he may be a witness for the United States. An accused party may also, when there is not sufficient evidence to put him upon his defense, be discharged by the court, or, if not discharged by the court, shall be entitled to the immediate verdict of the jury for the purpose of giving evidence for the other parties accused with him; and such order of discharge in either case, equally with the verdict of acquittal, shall be a bar to another prosecution for the same offense. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 921.)

§ 23–111 [6: 370]. Depositions.

If a material witness for the defendant resides beyond the District of Columbia, or is sick or infirm, or about to leave the District, the defendant may apply in writing to the court for a commission to examine such witness upon interrogatories thereto annexed when the deposition is to be taken beyond the District of Columbia, and orally in other cases, and the court may grant the same and pass an order stating for what length of time notice shall be given to the district attorney before said witness shall be examined. At or before the time fixed in said notice, when the examination is upon written interrogatories, the district attorney may file cross-interrogatories; but if he fail to do so the clerk shall file the following:

First. Are all your statements in the foregoing answers made from your own personal knowledge? And if not, show what is stated upon information and give its source.

Second. State everything you know in addition to what is stated in your above answers concerning this case favorable to either the United States or the defendant.

For good cause shown the court may order in any case that the examination be conducted orally. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 922; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

The 1902 act amends act of 1901 by substituting in the first sentence the words "beyond the District of Columbia" for the words "more than a hundred miles from the city of Washington."

CROSS REFERENCE

Depositions in civil cases, § 14–201 et. seq. and notes.

§ 23–112 [6: 371]. Commission to take depositions—Issuance and return.

The commission shall issue from the clerk's office, the examination of the witnesses shall be made and certified, and the return thereof made in the same manner as in civil cases, and unimportant irregularities or errors in the proceedings under said commission shall not cause the deposition to be excluded where no substantial prejudice can be wrought to the government by such irregularities or errors. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 923.)

§ 23–113 [6: 372]. Sentence—Postponement for appeal.

If a new trial be not granted nor the judgment arrested the court may pronounce sentence upon the party convicted; but the execution of such sentence shall be postponed for a sufficient time to enable the defendant to prosecute an appeal, on the application of the defendant, if he shall give notice of his intention to appeal from the judgment to the court of appeals. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 924.)

§ 23–114 [6: 373]. Time of execution of sentence of death.

In case of a sentence of death, the time fixed for the execution of the sentence shall not be considered an essential part of the sentence, and if it be not executed at the time therein appointed, by reason of the pendency of an appeal or for other cause, the

court may appoint another day for carrying the same into execution. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 926.)

NOTES TO DECISIONS

CONSTRUCTION

Section 23–703 must be read in connection with § 23–114 and with their legislative history. When this is done, it is clear that § 23–703 is intended not for the benefit of defendants upon whom death sentences are to be imposed but as an aid to the prison authorities charged with execution of such sentences. *Wheeler* v. *Reid* (C. A., D. C. 1948, 175 F. 2d 829, 84 U. S. App. D. C. 180).

Chapter 2.—INDICTMENTS

Sec.
23–201. Offenses that may be joined.
23–202. Description of money—Sufficiency of proof.
23–203. Indictment for intent to defraud—Sufficiency—Proof.
23–204. Indictment for perjury—Sufficiency.
23–205. Indictment for subornation of perjury—Sufficiency.

§ 23–201 [6: 361]. Offenses that may be joined.

An indictment for larceny may contain a count for obtaining the same property by false pretenses, a count for embezzlement thereof, and a count for receiving or concealing the same property, knowing it to be stolen or embezzled, or any of such counts, and the jury may convict of any of such offenses, and may find any or all of the persons indicted guilty of any of said offenses. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 915.)

CROSS REFERENCES

All pleading, orders, process or other instruments must be written legibly and in English, § 13–203.

Pleading over after demurrer, § 13–209.

Provisions in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, §§ 13–312 to 13–319.

NOTES TO DECISIONS

FALSE PRETENSES AND EMBEZZLEMENT

A general verdict of guilty on an indictment containing counts for false pretenses and embezzlement is inconsistent, and the rule "to the effect that in a criminal case a general judgment * * * of guilty on each count, cannot be reversed on error if any count is good and is sufficient to support the judgment does not apply." *Davis* v. *United States* (37 App. D. C. 126). See also *Fulton* v. *United States* (45 App. D. C. 27) and cases there cited.

LARCENY AND EMBEZZLEMENT

It is not error to refuse to require the government to elect between larceny and embezzlement counts where the same evidence is relied on to support both counts. *Means* v. *United States* (62 App. D. C. 118, 65 Fed. (2d) 206).

§ 23–202 [6: 362]. Description of money—Sufficiency of proof.

In every indictment, except for forgery, in which it is necessary to make an averment as to any money or bank bill or notes, United States Treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof that the accused has stolen or embezzled any amount of coin, or any such note, bill, currency, or bond, although the particular amount or species of such coin, note, bill, currency, or bond be not proved. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 916.)

NOTES TO DECISIONS

PURPOSE

The purpose of this section was to relieve the Government from the necessity of detailed particularization in either allegations or proof of money taken. *Neufield* v. *U. S.*, 1941 (118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

§ 23–203 [6: 363]. Indictment for intent to defraud—Sufficiency—Proof.

In an indictment in which it is necessary to allege an intent to defraud, it shall be sufficient to allege that the party accused did the act complained of with intent to defraud, without alleging an intent to defraud any particular person or body corporate; and on the trial of such an indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove a general intent to defraud. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 917.)

NOTES TO DECISIONS

FORGERY

Forgery of checks held to be done with intent to defraud. *Easterday* v. *United States* (53 App. D. C. 387, 292 Fed. 664).

§ 23–204 [6: 364]. Indictment for perjury—Sufficiency.

In every information or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath was taken (averring such court, or person or persons, to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage or custom to the contrary notwithstanding. (23 Geo. II, ch. 11, § 1; Kilty's Rept. p. 252; Alex. Brit. Stat. 766.)

COMPILER'S NOTE

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901, 31 Stat. 1189, ch. 854, § 1. It was obviously impossible to modernize the language of this statute.

NOTES TO DECISIONS

SUFFICIENCY

Perjury indictment setting out in each count a statement allegedly made by defendant in course of testimony before congressional subcommittee, alleging that such statement was false and setting forth what the true facts were and alleging generally that testimony sought to be elicited from defendant was material to the inquiry, was sufficient as against motion to dismiss. *U. S.* v. *Meyers* (D. C., D. C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U. S. App. D. C. 101, certiorari denied 69 S. Ct. 607, 336 U. S. 912, 93 L. Ed. 1076).

Under Federal Rules of Criminal Procedure, 7c, 18 U. S. C., a general allegation of materiality is sufficient in an indictment for perjury or subornation of perjury without setting forth in detail how and why the particular question addressed to the witness was material. *U. S.*

v. *Meyers* (D. C., D. C. 1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U. S. App. D. C. 101, certiorari denied 69 S. Ct. 607, 336 U. S. 912, 93 L. Ed. 1076).

§ 23–205 [6: 365]. Indictment for subornation of perjury—Sufficiency.

In every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed; any law, usage or custom to the contrary notwithstanding. (23 Geo. II, ch. 11, § 2; Kilty's Report 252; Alex. Brit. Stat. 766; Comp. Stat. D. C., p. 472, § 145.)

CROSS REFERENCE

See note to § 23–204.

Chapter 3.—SEARCH WARRANTS

Sec.
23–301. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.
23–302. Disposition of property seized.
23–303. Commitment of defendant—Retention of things seized.
23–304. Return or destruction of property seized.
23–305. Separability provisions.

§ 23–301 [6: 357]. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.

Upon complaint, under oath, before the police court, or a United States commissioner, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place articles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coins, stamps, labels, bank bills, or other instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, or any book, paper, memorandum, or device for or used in recording any bet or deposit of money or thing or consideration of value received for any share, ticket, certificate, writing, bill, slip, or token in any pool or lottery or as a wager on or in connection with any race, game, contest, election, or other gambling transaction or device of an unlawful nature as defined in sections 22–1501, 22–1503, 22–1504, 22–1505, 22–1507, 22–1508, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto, and describing the person to be seized, the said court or United States commissioner may issue a warrant either to the marshal or any officer of the Metropolitan Police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the police court or United States commissioner issuing said warrant, as the case may be.

The said warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued, and may be substantially in the form following:

"Whereas there has been filed before ———— an affidavit, of which the following is a copy (here insert). These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods, or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of ———— before the police court, or United States commissioner, as the case may be, to be dealt with and disposed of according to law." (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 911; Apr. 5, 1938, 52 Stat. 199, ch. 72, § 3.)

AMENDMENT

The 1938 amendment omitted provisions for bringing complaints before justices of the peace and inserted provisions relative to United States commissioners, and also included those additional items for search following "lottery policies."

CROSS REFERENCES

Advance information of raid to attorneys or bondsmen unlawful, § 23–609.

Examination of books and search of premises of certain businesses, property pledged, §§ 4–148, 4–149.

Inspection of premises to detect violations of fish and game laws, § 22–1616.

Inspector of weights, measures, and markets may inspect and search without warrants, § 10–126.

Major and superintendent may authorize search in gaming houses, bawdy-houses, etc., § 4–145.

Provision in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, §§ 13–312 to 13–319.

Search warrant in prevention of cruelty to animals, § 22–805.

Search warrants under Uniform Narcotic Drug Act, § 33–414.

Search warrant to discover and eradicate plant diseases and insects, § 6–904.

Search warrant to discover illegal use of milk containers, §§ 48–205, 48–305.

Search warrant under Alcoholic Beverage Control Act, § 25–129.

NOTES TO DECISIONS

DESCRIPTION OF PREMISES

Search warrant which described premises as "The Humidor" is sufficient to search entire four-story building. *Irwin* v. *United States* (67 App. D. C. 41, 89 Fed. (2d) 678).

ESPIONAGE ACT

There is nothing in the Espionage Act which makes it inapplicable in the District of Columbia and search warrant may be issued where property is used as means of committing felony. *Nuckols* v. *United States* (69 App. D. C. 120, 99 Fed. (2d) 353).

Search warrant conforms in every respect to the requirements of the Espionage Act and does not infringe the rights of appellant under the Fourth Amendment. *Hysler* v. *United States* ((C. C. A. 5), 86 Fed. (2d) 918).

EVIDENCE AS ADMISSIBLE

Where search bears a reasonable relation to the arrest, evidence secured during the search is admissible. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

In prosecution under indictment for housebreaking and grand larceny, admission of stolen article allegedly obtained by illegal search of defendant's room was not error in view of testimony that defendant agreed to the search and even pointed out stolen articles. *Alderman* v. *U. S.* (App. D. C. 1948, 165 F. 2d 622).

HOTELS

A hotel is a public place and search thereof is not so rigidly restricted as search of a private home. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

ILLEGAL SEARCH, LEGALIZATION

Under rule that officers should not be encouraged to proceed in an irregular manner on chance that all will end well, an illegal search cannot be legalized by what it brings to light. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

PROBABLE CAUSE

"Probable cause" exists for a search warrant if affiant has reasonable grounds at the time of his affidavit and the issuance of the warrant for the belief that the law was being violated on the premises to be searched, and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe there was a commission of the offense charged *Herson* v. *United States* (65 App. D. C. 86, 80 Fed. (2d) 529)

Probable cause to justify a search must be determined by existence of facts known to officer before, not after, the search. *Darnall* v. *U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

SEARCH AS REASONABLE

In testing the reasonableness of a search at time of arrest, all circumstances must be considered. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

Where police department had made a long, careful, and thorough investigation which indicated that hotel was being used for disorderly purposes and that misdemeanors were being committed therein continually, those in charge of the arrest were justified in organizing a raiding squad sufficiently large to make all necessary and proper arrests, and officers were properly permitted to testify as to what they saw while making search even though a search warrant had not been obtained. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

SEARCH, WHEN VALID

A search may be made only under a valid search warrant or as an incident to a lawful arrest. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

Even in connection with a valid arrest, a search is unlawful if it is merely exploratory and general and made solely to find evidence of defendant's guilt. *Collins* v. *U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

§ 23–302 [6: 358]. Disposition of property seized.

When the warrant is executed by the seizure of the property or things described therein, the said property or things shall be delivered to the marshal, and shall be safely kept to be used as evidence. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 912.)

CROSS REFERENCE

Powers and duties of property clerk of Metropolitan Police, § 4–151 et seq.

§ 23–303 [6: 359]. Commitment of defendant—Retention of things seized.

If upon the examination the court is satisfied that the offense charged with reference to the things seized has been committed, the party accused shall be committed for trial or held to bail, and said things shall remain in the custody of the marshal until the accused is tried or the right of the claimant to said things is otherwise ascertained. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 913.)

CROSS REFERENCE

See note to § 23–302.

§ 23–304 [6: 360]. Return or destruction of property seized.

If the accused be discharged, the property or other things seized shall be returned to the person in whose possession they were found. If he be convicted, the property stolen, embezzled, or obtained by false pretenses shall be returned to its owner, and the other articles before described shall be destroyed, under direction of the court.

If the property seized be articles, games, devices, or contrivances maintained, kept set up, or used in violation of sections 22–1501 to 22–1508, they may be ordered destroyed, under direction of court, irrespective of any trial or the outcome thereof. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 914; Apr. 5, 1938, 52 Stat. 199, ch. 72, § 4.)

AMENDMENT

Act of 1938 added the second paragraph.

CROSS REFERENCES

Disposition of drugs seized under Uniform Narcotic Drug Act, § 33–417.

See note to § 23–302.

§ 23–305 [6: 360a]. Separability provisions.

If any provision of sections 22–1501, 22–1502, 23–301, 23–304, 23–305, or the application thereof to any person or circumstance, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Apr. 5, 1938, 52 Stat. 199, ch. 72, § 5.)

Chapter 4.—FUGITIVES FROM JUSTICE

Sec.
23–401. Extradition.
23–402. When associate justice may act.
23–403. Detention of fugitives from justice—Warrants for apprehension.
23–404. Bail—When allowed.
23–405. Commitment when bond not given—Forfeiture of bond.
23–406. Discharge of prisoner if not demanded by return day—Future commitment.
23–407. Major and superintendent of police to give notice of apprehension.
23–408. Period of detention.
23–409. Voluntary return—Bond for appearance in demanding state.
23–410. Removal proceedings and returns to foreign countries not repealed.

§ 23–401 [6: 377]. Extradition.

In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the Chief Justice of the District Court of the United States for the District of Columbia shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several States are required to do by the provisions of sections 5278 and 5279, title 66, of the Revised Statutes of the United States, "Extradition" (U. S. C., title 18, §§ 662, 663), and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 930.)

NOTES TO DECISIONS

ARREST IN DIFFERENT STATE

Defendant indicted in State of Pennsylvania for obtaining money under false pretenses, arrested in District of Columbia upon warrant issued under this section on

requisition of Governor of Pennsylvania, was remanded to custody of the agent of the State of Pennsylvania. *Barrett* v. *Bigger* (57 App. D. C. 81, 17 Fed. (2d) 669).

BURDEN OF PROOF

If the extradition papers make out a prima facie case, the burden of proving absence from the State is on petitioner. *Levy* v. *Splain* (50 App. D. C. 31, 267 Fed. 333). See also *Ellison* v. *Splain* (49 App. D. C. 99, 261 Fed. 247).

DETENTION OF ACCUSED PERSON

"An accused person may be held a reasonable time to await the preparation and transmission of extradition papers from the demanding State." *Stallings* v. *Splain* (49 App. D. C. 38, 258 Fed. 510).

DUTIES OF CHIEF JUSTICE

This section expressly confers upon the Chief Justice of the Supreme Court (District Court of the United States) of the District authority to act in requisition proceedings. *Hill* v. *Dorsey* (57 App. D. C. 305, 22 Fed. (2d) 1003).

Chief Justice acts in extradition matters in an executive capacity. *Reed* v. *Colpoys* (69 App. D. C. 163, 99 Fed. (2d) 396).

To same effect as second paragraph of original annotation, see *Lee Won Sing* v. *Cottone,* 1941 (123 F. 2d 169, 74 App. D. C. 374).

EVIDENCE OF GUILT

To justify commitment for extradition there must be evidence to prove guilt of the accused. *Foster* v. *Goldsoll* (48 App. D. C. 505, cert. den. 250 U. S. 647, 63 L. Ed. 1188, 39 Sup. Ct. 495).

FINDING OF TRIAL JUDGE

If evidence is conflicting as to presence of defendant in demanding state, the finding of the trial judge will not be disturbed on appeal. *Jackson* v. *Snyder* (54 App. D. C. 23, 293 Fed. 842).

FUGITIVE FROM JUSTICE

If petitioner offers proof showing with precision that he left the demanding state before the commission of the alleged crime "it would then devolve upon the person detaining him 'to show that he was a fugitive from justice by producing evidence that he was in the state at the time charged in the indictment, or to prove that said date had been erroneously charged and could be carried back to the necessary time.'" *Levy* v. *Splain* (50 App. D. C. 31, 267 Fed. 333), citing *Hayes* v. *Palmer* (21 App. D. C. 450).

"To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense he has left its jurisdiction and is found within the territory of another." *DePoilly* v. *Palmer* (28 App. D. C. 324), quoting with approval from *Roberts* v. *Reilly* (116 U. S. 80, 29 L. Ed. 544, 6 Sup. Ct. 291), and citing *Hayes* v. *Palmer* (21 App. D. C. 450).

HABEAS CORPUS

On habeas corpus, where there is no claim that the extradition papers are not regular on their face, there is but one question open for investigation, namely, whether petitioner was in demanding state at the time the crime charged was committed. *Levy* v. *Splain* (50 App. D. C. 31, 267 Fed. 333); *Watts* v. *Splain* (51 App. D. C. 129, 277 Fed. 335).

When indictment charged conspiracy on a certain day without a continuando, the accused in extradition proceeding should be discharged on habeas corpus when he proved he was not in the state when the offense was charged to have been committed. *Levy* v. *Splain* (50 App. D. C. 31, 267 Fed. 333).

INDICTMENT

"It is only in cases when it is apparent that the indictment does not charge an offense at all, that another court will pass on it." *Wheeler* v. *Palmer* (42 App. D. C. 395).

Indictment need only show that accused was substantially charged with a crime under the law of the demanding state. The legal sufficiency of the indictment as a pleading must be tested in the courts of the demanding state. *Webster* v. *Splain* (45 App. D. C. 567), distinguishing *Hard* v. *Splain* (45 App. D. C. 1). See also *Wheeler* v. *Palmer* (42 App. D. C. 395), citing *Lamar* v. *Splain* (42 App. D. C. 300). See also *Farr* v. *Palmer* (24 App. D. C. 234); *DePoilly* v. *Palmer* (28 App. D. C. 324); *Goodale* v. *Splain* (42 App. D. C. 235).

Formal defects in indictment will not prevent removal of petitioners to another district for trial but "if indictment were a mere information, or upon inspection, set forth no crime against United States, or a wholly different crime from that alleged as the basis for proceedings, or if such crime be charged to have been committed in another district from that to which the extradition is sought, the commissioner could not properly consider it as ground for removal." *Whitaker* v. *Hitt* (52 App. D. C. 149, 285 Fed. 797, 27 A. L. R. 951).

SHERIFF'S APPLICATION

It is immaterial when sheriff used the wrong gender of prisoner in application to the governor for a requisition on the authorities of the District of Columbia. *John* v. *Splain* (50 App. D. C. 201, 269 Fed. 717).

§ 23–402 [6: 378]. When associate justice may act.

Any associate justice of said court shall have like power, in case of the illness, absence, or other disability of the chief justice, or when any such application shall be certified to him by the chief justice. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 931.)

§ 23–403 [6: 379]. Detention of fugitives from justice—Warrants for apprehension.

Whenever any person shall be found within the District of Columbia charged with any offense committed in any state, territory, or other possession of the United States, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of such state, territory, or possession, any judge of the police court of the District of Columbia, may, upon complaint on oath or affirmation of any credible witness, setting forth the offense, that such person is a fugitive from justice, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the police court, to answer such complaint. (Apr. 21, 1928, 45 Stat. 440, ch. 398, § 1.)

STATUTORY REFERENCE

This section is in U. S. C., Title 18, § 669.

NOTES TO DECISIONS

DETENTION PENDING REQUISITION

Where state circuit court granted writ of habeas corpus discharging petitioner, who had been ordered recommitted for violation of conditional pardon, on ground that state statute was unconstitutional and after state court of last resort had reversed the decision petitioner was arrested in District of Columbia on a fugitive warrant, detention of petitioner pending receipt of requisition from Governor of the state was authorized. *Herzog* v. *Colpoys,* 1944 (143 F. 2d 137, 79 U. S. App. D. C. 81).

§ 23–404 [6: 380]. Bail—When allowed.

If, upon the examination of the person charged, it shall appear to the judge of the police court that there is reasonable cause to believe that the com-

plaint is true, and that such person may be lawfully demanded of the Chief Justice of the District Court of the United States for the District of Columbia, he shall, if not charged with murder in the first degree, be required to give bond or other obligation, with sufficient sureties, in a reasonable sum, to appear before said judge of the police court at a future date, allowing thirty days to obtain a requisition from the governor of the state, territory, or possession of the United States from which said person is a fugitive, he to abide the order of such judge of the police court in the premises. (Apr. 21, 1928, 45 Stat. 440, ch. 398, § 2.)

CROSS REFERENCE

Other provisions concerning bail, § 11–602 and notes.

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 670.

§ 23–405 [6: 381]. Commitment when bond not given—Forfeiture of bond.

If such person shall not give bond or other obligation, as provided in section 23–404 or if he shall be charged with the crime of murder in the first degree, he shall be committed to the District jail, and there detained until a day fixed by the court, in like manner as if the offense charged had been committed within the District of Columbia; and, if the person so giving bond or other obligation shall fail to appear according to the condition of his bond or obligation, he shall be defaulted, and the bond or other obligation entered into by him shall be forfeited to the United States. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 3.)

STATUTORY REFERENCE

This section is in U. S. C., Title 18, § 671.

§ 23–406 [6: 382]. Discharge of prisoner if not demanded by return day—Future commitment.

If the person so giving bond or other obligation, or committed, shall appear before the judge of the police court upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the judge of the police court shall see cause to commit him for a further time, or to require him to give bond or other obligation for his appearance at some other day, and if, when ordered, he shall not give bond or other obligation he shall be committed and detained as before: *Provided,* That whether the person so charged shall give bond or other obligation, be committed or discharged, his delivery to any person authorized by the warrant of the governor shall be a discharge of his bond or obligation, if any. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 4.)

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 672.

§ 23–407 [6: 383]. Major and superintendent of police to give notice of apprehension.

The major and superintendent of the Metropolitan police of the District of Columbia shall give notice to the police official or sheriff of the city or county from which such person is a fugitive that the person is so held in the District of Columbia. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 5.)

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 673.

§ 23–408 [6: 384]. Period of detention.

A person committed as provided in section 23–404 shall not be detained in jail longer than to allow a reasonable time to the person receiving the notice herein required to apply for and obtain a proper requisition for such person according to the circumstances of the case and the distance of the place where the offense is alleged to have been committed. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 6.)

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 674.

§ 23–409 [6: 385]. Voluntary return—Bond for appearance in demanding state.

Nothing contained in sections 23–403 to 23–410 shall prevent the voluntary return, in the custody of a proper official, of a person to the jurisdiction of the state, territory, or other possession of the United States from which he is a fugitive. And nothing contained in sections 23–403 to 23–410 shall prevent a judge of the police court of the District of Columbia, in his discretion, accepting bond or other obligation for the appearance of a person before the proper official in the state, territory, or possession of the United States from which he is a fugitive. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 7.)

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 675.

§ 23–410 [6: 386]. Removal proceedings and returns to foreign countries not repealed.

Nothing contained in sections 23–403 to 23–410 shall repeal, modify, or in any way affect existing law concerning the procedure for the return of any person apprehended in the District of Columbia to a Federal district to answer a Federal charge, or repeal, modify, or affect existing law or treaty concerning the return to a foreign country of a person apprehended in the District of Columbia as a fugitive from justice from a foreign country. (Apr. 21, 1928, 45 Stat. 442, ch. 398, § 8.)

STATUTORY REFERENCE

This section is in U. S. C., title 18, § 676.

Chapter 5.—UNIFORM ACT ON FRESH PURSUIT

Sec.

23–501. Arrests in District of Columbia by officers of other States.
23–502. Hearing—Commitment—Discharge.
23–503. Construction of act.
23–504. "Fresh pursuit" defined.

§ 23–501 [6: 481]. Arrests in District of Columbia by officers of other States.

Any member of a duly organized State, county, or municipal peace unit of any State of the United States who enters the District of Columbia in fresh pursuit and continues within the said District in such fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State shall have the same authority to arrest and hold such person in custody as has any member of any duly organized peace unit of the said District to arrest and hold in custody a person on the

ground that he is believed to have committed a felony in the said District. (July 26. 1939, 53 Stat. 1124, ch. 375, § 1.)

§ 23–502 [6: 482]. Hearing—Commitment—Discharge.

If an arrest is made in the District of Columbia by an officer of another State in accordance with the provisions of section 23–501, he shall without unnecessary delay take the person arrested before a judge of the police court of the District of Columbia, or a United States commissioner for the District of Columbia, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge of the police court of the District of Columbia or the United States commissioner before whom the hearing is conducted determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Chief Justice of the District Court of the United States for the District of Columbia. If the judge of the police court or the United States commissioner for the District of Columbia, before whom the hearing is held, determines that the arrest was unlawful he shall discharge the person arrested. (July 26, 1939, 53 Stat. 1124, ch. 375, § 2.)

§ 23–503 [6: 483]. Construction of act.

Section 23–501 shall not be construed so as to make unlawful any arrest in this District which would be otherwise lawful. (July 26, 1939, 53 Stat. 1124, ch. 375, § 3.)

§ 23–504 [6: 484]. "Fresh pursuit" defined.

The term "fresh pursuit" used in this chapter shall include fresh pursuit as defined by the common law, also the pursuit of a person who has committed a felony or one whom the pursuing officer has reasonable grounds to believe has committed a felony. It shall also include the pursuit of a person whom the pursuing officer has reasonable grounds to believe has committed a felony, although no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. "Fresh pursuit" as used herein shall not necessarily imply an instant pursuit, but pursuit without unreasonable delay. (July 26, 1939, 53 Stat. 1124, ch. 375, § 4.)

COMPILER'S NOTE

Section 5 of the act of July 26, 1939, cited to the text of §§ 23–501 to 23–504 provided:

"If any part of this Act is for any reason declared void. it is declared to be the intent of this Act that such invalidity shall not affect the validity of the remaining portions of this Act."

Section 6 of the act of July 26, 1939, provided that the act may be cited as the Uniform Act on Fresh Pursuit.

Chapter 6.—PROFESSIONAL BONDSMEN

Sec.

23–601. Definitions.
23–602. Business impressed with public interest.
23–603. Procuring business through official or attorney for a consideration—Prohibited.
23–604. Attorneys procuring employment through official or bondsman for a consideration—Prohibited.
23–605. Receiving other than regular fee for bonding prohibited—Bondsman prohibited from endeavoring to secure dismissal or settlement.
23–606. Posting names of authorized bondsmen—List to be furnished prisoners—Prisoners may communicate with bondsman—Record to be kept by police.
23–607 Bondsman prohibited from entering place of detention unless requested by prisoner—Record of visit to be kept.
23–608 Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act.
23–609 Giving advance information of proposed raid prohibited.
23–610. Designation of official to take bail or collateral when court is not in session.
23–611. Penalties.
23–612. Enforcement.

§ 23–601 [6: 387]. Definitions.

The words "bonding business" as used in this chapter mean the business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia, and the word "bondsman" means any person or corporation engaged either as principal or as agent, clerk, or representative of another in such business. (Mar. 3, 1933, 47 Stat. 1482, ch. 206, § 1.)

CROSS REFERENCE

Other provisions concerning bail, §§ 11–602, 11–606.

§ 23–602 [6: 388]. Business impressed with public interest.

The business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia is impressed with a public interest. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 2.)

§ 23–603 [6: 389]. Procuring business through official or attorney for a consideration—Prohibited.

It shall be unlawful for any person engaged, either as principal or as the clerk, agent, or representative of a corporation, or another person in the business of becoming surety upon bonds for compensation in the District of Columbia, either directly or indirectly, to give, donate, lend, contribute, or to promise to give, donate, loan, or contribute any money, property, entertainment, or other thing of value whatsoever to any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, or other attaché of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ said bondsman to execute as surety any bond for compensation in any criminal case in the District of Columbia; and it shall be unlawful for any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, bailiff, or other attaché of a criminal court, or public official of any character, to accept or receive from any such person engaged in the bonding business any money, property, entertainment, or other thing of value whatsoever for procuring or assisting in procuring any person to employ any bondsman to execute as surety any bond for compensation in any criminal case in the District of Columbia. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 3.)

§ 23–604 [6: 390]. Attorneys procuring employment through official or bondsman for a consideration—Prohibited.

It shall be unlawful for any attorney at law, either directly or indirectly, to give, loan, donate, contrib-

ute, or to promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any bondsman, the agent, clerk, or representative of any bondsman, police officer, deputy United States marshal, probation officer, assistant probation officer, bailiff, clerk, or other attaché of any criminal court for causing or procuring or assisting in causing or procuring any person to employ such attorney to represent him in any criminal case in the District of Columbia. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 4.)

§ 23–605 [6: 391]. Receiving other than regular fee for bonding prohibited—Bondsman prohibited from endeavoring to secure dismissal or settlement.

It shall be lawful to charge for executing any bond in a criminal case in the District of Columbia, and it shall be unlawful for any person or corporation engaged in the bonding business, either as principal, or clerk, agent, or representative of another, either directly or indirectly, to charge, accept, or receive any sum of money, or other thing of value, other than the regular fee for bonding, from any person for whom he has executed bond, for any other service whatever performed in connection with any indictment, information, or charge upon which said person is bailed or held in the District of Columbia. It also shall be unlawful for any person or corporation engaged either as principal or as agent, clerk, or representative of another in the bonding business, to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the District of Columbia, with any court, or with the prosecuting attorney in any court in the District of Columbia. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 5.)

§ 23–606 [6: 392]. Posting names of authorized bondsmen—List to be furnished prisoners—Prisoners may communicate with bondsman—Record to be kept by police.

A typewritten or printed list alphabetically arranged of all persons engaged under the authority of any of the courts of criminal jurisdiction in the District of Columbia in the business of becoming surety upon bonds for compensation in criminal cases shall be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, and every other place in the District of Columbia in which persons in custody of the law are detained, and one or more copies thereof kept on hand; and when any person who is detained in custody in any such place of detention shall request any person in charge thereof to furnish him the name of a bondsman, or to put him in communication with a bondsman, said list shall be furnished to the person so requesting, and it shall be the duty of the person in charge of said place of detention within a reasonable time to put the person so detained in communication with the bondsman so selected, and the person in charge of said place of detention shall contemporaneously with said transaction make in the blotter or book of record kept in any such place of detention, a record showing the name of the person requesting the bondsman, the offense with which the said person is charged, the time at which the request was made, the bondsman requested, and the person by whom the said bondsman was called, and preserve the same as a permanent record in the book or blotter in which entered. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 6.)

§ 23–607 [6: 393]. Bondsman prohibited from entering place of detention unless requested by prisoner—Record of visit to be kept.

It shall be unlawful for any bondsman, agent, clerk, or representative of any bondsman to enter a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia for the purpose of obtaining employment as a bondsman, without having been previously called by a person so detained, or by some relative or other authorized person acting for or on behalf of the person so detained, and whenever any person engaged in the bonding business as principal, or as clerk, agent, or representative of another, shall enter a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia, he shall forthwith give to the person in charge thereof his mission there, the name of the person calling him, and requesting him to come to such place, and the same shall be recorded by the person in charge of the said place of detention and preserved as a public record, and the failure to give such information, or the failure of the person in charge of said place of detention to make and preserve such a record, shall constitute a violation of this chapter. (Mar. 3, 1933, 47 Stat. 1484, ch. 206, § 7.)

§ 23–608 [6: 394]. Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act.

It shall be the duty of the police court, juvenile court, and the criminal divisions of the District Court of the United States for the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which such business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in any such court until he shall by order of the court be authorized to do so. Such courts, in making such rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of said courts to

require every person qualifying to engage in the bonding business as principal to file with said court a list showing the name, age, and residence of each person employed by said bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of said persons stating that said person will abide by the terms and provisions of this chapter. Each of said courts shall require the authority of each of said persons to be renewed from time to time at such periods as the court may by rule provide, and before said authority shall be renewed the court shall require from each of said persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of said affidavits shall be guilty of perjury. (Mar. 3, 1933, 47 Stat. 1484, ch. 206, § 8.)

CROSS REFERENCE

Perjury, § 22–2501.

NOTES TO DECISIONS

REVOCATION OF LICENSE

When an authorization to engage in the bonding business has been approved by the district court and is outstanding, it can be revoked, prior to the expiration of the term, only upon a proceeding which contains the elements of due process of law, i. e., a hearing and revelation of all matter upon which a decision is to be based. In *Re Carter* (C. A. D. C. 1949, 177 F. 2d 75, 85 U. S. App. D. C. 229, certiorari denied, 70 S. Ct. 250, 338 U. S. 900, 94 L. Ed. 198).

§ 23–609 [6: 395]. Giving advance information of proposed raid prohibited.

It shall be unlawful for any police officer or other public official, in advance of any raid by police or other peace officers or public officials or the execution of any search warrant or warrant of arrest, to give or furnish, either directly or indirectly, any information concerning such proposed raid or arrest to any person engaged in any manner in the bonding business, or to any attorney at law: *Provided, however,* That it shall not be unlawful for any police or other peace officer, in conducting any raid or in executing any search warrant or warrant of arrest, to communicate to any attorney at law or person engaged in the bonding business, any fact necessary to enable such officer to obtain from such attorney at law or person engaged in the bonding business information necessary to enable such officer to carry out said raid or execute such process. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 9.)

§ 23–610 [6: 396]. Designation of official to take bail or collateral when court is not in session.

The judges of the police court of the District of Columbia shall have the authority to appoint some official of the Metropolitan police force of the District of Columbia to act as a clerk of the police court with authority to take bail or collateral from persons charged with offenses triable in the police court in criminal cases in the District of Columbia at all times when the police court is not open and its clerks accessible. The official so appointed shall have the same authority at said times with reference to taking bonds or collateral as the clerk of the police court had on March 3, 1933; shall receive no compensation for said services other than his regular salary; shall be subject to the orders and rules of the police court in discharge of his said duties, and may be removed as such clerk at any time by the judges of the police court. The District Court of the United States for the District of Columbia and the Juvenile Court of the District of Columbia each shall have power by order to authorize the official, appointed by the police court, to take bond of persons arrested upon writs and processes from those courts in criminal cases between four o'clock postmeridian and nine o'clock antemeridian and upon Sundays and holidays, and each of such courts shall have power at any time by order to revoke such authority granted by it. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 10.)

§ 23–611 [6: 397]. Penalties.

Any person violating any provision of this chapter other than in the commission of perjury shall be punished by a fine of not less than $50 nor more than $100, or by imprisonment of not less than ten or more than sixty days in jail, or both, where no other penalty is provided by this chapter; and if the person so convicted be a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office; if a bondsman, or the agent, clerk, or representative of a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order; and, if an attorney at law, shall be subject to suspension or disbarment as attorney at law. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 11.)

§ 23–612 [6: 398]. Enforcement.

It shall be the duty of the police court, juvenile court, and of the criminal divisions of the District Court of the United States for the District of Columbia to see that this chapter is enforced, and upon the impaneling of each grand jury in the District Court of the United States for the District of Columbia it shall be the duty of the judge impaneling said jury to give it in charge to the jury to investigate the manner in which this chapter is enforced and all violations thereof. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 12.)

Chapter 7.—DEATH PENALTY

Sec.

23–701. Capital punishment—How inflicted.
23–702. Commissioners to provide death chamber, appoint executioner and assistants, and fix fees.
23–703. Sentences to be in writing and certified copy furnished superintendent of District jail.
23–704. Who may be present at executions—Fact of execution to be certified to clerk of court.
23–705. Who may not be present at executions.
23–706. Place of execution.

§ 23–701 [6: 418]. Capital punishment—How inflicted.

The mode of capital punishment shall be by the process commonly known as electrocution. The punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death,

and the application of such current shall be continued until such convict is dead. (Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1.)

NOTES TO DECISIONS

AUTHORITY TO EXECUTE CAPITAL PUNISHMENT

Regardless of the legislation under which the appeal was brought, Congress had unmistakably invested the respondent, the superintendent of the jail, with authority within the District to carry into effect the death sentence in capital cases. *Price* v. *Moyer* (53 App. D. C. 63, 288 Fed. 269).

§ 23–702 [6: 419]. Commissioners to provide death chamber, appoint executioner and assistants, and fix fees.

The commissioners of the District of Columbia are authorized and required to provide a death chamber and necessary apparatus for inflicting the death penalty by electrocution, to designate an executioner and necessary assistants, not exceeding three in number, and to fix the fees thereof for services. (Jan. 30, 1925, 43 Stat. 799, ch. 115, § 2.)

CROSS REFERENCE

See § 23–706, as to place of execution.

§ 23–703 [6: 420]. Sentences to be in writing and certified copy furnished superintendent of District jail.

Upon the conviction of any person in the District of Columbia of a crime the punishment of which is death, it shall be the duty of the presiding judge to sentence such convicted person to death according to the terms of sections 23–701 to 23–704, and to make such sentence in writing, which shall be filed with the papers in the case against such convicted person, and a certified copy thereof shall be transmitted, by the clerk of the court in which such sentence is pronounced, to the superintendent of the District jail, not less than ten days prior to the time fixed in the sentence of the court for the execution of the same. (Jan. 30, 1925, 43 Stat. 799, ch. 115, § 3.)

CROSS REFERENCE

Time of execution, § 23–114.

NOTES TO DECISIONS

CONSTRUCTION

Section 23–703 must be read in connection with § 23–114 and with their legislative history. When this is done, it is clear that § 23–703 is intended not for the benefit of defendants upon whom death sentences are to be imposed, but as an aid to the prison authorities charged with execution of such sentences. *Wheeler* v. *Reid* (C. A., D. C. 1948, 175 F. 2d 829, 84 U. S. App. D. C. 180).

§ 23–704 [6: 421]. Who may be present at executions—Fact of execution to be certified to clerk of court.

At the execution of the death penalty as herein prescribed there shall be present the following persons, and no more, to wit:

The executioner and his assistant; the physician of the prison and one other physician if the condemned person so desires; the condemned person's counsel and relatives, not exceeding three, if they so desire; the prison chaplain and such other ministers of the Gospel, not exceeding two, as may attend by desire of the condemned; the superintendent of the prison, or, in the event of his disability, a deputy designated by him; and not fewer than three nor more than five respectable citizens whom the superintendent of the prison shall designate, and, if necessary to insure their attendance, shall subpœna to be present. The fact of execution shall be certified by the prison physician and the executioner to the clerk of the court in which sentence was pronounced, which certificate shall be filed by the clerk with the papers in the case. (Jan. 30, 1925, 43 Stat. 799, ch. 115, § 4.)

§ 23–705 [6: 422]. Who may not be present at executions.

No person whatever under the age of twenty-one years, shall be allowed to witness any such execution. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1203.)

§ 23–706 [6: 423]. Place of execution.

Persons adjudged to suffer death shall be executed within the walls of the jail of the District, or within the yard or inclosure thereof, and not elsewhere. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1200.)

TITLE 24.—PRISONERS AND THEIR TREATMENT

Chap.		Sec.
1.	Probation	24–101
2.	Indeterminate sentences and paroles	24–201
3.	Insane criminals	24–301
4.	Prisons and prisoners	24–401
5.	Rehabilitation of alcoholics	24–501

Chapter 1.—PROBATION

Sec.

24–101. Probation system—Probation officers—Appointment.

24–102. When probation may be granted—Statement to probationer—Rules and regulations.

24–103. Investigations and reports by probation officers.

24–104. Discharge from or continuance of probation—Modification or revocation of order.

24–105. Quarters for probation officers—Payment of expenses.

§ 24–101 [6: 424]. Probation system—Probation officers—Appointment.

The District Court of the United States for the District of Columbia in general term may appoint one probation officer, and as many volunteer assistant probation officers, male or female, as occasion may require; and the police court of the District of Columbia may appoint one chief probation officer, and two assistant probation officers, one of which assistant probation officers shall serve for one year only, and one stenographer and typist, who shall serve for one year only, and as many volunteer assistant probation officers, male or female, as occasion may require.

All such probation officers and assistants shall be appointed for a term of two years, with the exception of one assistant probation officer and one stenographer and typist, who shall be appointed for one year only, and may be removed by the respective courts appointing them. All such volunteer probation officers shall serve without compensation, and shall have such powers and perform such duties as may be assigned to them by said courts. (June 25, 1910, 36 Stat. 864, ch. 433, § 1; Mar. 4, 1919, 40 Stat. 1324, ch. 122; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

COMPILER'S NOTE

See note to § 19–401.

AMENDMENT

The 1910 act and the 1919 amendment provided for specific salaries for each position created. The 1923 act is the Classification Act of 1923 (U. S. C., title 5, § 673). The 1919 amendment raised the number of assistant probation officers from one to two, of which one shall serve for one year only, and provided for "one stenographer and typist who shall serve for one year only."

CROSS REFERENCE

Probation department for juvenile court, § 11–922 et seq.

NOTES TO DECISIONS

FEDERAL PROBATION LAW

The Federal Probation Law, 18 U. S. C. § 724, does not apply to the District of Columbia. *Cooper* v. *U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

SENTENCE SUSPENDED INDEFINITELY

When Federal District Court exceeded its power and ordered that sentence be suspended indefinitely during good behavior, mandamus was the proper remedy. *Ex. parte United States* (242 U. S. 27, 61 L. Ed. 129, 37 Sup. Ct. 72).

SUSPENSION OF SENTENCE

Where defendant was convicted for violation of a traffic regulation, and execution of sentence was suspended, such suspension must be vacated because such power is derived from the Federal Probation Act. Though under the District of Columbia Probation Act, the court is authorized to suspend execution, clearly the suspension in this case was not and did not purport to be exercised under the authority of the probation law and was beyond the power of the court. *Ziegler* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 618).

§ 24–102 [6: 425]. When probation may be granted—Statement to probationer—Rules and regulations.

The District Court of the United States for the District of Columbia shall have power in any case, except those involving treason, homicide, rape, arson, kidnaping, or a second conviction of a felony, after conviction or after a plea of guilty of a felony or misdemeanor and after the imposition of a sentence thereon but before commitment, and the said police court shall have like power, after a conviction or a plea of guilty in any case of misdemeanor, to place the defendant upon probation, provided that it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as of the defendant would be subserved thereby, and may suspend the imposition or execution of the sentence, as the case may be, for such time and upon such terms as it may deem best and place the defendant in charge of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. No person shall be put on probation except with his or her consent. (June 25, 1910, 36 Stat. 864, ch. 433, § 2.)

CROSS REFERENCE

Duties concerning persons found guilty under laws against prostitution, § 22–2703.

NOTES TO DECISIONS

POWER OF MUNICIPAL COURT

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile* v. *United States* (D. C. Mun. App. 1944, 38 A. 2d 620).

REDUCTION OF SENTENCE

Where order of probation was void because entered after defendant had been committed, release of defendant under the probation order was premature and it was duty of court to cause him to be recommitted, and the void probation order did not amount to an unconditional reduction of sentence. *Peden* v. *Fleming* (App. D. C. 1946, 153 F. 2d 800).

The effect of a probation order is not to reduce sentence to time already served, but, while on probation, prisoner continues to be, in a sense, in custodia legis and the sentence is, through grace of this section, merely in a state of suspended animation, if probation has been properly granted. *Peden* v. *Fleming* (App. D. C. 1946, 153 F. 2d 800).

RESTITUTION AS CONDITION

Conditioning probation on restitution, to be made by paying compensation award, and revoking probation for failure to pay the award, was not improper as imprisoning probationer for debt. *Basile* v. *U. S.* (D. C. Mun. App. 1944, 38 A. 2d 620).

Failure of Congress to specifically authorize restitution as a condition of probation in District of Columbia, though specific authority was given under 18 U. S. C. § 724 et seq., did not negative power of District of Columbia court to impose such a condition. *Basile* v. *U. S.* (D. C. Mun. App. 1944, 38 A. 2d 620).

Where defendant was convicted of failure to provide compensation insurance policy and placed on probation, conditioning the probation on his making restitution to compensation claimant by paying the total award of compensation was proper. *Basile* v. *United States* (D. C. Mun. App. 1944, 38 A. 2d 620).

TIME FOR PROBATION

Under this section, probation may be granted after appeal to and affirmance by appellate court but before service of sentence has begun. *Gaston* v. *U. S.*, 1944 (143 F. 2d 10, 79 U. S. App. D. C. 37, certiorari denied 64 S. Ct. 1286, 322 U. S. 764, 88 L. Ed. 1591).

Under this section providing that probation may be granted after imposition of sentence but before commitment, Municipal Court of District of Columbia did not have power to enter a probation order after defendant had been committed. *Peden* v. *Fleming* (App. D. C. 1946, 153 F. 2d 800).

§ 24–103 [6: 426]. Investigations and reports by probation officers.

The probation officers shall carefully investigate all cases referred to them by the court, and make recommendations to the court to enable it to decide whether the defendant ought to be placed under probation, and shall report to the court, from time to time as may be required by it, touching all cases in their care, to the end that the court may be at all times fully informed of the circumstances and conduct of probationers. (June 25, 1910, 36 Stat. 864, ch. 433, § 3.)

NOTES TO DECISIONS

RECOMMENDING SENTENCE

Where accused pleaded guilty to maintaining disorderly house and, on plea for probation, trial judge announced, that probation officer had recommended maximum sentence and, on objection to consideration of recommendation, trial judge, without express ruling thereon, sentenced defendant to the near maximum penalty, sentence was not set aside. *Ishkanian* v. *U. S.* (D. C. Mun. App. 1944, 35 A. 2d 176).

A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by this chapter but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Ishkanian* v. *U. S.* (D. C. Mun. App. 1944, 35 A. 2d 176).

§ 24–104 [6: 427]. Discharge from or continuance of probation—Modification or revocation of order.

Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the probationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, and the time of probation shall not be taken into account to diminish the time for which he was originally sentenced. (June 25, 1910, 36 Stat. 865, ch. 433, § 4.)

NOTES TO DECISIONS

EXTENSION OF PROBATION

The extension of the probation every six months after the return unexecuted of an attachment for violation of terms of probation kept the probation alive and did not violate this section, which does not limit the number or length of extensions of probation. *Cooper* v. *U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

PROBABLE CAUSE

A probationer who had been arrested on another charge was properly arrested by probation officer for violation of terms of probation when she appeared in another court to answer the new charge, since only the execution of the sentence had been suspended and the requirement as to probable cause for the commission of an offense did not apply to her. *Cooper* v. *U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

REVOCATION

The court had jurisdiction to reconsider defendant's probation and revoke it if the public interest seemed to justify such action. *Cooper* v. *U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

That the judge who had originally sentenced defendant was no longer in office did not prevent another judge of the same court from revoking the defendant's probation. *Cooper* v. *U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

§ 24–105 [6: 428]. Quarters for probation officers—Payment of expenses.

The chief probation officer of each court shall be entitled, for himself and his assistants, to a room in the building occupied by that court, and all necessary stationery and supplies for the transaction of the business of his office, and all the probation officers except volunteer officers shall be entitled to their necessary expenses in performing the duties of their office, under the direction of the court, the amount of the expense for such stationery, supplies, and expenses to be fixed and allowed by the court upon proper vouchers submitted to it by the probation officers, and accounts duly verified by their oath. (June 25, 1910, 36 Stat. 865, ch. 433, § 5; Mar. 4, 1919, 40 Stat. 1325, ch. 122; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

AMENDMENT

The 1910 act contained an additional clause which read, "and for the purpose of this act there is hereby appropriated the sum of five thousand dollars, one-half to be paid out of any money in the Treasury not otherwise appropriated and the other half out of the revenues of the District of Columbia." The 1919 amendment raised this amount stated in said clause to $8,000. The 1923 act is the Classification Act of 1923 (U. S. C., title 5, § 673).

CROSS REFERENCE

Annual estimate of expenditures, § 47–213.

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

Sec.
24–201. Repealed.
24–201a. Board of Parole—Rules and regulations.
24–201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.
24–201c. Applications for reduction of minimum sentence—Jurisdiction of court.
24–202. Repealed.
24–203. Imposition of indeterminate sentences authorized—Life and death sentences.
24–204. Parole authorized — Conditions — Custody — Reports.
24–205. Violation of parole—Warrant—Arrest—Return to confinement.
24–206. Revocation of parole after retaking—Hearing—New parole.
24–207. Repeal provision.
24–208. Powers of prior board transferred—Application of law to prisoners sentenced before parole law became effective.
24–209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia and elsewhere.

§ 24–201 [6: 451]. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Section, Act July 15, 1932, 47 Stat. 696, ch. 492, § 1, related to former Board of Indeterminate Sentence and Parole.

NOTES TO DECISIONS

CONSTITUTIONALITY

This act does not violate the Fifth Amendment, and is not invalid as a delegation of judicial power to the executive branch of the Government. *Sims* v. *Rives,* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960); *Tomlin* v. *United States* (66 App. D. C. 32, 84 Fed. (2d) 879).

PAROLE BOARD

Authority of the new board and the system of parole which it was to supervise were confined to the penal institutions in the District of Columbia, and only persons therein confined were to be affected. *Aderhold* v. *Lee* ((C. C. A. 5), 68 Fed. (2d) 824).

Board pronouncing final judgment was vested by statute with full jurisdiction to determine the question at issue; at which the prisoner was accorded a fair hearing, to which he made no objection; and in which his only complaint is that he was not brought before the board upon a proper warrant. *Jarman* v. *United States* ((C. C. A. 4), 92 Fed. (2d) 309).

PURPOSE

Title 18 U. S. C. §§ 710, 715–716b and this chapter regarding powers of federal board of parole and District of Columbia Board of Indeterminate Sentence and Parole indicate congressional intent to provide a uniform administration of federal and district laws with respect to the control of released prisoners. *Gould* v. *Green,* 1944, 141 F. 2d 533 (78 U. S. App. D. C. 363).

REMOVAL OF PRISONER FROM DISTRICT

Prisoner sentenced after creation of special parole board for the District could, after federal board was given equal authority over those in District, be removed to penitentiary outside of the District. *MacAboy* v. *Klecka* ((D. C.-Md.), 22 Fed. Supp. 960).

SENTENCE

Sentence imposed under this act for violation of Liquor Taxing Act of 1934, held valid. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).

§ 24–201a. Board of Parole—Rules and regulations.

A Board of Parole for the penal and correctional institutions of the District of Columbia is hereby created to consist of three members appointed by the Commissioners of the District of Columbia, one of whom shall serve on a full-time basis and be designated by the Commissioners as Parole Executive. The other two members shall serve without compensation, one of whom shall be elected Chairman of the said Board. The Board of Parole shall select its own Chairman and shall have power to establish rules and regulations for its procedure. (July 17, 1947, 61 Stat. 378, ch. 263, § 1.)

§ 24–201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.

Upon appointment of the members of the Board of Parole, the powers of the Board of Indeterminate Sentence and Parole created by section 24–201, not specifically repealed, shall be transferred to and vested in the Board of Parole. The officers and employees of the Board of Indeterminate Sentence and Parole, except the members thereof, together with all official records, furniture and supplies, and all unexpended balances of any appropriations, shall be transferred to the Board of Parole. It shall be the duty of the parole executive to prepare for the consideration of the Board of Parole all applications of prisoners for parole in such form and at such times and together with such information and records as the Board of Parole may require, to perform such administrative duties as the Board may prescribe, and to supervise prisoners on parole in accordance with the terms and conditions prescribed by the Board. The Department of Corrections, and all other agencies and officials of the District shall cooperate with the Board and shall furnish the Board with such information, files, and records as it may deem necessary in the performance of its duties: *Provided,* That confidential information and records shall not be required to be produced. (July 17, 1947, 61 Stat. 378, ch. 263, § 2.)

§ 24–201c. Applications for reduction of minimum sentence—Jurisdiction of court.

When by reason of his training and response to the rehabilitation program of the Department of Corrections it appears to the Board that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, and that his immediate release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board in its discretion may apply to the court imposing sentence for a reduction of his minimum sentence. The court shall have jurisdiction to act upon the application at any time prior to the expiration of the minimum sentence and no hearing shall be required. (July 17, 1947, 61 Stat. 379, ch. 263, § 4.)

§ 24–202. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Section, based on Act July 15, 1932, 47 Stat. 697, ch. 492, § 2, as amended June 6, 1940, 54 Stat. 242, ch. 254, § 1, related to employees of former board.

§ 24–203 [6: 453]. Imposition of indeterminate sentences authorized—Life and death sentences.

In imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed fifteen years' imprisonment. Nothing in sections 24–201 to 24–210 shall abrogate the power of the justice or judge to sentence the convicted prisoner to the death penalty as now [June 6, 1940] or hereafter may be provided by law. (July 15, 1932, 47 Stat. 697, ch. 492, § 3; June 6, 1940, 54 Stat. 264, ch. 254, § 2.)

COMPILER'S NOTES

Section 2 (b) of the act of 1940 provided that such act should not affect the penalty, sentence, or forfeiture for felonies committed prior thereto.

FELONIES COMMITTED PRIOR TO JUNE 6, 1940

Section 9 of the act of June 6, 1940, 54 Stat. —, ch. 254, provides as follows: "(a) Where a justice or a judge of the District Court of the United States for the District of Columbia has imposed or shall impose a life sentence on a prisoner convicted of a felony committed before this amendatory act takes effect such prisoner shall be eligible to parole under the provisions of said act approved July 15, 1932, as amended, after having served fifteen years of his life sentence.

"(b) Where a justice or judge of the District Court of the United States has imposed or shall impose a sentence for a definite term of imprisonment on a prisoner convicted of a felony committed before this amendatory act takes effect, such prisoner shall be eligible to parole under the provisions of said act approved July 15, 1932, as amended, after having served one-third of the sentence imposed."

AMENDMENT

Prior to the 1940 amendment the minimum period was "not exceeding one-fifth of the maximum period fixed by law." The act of 1940 also reworded and changed the order of the second and third sentences, the principal change being that previous to the amendment a person given a life sentence was eligible to parole "after having served fifteen years of his life's sentence."

NOTES TO DECISIONS

APPLICATION OF STATUTE

This act is applicable to persons convicted in the District of Columbia of offenses defined in the general laws of the United States. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).

CONSTITUTIONALITY

The Indeterminate Sentence Act applies to convictions in the District for offenses defined in the general laws of the United States, and thus applied is constitutionally valid. *Farnsworth* v. *Zerbst* ((C. C. A. 5), 98 Fed. (2d) 541).

CONTEMPT

This section is inapplicable to a criminal contempt conviction not only because it ought not and is not intended to apply, but also because it cannot be made applicable in view of fact that trial judge has nonarbitrary discretion in matter of sentence. *Warring* v. *Huff,* 1941 (122 F. 2d 641, 74 App. D. C. 302, certiorari denied, 1942, 62 S. Ct. 183, 314 U. S. 678, 86 L. Ed. 543).

CRIME COMMITTED BEFORE PASSAGE OF ACT

Indeterminate Sentence Act held not applicable where crime of grand larceny was committed before passage of that act. *De Benque* v. *United States* (66 App. D. C. 36, 85 Fed. (2d) 202, 106 A. L. R. 839, cert. den. 298 U. S. 681, 80 L. Ed. 1402, 56 Sup. Ct. 960, reh. den. 299 U. S. 620, 81 L. Ed. 457, 57 Sup. Ct. 6).

Where defendants were found guilty in 1939 of having committed robbery in District of Columbia on June 10, 1932, sentence to prison of 3 to 15 years was not void on theory that it should be for not less than 6 months nor more than 15 years. *U. S.* v. *Neufield* (D. C., D. C. 1945, 62 F. Supp. 600).

Claim of defendants that much had come to light after their conviction which would show that defendants were innocent could not be considered in passing on motion to set aside sentences as void because sentences allegedly did not comply with law in effect when offenses were committed. *U. S.* v. *Neufield* (D. C., D. C. 1945, 62 F. Supp. 600).

MEANING OF INDETERMINATE SENTENCE

An indeterminate sentence is one for the maximum period imposed by the court, subject to termination by the Parole Board at any time after service of the minimum period. *Story* v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

To same effect as original annotation, see *U. S.* v. *Neufield* (D. C., D. C. 1945, 62 F. Supp. 600).

SECOND-DEGREE MURDER

Indeterminate Sentence Act is inapplicable to second-degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson* v. *Rives* (66 App. D. C. 174, 85 Fed. (2d) 673).

SENTENCES

Where the first sentences imposed under Indeterminate Sentence law were void, since the said statute was by its own terms inapplicable, the passing of the term did not deprive the court of power to resentence. *De Benque* v. *United States* (66 App. D. C. 36, 85 Fed. (2d) 202), 106 A. L. R. 839.

This provision brings the described sentences, although not indeterminate ones, within the new scheme by treating one-fifth thereof as the equivalent of the minimum in an indeterminate sentence and may include prisoners sentenced before the date of the act if imprisoned in the institutions under the jurisdiction of the board, but it does not extend the board's jurisdiction to prisoners in other institutions nor require their return to the District although convicted there before the act was passed. *Aderhold* v. *Lee* ((C. C. A. 5), 68 Fed. (2d) 824).

As maximum sentence on each count was 3 years, and as it did not exceed the maximum of 10 years fixed by law, and when minimum sentence on each of four counts was 2 years, the sentence therefore did not exceed one-fifth of the maximum period fixed by law of 10 years and was not in violation of Indeterminate Sentence and Parole law. *United States ex rel. Bracey* v. *Hill* ((C. C. A. 3), 77 Fed. (2d) 970); *Bracey* v. *Zerbst* ((C. C. A. 10), 93 Fed. (2d) 8).

Sentence fixing a maximum of 12 years conformed with the act, as did the minimum period of 3 years, being for a minimum period not exceeding one-fifth of the maximum period fixed by law. *McDonald* v. *Johnston* ((C. C. A. 9), 86 Fed. (2d) 329).

A sentence is legal so far as it is within provisions of law and jurisdiction of court, and is void only as to excess when such excess is separable and may be dealt with without disturbing valid portion of sentence. *U. S.* v. *Neufield* (D. C., D. C. 1945, 62 F. Supp. 600).

§ 24–204 [6: 454]. Parole authorized—Conditions—Custody—Reports.

Whenever it shall appear to the Board of Parole that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his release is not incompatible with the

welfare of society, and that he has served the minimum sentence imposed or the prescribed portion of his sentence, as the case may be, the Board may authorize his release on parole upon such terms and conditions as the Board shall from time to time prescribe. While on parole, a prisoner shall remain in the legal custody and under the control of the Attorney General of the United States or his authorized representative until the expiration of the maximum of the term or terms specified in his sentence without regard to good time allowance. (July 15, 1932, 47 Stat. 697, ch. 492, § 4; June 6, 1940, 54 Stat. 242, ch. 254, § 3; July 17, 1947, 61 Stat. 378, ch. 263, § 3.)

AMENDMENT

The act of 1940 inserted the words "or to such other place as the board may indicate," after the words "return to his home;" substituted the Attorney General or his representative in place of superintendent of the institution as the party to have control of the paroled prisoner; substituted "without regard to the good-time allowance" for "less such good-time allowance as is, or may hereafter be, provided by law," and substituted the proviso clause for "which limits, however, may be thereafter changed in the discretion of the board."

AMENDMENTS

Act July 17, 1947, cited to text, amended section generally.

NOTES TO DECISIONS

DISCRETION OF BOARD

A prisoner may be released from imprisonment before he has served the maximum period of his sentence, less lawful good-time allowance, only in the discretion of the Board of Indeterminate Sentence and Parole. *De Benque* v. *United States* (66 App. D. C. 36, 85 Fed. (2d) 202), 106 A. L. R. 839.

The District of Columbia Board of Indeterminate Sentence and Parole has authority to impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance. *In re Reed* (App. D. C. 1946, 158 F. 2d 323, 81 U. S. App. D. C. 310).

PRISONERS CONFINED OUTSIDE DISTRICT

Same privileges of parole are accorded to prisoners sentenced in the District of Columbia and committed to penal institutions outside of the District as to those sentenced and confined within the District. *Bracey* v. *Hill*, ((D. C.-Pa.), 11 Fed. Supp. 148).

§ 24–205 [6: 455]. Violation of parole—Warrant—Arrest—Return to confinement.

If said Board of Indeterminate Sentence and Parole, or any member thereof, shall have reliable information that a prisoner has violated his parole, said board, or any member thereof, at any time within the term or terms of the prisoner's sentence, may issue a warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. Any officer of the District of Columbia penal institutions, any officer of the Metropolitan Police Department of the District of Columbia, or any federal officer authorized to serve criminal process within the United States to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States. (July 15, 1932, 47 Stat. 698, ch. 492, § 5; June 6, 1940, 54 Stat. —, ch. 254, § 4.)

AMENDMENT

Prior to the 1940 amendment the second sentence of this section provided for the execution of the warrant by any officer of the penal institution from which the prisoner was paroled or by any Federal officer authorized to serve criminal process and provided for such execution by "taking such prisoner and returning him to said penal institution."

NOTES TO DECISIONS

CRIME COMMITTED WHILE ON PAROLE

Petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammerer* v. *Huff* (71 App. D. C. 246, 110 Fed. (2d) 113).

JAIL SENTENCE WHILE ON PROBATION

When probationer was actually serving a jail sentence while on probation with respect to another sentence, even in jail, he was subject to the conditions of the probation and by its terms he was to refrain from violation of law. *Burns* v. *United States* (287 U. S. 216, 77 L. Ed. 266, 53 Sup. Ct. 154).

PARTIES INTERESTED

Defendant who had not been paroled or retaken on warrant was not in a position to challenge the validity of this section under the Fourth Amendment. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).

§ 24–206 [6: 456]. Revocation of parole after retaking—Hearing—New parole.

When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board. At such hearing he may be represented by counsel. The Board may then, or at any time in its discretion, terminate the parole or modify the terms and conditions thereof. If the order of parole shall be revoked, the prisoner, unless subsequently reparoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. For the purpose of computing commutation for good conduct, the remainder of the sentence originally imposed shall be considered as a new sentence. The time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced.

In the event a prisoner is confined in, or as a parolee is returned to a penal or correctional institution other than a penal or correctional institution of the District of Columbia, the Board of Parole created by section 723a, Title 18, U. S. Code, shall have and exercise the same power and authority as the Board of Parole of the District of Columbia had the prisoner been confined in or returned to a penal or correctional institution of the District of Columbia. (July 15, 1932, 47 Stat. 698, ch. 492, § 6; June 6, 1940, 54 Stat. 242, ch. 254, § 5; July 17, 1947, 61 Stat. 379, ch. 263, § 5).

AMENDMENTS

Act July 17, 1947, cited to text, amended section generally.

CITED

De Benque v. *United States* (66 App. D. C. 36, 85 Fed. (2d) 202, 106 A. L. R. 839); *Hammerer* v. *Huff* (71 App. D. C. 246, 110 Fed. (2d) 113).

NOTES TO DECISIONS

AMENDMENTS

The amendment of July 17, 1947 to this section so as to permit parole violator upon recommitment to earn commutation for good conduct was remedial and was to be construed liberally. *Jones* v. *Clemmer* (App. D. C. 1947, 163 F. 2d 852).

APPEARANCE AND HEARING

The provision of this section that a paroled prisoner arrested for violation of parole should be given an opportunity to appear before board meant an effective appearance, including presence of counsel, if desired by prisoner, and receipt of testimony if he has testimony to present. *Fleming* v. *Tate* (App. D. C. 1946, 156 F. 2d 848).

Participation by counsel in proceedings against parole violator need be no greater than necessary to insure that board is accurately informed from parolee's standpoint before it acts, and permitted presentation of testimony by parolee is governed by same rule. *Fleming* v. *Tate* (App. D. C. 1946, 156 F. 2d 848).

This section providing that a prisoner shall be given an opportunity to "appear" before the Board of Indeterminate Sentence and Parole of District of Columbia contemplates an effective appearance and not the mere physical presence of prisoner, and implies that he must be given a "hearing" wherein he is entitled to be represented by retained counsel, present evidence, and adduce witnesses. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

Under this section providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, a summary and informal hearing is sufficient. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

ASSIGNMENT OF COUNSEL

Under this section providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, right of counsel is statutory and not constitutional, and prisoner would not be entitled to have counsel assigned to represent him. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

COMMUTATION OF SENTENCE

Any right to commutation which defendant may have earned for good conduct at any time prior to recommitment was conditional and was forfeited by violation of parole. *Jones* v. *Clemmer* (App. D. C. 1947, 163 F. 2d 852).

The amendment of July 17, 1947 to this section permitting parole violator to earn commutation for good conduct applied to service of remainder of sentences after recommitment, although sentences were originally imposed prior to such amendment. *Jones* v. *Clemmer* (App. D. C. 1947, 163 F. 2d 852).

DISCRETION OF BOARD

Under this section, parolee should be permitted to present any pertinent matter, and, although board's discretion in continuing or revoking parole is uncontrolled, it cannot act in disregard of facts or refuse to hear argument. *Fleming* v. *Tate* (App. D. C. 1946, 156 F. 2d 848).

The granting or revocation of a parole is within discretion of Board of Indeterminate Sentence and Parole of the District of Columbia. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

HABEAS CORPUS

A parole violator, who was returned to prison without permitting counsel who had previously represented prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. *Fleming* v. *Tate* (App. D. C. 1946, 156 F. 2d 848).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

Where, at hearing before Board of Indeterminate Sentence and Parole of District of Columbia to revoke a parole, parolee's counsel was not permitted to appear, parolee's employer was not permitted to testify, and parole was revoked, parolee's right under this section to appear before the board was violated and parolee would be discharged on habeas corpus without prejudice to subsequent proceedings for revocation of his parole in conformity with this section. *In re Tate* (D. C., D. C. 1946, 63 F. Supp. 961).

REVOCATION OF PAROLE

Failure of Board of Parole to give immediate hearing and revoke parole when paroled prisoner was returned to reformatory pursuant to sentences for crimes committed while on parole did not permit parole to continue running in satisfaction of original sentences after prisoner's reentry of reformatory. *Washington* v. *Clemmer* (C. A., D. C. 1948, 169 F. 2d 300).

RULES OF EVIDENCE

Although parole violator is entitled to present testimony at hearing before board, it is not required that receipt of testimony be governed by strict rules of evidence. *Fleming* v. *Tate* (App. D. C. 1946, 156 F. 2d 848).

SENTENCE UPON REIMPRISONMENT

The provision of this former section that unexpired term of imprisonment of any paroled prisoner shall begin to run from date he is returned to institution does not require that original sentence shall run from date of his imprisonment for new and separate offense, but refers only to reimprisonment on original sentence under order of parole board. *Washington* v. *Clemmer* (C. A., D. C. 1948. 169 F. 2d 300).

VIOLATION OF CONDITIONS

District of Columbia Board of Indeterminate Sentence and Parole had power to impose conditions upon release of prisoner who had served full time of sentence with deductions for good conduct and in event of violation of conditions to recommit him to serve out balance of his term. *Gould* v. *Green,* 1944, 141 F. 2d 533 (78 U. S. App. D. C. 363).

§ 24–207 [6: 457]. Repeal provision.

All acts or parts of acts inconsistent with the provisions of sections 24–201 to 24–208 are hereby repealed: *Provided, however,* That for any felony committed before July 15, 1932, the penalty, sentence, or forfeiture provided by law for such felony at the time such felony was committed shall remain in full force and effect and shall be imposed, notwithstanding sections 24–201 to 24–208. (July 15, 1932, 47 Stat. 698, ch. 492, § 7.)

NOTES TO DECISIONS

PRISONERS CONFINED OUTSIDE DISTRICT

Parole board under Indeterminate Sentence Act had no jurisdiction over prisoners convicted of murder in the District of Columbia, but confined in the United States penitentiary at Atlanta, Ga. *Aderhold* v. *Lee* ((C. C. A. 5), 68 Fed. (2d) 824, revg. 5 Fed. Supp. 950, cert. den. 292 U. S. 633, 647, 78 L. Ed. 1486, 1498, 54 Sup. Ct. 718, 861).

REPEAL

This section was intended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence. *Anderson* v. *Rives* (66 App. D. C. 174, 85 Fed. (2d) 673).

§ 24–208 [6: 458]. Powers of prior board transferred—Application of law to prisoners sentenced before parole law became effective.

The power of the Board of Parole shall extend to all prisoners whose sentences exceed one hundred and eighty days regardless of the nature of the offense: *Provided,* That in the case of a prisoner convicted of an offense other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, the prisoner may not be paroled until he has served one-third of the sentence imposed, and in the case of two or more sentences for other than a felony, no parole may be granted until after the prisoner has served one-third of the aggregate sentences imposed. (July 15, 1932, 47 Stat. 698, ch. 492, § 9; June 6, 1940, 54 Stat. 242, ch. 254, § 7 (a); July 17, 1947, 61 Stat. 379, ch. 263, § 6.)

COMPILER'S NOTE

Subsection (b) of section 7 of the 1940 amendment provided as follows: "In the case of a prisoner convicted of misdemeanors committed prior to the effective date of this amendatory act [June 6, 1940], when the aggregate sentence imposed is in excess of one year, and in the case of a prisoner convicted of felony committed prior to the effective date of said act approved July 15, 1932, said Board of Indeterminate Sentence and Parole may parole said prisoner under the provisions of said act approved July 15, 1932, as amended, after said prisoner has served one-fifth of the sentence imposed."

AMENDMENTS

Act July 17, 1947, cited to text, amended section generally.

CROSS REFERENCE

See note under § 24–208. *Aderhold* v. *Lee* ((C. C. A. 5), 68 Fed. (2d) 824, revg. 5 Fed. Supp. 950, cert. den. 292 U. S. 633, 647, 78 L. Ed. 1486, 1498, 54 Sup. Ct. 718, 861).

NOTES TO DECISIONS

CITED

Story v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

POWERS OF BOARD

Under this section creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole to district board upon appointment of members of district board, the district board receives such powers over prisoners confined in penal institutions of district as existed in federal board of parole on date of appointment of members of district board, and not merely powers which existed in federal board of parole at time this chapter became effective. *Gould* v. *Green,* 1944 (141 F. 2d 533, 78 U. S. App. D. C. 363).

Under this section creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole over prisoners confined in penal institutions in District of Columbia to district board upon appointment of members of district board, authority of district board was not limited to prisoners thereafter convicted. *Gould* v. *Green,* 1944 (141 F. 2d 533, 78 U. S. App. D. C. 363).

§ 24–209 [6: 459]. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia and elsewhere.

The Board of Parole created by section 723a of Title 18, U. S. Code, shall have and exercise the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States and now or hereafter confined in any United States penitentiary or prison (other than the penal institutions of the District of Columbia) as is vested in the Board of Indeterminate Sentence and Parole over prisoners confined in the penal institutions of the District of Columbia. (July 15, 1932, ch. 492, § 10, as added, June 5, 1934, 48 Stat. 880, ch. 391.)

COMPILER'S NOTE

The 1934 act purported to amend the 1932 act, cited to the text of the other sections of this chapter, by adding this section.

NOTES TO DECISIONS

IN GENERAL

There is no doubt that Congress intended the act to be applicable to persons convicted in the District of Columbia of crimes against the general laws of the United States. *Sims* v. *Rives* (66 App. D. C. 24, 84 Fed. (2d) 871).

This section gives to the United States Board of Parole the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States as is vested in the Board of Indeterminate Sentence and Parole. *Story* v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

The term "prisoners confined in", as used in this section transferring power over prisoners confined in penal institutions of District of Columbia from United States Board of Parole to the District Board of Penal Institutions, is used to designate group of persons by institutions rather than to delimit powers of District board to such persons only while they are in confinement. *Ex parte Gould* (D. C., D. C. 1943, 51 F. Supp. 354).

The power of United States Board of Parole to impose conditions on release on account of deductions for good conduct of United States prisoners passed from United States Board of Parole to District Board of Penal Institutions by this chapter with respect to United States prisoners in penal institutions of the District of Columbia. *Ex parte Gould* (D. C., D. C. 1943, 51 Supp. 354).

PRISONER CONFINED OUTSIDE DISTRICT

This act is not inconsistent with the authority of the Attorney General to transfer prisoners from the District of Columbia. *Bracey* v. *Hill* ((D. C.-Pa.), 11 Fed. Supp. 148).

The same privileges of parole are accorded prisoners sentenced in the District of Columbia and committed to penal institutions outside of the District as to those sentenced and confined within the District. *Bracey* v. *Hill* ((D. C.-Pa.), 11 Fed. Supp. 148).

This section removes the question whether a defendant, who was sentenced in the District of Columbia, could be committed to a penal institution outside of the District because of the deprivation of parole. *Bracey* v. *Hill* ((D. C.-Pa.), 11 Fed. Supp. 148).

One sentenced for violation of the laws of the District of Columbia, convicted and confined in District, could be confined outside the District, and such confinement does not violate any constitutional rights. *MacAboy* v. *Klecka* ((D. C.-Md.), 22 Fed. Supp. 960).

The United States Board of Parole and not the District Board of Penal Institutions, has jurisdiction over prisoners convicted in District of Columbia and transferred to some Federal institution other than penal institutions of the District. *Ex parte Gould* (D. C., D. C. 1943, 51 F. Supp. 354).

RELEASE OF PRISONERS NOT ON PAROLE

Neither this section nor §§ 24–201 to 24–208 have any bearing upon the release of prisoners other than on parole, and neither restricts in any way the power of the United States Board to supervise prisoners so released from institutions other than in the District under the provisions of section 4 of the act of June 29, 1932 (U. S. C., title 18, § 716b). *Story* v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

RELEASE OF PRISONERS ON PAROLE

This act constituted an extension of power in the United States Board over District of Columbia prisoners in that it permitted the board to release such prisoners

on parole from non-District institutions after serving only one-fifth of their maximum terms. *Story* v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

UNITED STATES PRISONER

Prisoner sentenced for violation of the laws of the District of Columbia is a "United States prisoner" within the meaning of U. S. C., title 18, § 716b. *MacAboy* v. *Klecka* ((D. C.-Md.), 22 Fed. Supp. 960).

Chapter 3.—INSANE CRIMINALS

Sec.

24–301. Commitment of insane criminals to the Gallinger Municipal Hospital—Certification to the Federal Security Administrator — Confinement—Expense—Right to appeal.
24–302. Commitment of persons becoming insane while serving sentence.
24–303. Restoration to sanity.

§ 24–301 [6: 374]. Commitment of insane criminals to the Gallinger Municipal Hospital—Certification to the Federal Security Administrator—Confinement—Expense—Right to appeal.

When any person tried upon an indictment or information for an offense or tried in the juvenile court of the District of Columbia for an offense, is acquitted on the sole ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict; and whenever a person is indicted or is charged by an information for an offense, or is charged in the juvenile court of the District of Columbia with an offense, and before trial or after a verdict of guilty, it shall appear to the court, from prima facie evidence submitted to the court or from the evidence adduced at the trial, that the accused is then of unsound mind, the court may order the accused committed to the Gallinger Municipal Hospital for a period not exceeding thirty days, which period may be extended by the court for good cause shown, for examination and observation by the psychiatric staff of said hospital. If, after examination and observation, the said psychiatric staff shall report that in their opinion the accused is insane, the court may cause a jury to be impaneled from the jurors then in attendance on the court or, if the regular jurors have been discharged, may cause a sufficient number of jurors to be drawn to inquire into the sanity of the accused, and said inquiry shall be conducted in the presence and under the direction of the court. If the jury shall find the accused to be then insane, or if an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Federal Security Administrator, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. The person whose sanity is in question shall be entitled to his bill of exceptions and an appeal as in other cases. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 927; Apr. 14, 1906, 34 Stat. 113, ch. 1624; July 2, 1945, 59 Stat. 311, ch. 217.)

AMENDMENTS

The act of July 2, 1945, cited to text, amended section generally.

CROSS REFERENCES

Commitment as feeble-minded person, § 32–621.

General provisions concerning payment of hospitalization of insane persons, § 21–318.

Other provisions concerning insane persons, criminal and otherwise, inquests, commitment, payment of expenses, §§ 21–301 to 21–333, 32–401 to 32–407.

NOTES TO DECISIONS

APPEAL FROM COMMITMENT TO ST. ELIZABETHS

Appeal from commitment to St. Elizabeths Hospital under this section held moot in view of the fact that petitioner had been determined by a jury to be of sound mind and had been released from the hospital. *Savage* v. *White* (56 App. D. C. 365, 14 Fed. (2d) 352).

CONSTITUTIONALITY

"There can be no reasonable objection to the validity of the provision of this section. It makes ample provision for the inquiry which is conducted with due regard to the protection of the defendant." *Wagner* v. *White* (38 App. D. C. 554).

This section has been held constitutional and valid in a case where defendant had been convicted, but not sentenced. *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

DISCRETION OF COURT

"Whether a prima facie case has been made by the petitioner requiring submission of the issue (of insanity) to a jury is a question submitted to the sound discretion of the trial judge." *Gonzales* v. *United States* (40 App. D. C. 450).

Refusal of trial court to submit to a jury the question of defendant's mental responsibility was not an abuse of its discretion, where there had never been any suggestion that he should be restrained of his liberty because of insanity, and where at his trial it did not appear and was not suggested that he was not fully and entirely responsible from a mental standpoint. *Jackson* v. *United States* (58 App. D. C. 125, 25 Fed. (2d) 549).

To same effect as first paragraph of original annotation, see *Neely* v. *U. S.* (App. D. C. 1945, 150 F. 2d 977).

EVIDENCE AS SUFFICIENT

Evidence concerning events of defendant's youth, none of them more recent than 15 years prior to time of hearing on petition for sanity inquisition after conviction of murder, and indicating that defendant as a youth had been reckless, imprudent, and brutal, was of no value to establish insanity. *Neely* v. *U. S.* (App. D. C. 1945, 150 F. 2d 977).

Opinion evidence by lay witness that a defendant convicted of murder was insane, was valueless to establish prima facie that defendant was insane so as to authorize granting of a petition for sanity inquisition. *Neely* v. *U. S.* (App. D. C. 1945, 150 F. 2d 977).

Denial of motion of one of the two defendants jointly indicted on charge of killing another in perpetrating robbery for a mental examination was not error, where moving defendant did not make prima facie showing of mental incapacity. *Wheeler* v. *U. S.* (App. D. C. 1948, 165 F. 2d 225, certiorari denied 68 S. Ct. 448, 339 U. S. 829, 92 L. Ed. 1155, see also 175 F. 2d 829, 84 U. S. App. D. C. 180).

PURPOSE

The purpose of this section providing that whenever prima facie evidence is submitted that accused is insane, the court may cause a jury to be impaneled to inquire into the sanity of accused, is to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment. *Neely* v. *U. S.* (App. D. C. 1945, 150 F. 2d 977).

RELEASE AFTER COMMITMENT

Insane person, found not guilty of homicide by reason of insanity, and committed to asylum, must prove sanity and that he is no longer a menace, to obtain release. *Barry* v. *White* (62 App. D. C. 69, 64 Fed. (2d) 707).

REPORT OF COMMISSION

Where the examination of accused as to his insanity was made by the Commission of Health at accused's request, and in support of his attempt to make a prima facie showing so as to authorize granting of petition for

sanity inquisition after conviction of murder, the court was not required to disregard the Commission's report on theory that to permit its consideration would have the effect of a waiver of privilege upon part of accused. *Neely* v. *U. S.* (App. D. C. 1945, 150 F. 2d 977).

SUSPENSION OF PROCEEDINGS

The sole effect of section 301 et seq. of this title governing procedure in case of insanity of person charged with crime is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip* v. *U. S.*, 1942 (129 F. 2d 53, 76 U. S. App. D. C. 91).

VERDICT, EFFECT OF

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. *Haislip* v. *U. S.*, 1942 (129 F. 2d 53, 76 U. S. App. D. C. 91).

§ 24–302 [6: 375]. Commitment of persons becoming insane while serving sentence.

Any person becoming insane while undergoing a sentence of any court of the District of Columbia for crime may, in like manner, be committed to said hospital for the insane, by order of the Secretary of the Interior, to receive the same treatment as other patients during the continuance of his disorder. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 928.)

§ 24–303 [6: 376]. Restoration to sanity.

When any person confined in the hospital for the insane, charged with crime and subject to be tried therefor or undergoing sentence therefor, shall be restored to sanity the superintendent of the hospital shall give notice thereof to the justice holding the criminal court and deliver him to the court according to its proper precept. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 929.)

NOTES TO DECISIONS

CERTIFICATION OF SANITY

Where accused charged with incest was found by jury to be of unsound mind and was committed to hospital, upon discharge of accused from hospital as cured and in absence of anything showing invalidity of certificate of hospital superintendent, court was required to proceed with trial on the suspended criminal indictment and no further proceedings on the question of sanity was necessary. *Haislip* v. *U. S.*, 1942 (129 F. 2d 53, 76 U. S. App. D. C. 91).

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. *Haislip* v. *U. S.*, 1942 (129 F. 2d 53, 76 U. S. App. D. C. 91).

CONSTRUCTION WITH OTHER LAWS

Where accused was charged with incest, found to be of unsound mind and committed to hospital and thereafter hospital superintendent certified that accused was not insane, in determining whether trial court had duty to ascertain judicially if superintendent's certificate correctly fixed accused's mental condition, section 320 of Title 24 relating to method of inquisition in case of persons believed to be of unsound mind was inapplicable. *Haislip* v. *U. S.*, 1942 (129 F. 2d 53, 76 U. S. App. D. C. 91).

HABEAS CORPUS

"But we find in this section nothing that precludes the right of the prisoner to have a judicial inquiry made into the fact of restoration to sanity," and he may apply for a habeas corpus in the event that the superintendent refuses to certify to his restoration to sanity. *Wagner* v. *White* (38 App. D. C. 554).

In habeas corpus proceeding by petitioner, who had been committed as an insane person pursuant to verdict, in murder prosecution, of not guilty by reason of insanity, evidence sustained determination that petitioner had not been restored to mental health and justified discharge of writ. *Orencia* v. *Overholser* (App. D. C. 1947, 163 F. 2d 763).

JURISDICTION

The sole effect of section 301 et seq. of the title governing procedure in case of insanity of person charged with crime is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip* v. *U. S.*, 1942 (129 F. 2d 53, 76 U. S. App. D. C. 91).

PRISONER CONVICTED BUT NOT SENTENCED

This section has been construed to include one convicted of crime but not yet sentenced. *Ormsby* v. *United States* ((C. C. A. 6), 273 Fed. 977).

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER I—PRISONS

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24–402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.
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SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

24–441. Department of Corrections created—Director.
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24–446. Cost of care and custody of persons confined in institutions managed by Department.
24–447. Advances to Director, Department of Corrections.

§ 24–401 [6: 401]. Place of imprisonment—Cumulative sentences—Jurisdiction of prosecutions.

When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the District Court of the United States for the District of Columbia. When the maximum punishment is a fine only or imprisonment for one year or less the prosecution may be in the police court. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934.)

COMPILER'S NOTE

This section may be affected by U. S. C., title 18, §§ 753–753j, creating the Bureau of Prisons in the Department of Justice.

CROSS REFERENCES

Place of imprisonment designated by Attorney General, § 24–425.

Power and duties of Board of Public Welfare concerning prisons and prisoners, § 3–101 et seq.

NOTES TO DECISIONS

ATTORNEY GENERAL, AUTHORITY

Attorney General of the United States has authority to designate an institution outside of the District of Columbia for service of sentence of a person convicted in the District of Columbia. *Stoneburg* v. *Hiatt* (D. C. Pa. 1942, 47 F. Supp. 596).

CUMULATIVE SENTENCES

Under this section cumulative sentences aggregating more than one year must be deemed one sentence for the purpose of determining the place of imprisonment. *Kelleher* v. *United States* (59 App. D. C. 107, 35 Fed. (2d) 877).

The purpose of the cumulative sentence provision was merely the adoption of a policy that District of Columbia prisoners sentenced for more than a year should serve time in a penitentiary rather than in the District jail, at least when the sentence was imposed by the district court. *Brosius* v. *Botkin* (72 App. D. C. 279, 114 Fed. (2d) 22).

Sentences for two separate offenses, each for a term from six months to a year, were properly served in a reformatory in Virginia. *Brosius* v. *Botkin* (72 App. D. C. 279, 114 Fed. (2d) 22).

Sentences imposed by Municipal Court of the District of Columbia can be cumulated with sentences imposed in District Court of the District of Columbia, and all served in a United States penitentiary. *Stoneburg* v. *Hiatt* (D. C. Pa. 1942, 47 F. Supp. 596).

DIRECTION CONTRARY TO STATUTE

A direction by Municipal Court of District of Columbia that sentences imposed should be served in a jail type institution, if not in accordance with statutes applicable to the particular situation, would have no effect. *Stoneburg* v. *Hiatt* (D. C. Pa. 1942, 47 F. Supp. 596).

FEDERAL CRIMES

Intention of Congress was that the trial judge should be invested with the power to designate the type of penal institution in which persons convicted of Federal crimes should be confined. *Andreas* v. *Clark* ((C. C. A. 9), 71 Fed. (2d) 908).

HARD LABOR

When defendant had been tried upon an information in the juvenile court of the District and sentenced to imprisonment at hard labor for six months, the statute authorizing such punishment was unconstitutional, and juvenile court was without jurisdiction to try capital or other infamous crimes. *United States* v. *Moreland* (258 U. S. 433, 66 L. Ed. 700, 42 Sup. Ct. 368, 24 A. L. R. 992).

Police court will not sentence to imprisonment in any institution where hard labor is lawfully required of the prisoners therein because such a sentence would place the offense itself within the category of infamous crimes and thereby oust the court of its jurisdiction. *Cleveland* v. *Mattingly* (52 App. D. C. 374, 287 Fed. 948).

IMPRISONMENT IN DEFAULT OF FINE

"The provision relating to cumulative sentences 'has no reference to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, but relates only to cases in which the punishment is to be imprisonment.'" *Hartranft* v. *Mullowny* (43 App. D. C. 44, writ of error dism. 247 U. S. 295, 62 L. Ed. 1123, 38 Sup. Ct. 518).

PROBATION

District Court had no power to release defendant on probation after he had entered upon the execution of his sentence when he was committed to jail to await transportation to the final place of imprisonment. *Moss* v. *United States* ((C. C. A. 4), 72 Fed. (2d) 30).

SENTENCE BEFORE REPEAL OF EIGHTEENTH AMENDMENT

When person was committed to jail before Eighteenth Amendment and Prohibition Act were repealed, he was not entitled to discharge by habeas corpus on theory that each day in prison was a new and distinct offense. *Rives* v. *O'Hearne* (64 App. D. C. 48, 73 Fed. (2d) 984).

SUCCESSIVE IMPRISONMENTS

Sentences are not cumulative "merely because two imprisonments are made successive in point of time, if it happen that the prisoner convicted upon two separate informations receives two separate definite sentences for the two separate offenses." *Harris* v. *Lang* (27 App. D. C. 84). See also *Harris* v. *Nixon* (27 App. D. C. 94).

TERM EXCEEDING ONE YEAR

"Section 934 (this section) provides generally that where the sentence on any conviction is for a term exceeding one year the imprisonment shall be in the penitentiary, and applies to section 810 (§ 22–2901) as directly as if it had been incorporated therein." *United States* v. *Evans* (28 App. D. C. 264).

§ 24–402 [6: 402]. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

Whenever any person has been convicted of crime in any court in the District of Columbia and sen-

tenced to imprisonment for more than one year by the court, the imprisonment during the term for which he may have been sentenced or during the residue of said term may be in some suitable jail or penitentiary or in the reformatory of the District of Columbia; and it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison or the reformatory of the District of Columbia and the imprisonment shall be in such penitentiary, jail, or the reformatory of the District of Columbia as the Attorney-General shall from time to time designate: *Provided,* That the commissioners of the District of Columbia are vested with jurisdiction over such male and female prisoners as may be designated by the Attorney-General for confinement in the reformatory of the District of Columbia from the time they are delivered into their custody or into the custody of their authorized superintendent, deputy, or deputies, and until such prisoners are released or discharged under due process of law: *And provided further,* That the residue of the term of imprisonment of any person who has prior to July 1, 1916, been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court may be in the reformatory of the District of Columbia instead of the penitentiary where such persons may be confined on July 1, 1916, and the Attorney-General, when so requested by the commissioners of the District of Columbia, is authorized to, and he shall, deliver into the custody of the superintendent of said reformatory or his deputy or deputies any such person confined in any penitentiary in pursuance of any judgment of conviction in and sentence by any court in the District of Columbia, and the commissioners of the District of Columbia are vested with jurisdiction over such prisoners from the time they are delivered into the custody of said superintendent or his duly authorized deputy or deputies, including the time when they are in transit between such penitentiary and the reformatory of the District of Columbia, and during the period they are in such reformatory or until they are released or discharged under due process of law. The Attorney-General shall pay the cost of the maintenance of said prisoners so transferred, said payment to be from appropriations for support of convicts, District of Columbia, in like manner as payments are made for the support of District convicts in federal penitentiaries. Nothing herein contained shall be construed as applying to the National Training School for Boys or the National Training School for Girls. (Sept. 1, 1916, 39 Stat. 711, ch. 433.)

COMPILER'S NOTE

This section is a proviso clause in the appropriations act of September 1, 1916. The following words were also contained therein, "The provisions of this paragraph shall take effect on and after July first, nineteen hundred and sixteen."

CROSS REFERENCES

Exclusive jurisdiction and control of Board of Public Welfare over certain institutions, § 3–106 et seq.

Place of imprisonment to be designated by Attorney General, § 24–425.

See note to § 24–401.

NOTES TO DECISIONS

CONSTITUTIONAL LAW

Act giving Attorney General power to designate places of confinement for Federal prisoners does not violate Fifth Amendment. *Stewart* v. *Johnston* ((C. C. A. 9), 97 Fed. (2d) 548).

FEDERAL INSTITUTIONS

This section impliedly recognizes the fact that District of Columbia prisoners may be incarcerated in Federal institutions. *Story* v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

Prisoner released on parole by Federal parole board as a matter of discretion but Congress adopted a new procedure of conditional release because it realized that society would be better served if prisoners were subjected to the same supervision as parolees. *Story* v. *Rives* (68 App. D. C. 325, 97 Fed. (2d) 182).

PENAL OR CORRECTIONAL INSTITUTIONS

A sentence to serve a term in a penal institution could not be served in a correctional institution, except under authority given to the Attorney General to transfer prisoners. *Wilson* v. *Aderhold* ((C. C. A. 5), 84 Fed. (2d) 806).

PLACE OF CONFINEMENT

The Attorney General of the United States had the authority to designate an institution located outside of the District of Columbia and beyond the control of local penal officials for service of sentence by one who was convicted in the District of Columbia of a violation of section 1504 of Title 24, since the offense punished thereby was an "offense against the United States" within meaning of this section. *Beard* v. *Bennett,* 1941 (114 F. 2d 578, 72 App. D. C. 269).

PLACE OF IMPRISONMENT

Attorney General was duly authorized to designate the prison where a defendant was sentenced in the courts of the District of Columbia to imprisonment exceeding one year, and his designation was in proper form. (Decided under D. C. 1901, § 925). *Myers* v. *Morgan* ((C. C. A. 8), 224 Fed. 413).

Attorney General, under the broad powers conferred upon him, had authority to cause appellee to be placed and held in the Atlanta penitentiary under any general sentence of imprisonment for more than a year, the court could have imposed. *Aderhold* v. *Edwards* ((C. C. A. 5), 71 Fed. (2d) 297).

TRANSFER OF PRISONERS

Transfer of inmates of Atlanta penitentiary who are eligible to parole, to an institution in District of Columbia, can not be required by the courts. *Aderhold* v. *Lee* ((C. C. A. 5) 68 Fed. (2d) 824, cert. den. 292 U. S. 633, 78 L. Ed. 1486, 54 Sup. Ct. 718).

Attorney General has authority to change the place of confinement from a Federal penitentiary to a local jail, when it is proper to do so, in the exercise of his discretion, and it is not necessary that a prisoner be remanded to the trial court merely for the purpose of having the designation of the jail changed. *Cox* v. *McConnell* ((C. C. A. 5), 80 Fed. (2d) 258).

In imposing sentences, courts are restricted to specifying the type of institution in which the prisoner is to be confined and he is committed to the custody of the Attorney General, who designates the place of confinement, and the Attorney General may transfer any prisoner from one institution to another for any reason sufficient to himself. *Zerbst* v. *Kidwell* ((C. C. A. 5), 92 Fed. (2d) 756).

Section 753f of U. S. C., title 18, if it is in any respect inconsistent with this section (§ 24–402), is so only to the extent that it broadens the Attorney General's authority so that he may designate a place of confinement other than one of the District of Columbia. *Beard* v. *Bennett* (72 App. D. C. 269, 114 Fed. (2d) 578).

§ 24–403 [6: 403]. Transfer of prisoners from jail to workhouse.

The District Court of the United States for the District of Columbia, the Attorney-General, and the

superintendent of the Washington Asylum and Jail, when so requested by the Commissioners of the District of Columbia, shall deliver into the custody of the superintendent or the authorized deputy or deputies of said superintendent of the workhouse, male and female prisoners sentenced to confinement in said jail for offenses against the common law or against statutes or ordinances relating to the District of Columbia, and, in the discretion of the District Court of the United States for the District of Columbia and the Attorney-General, male and female prisoners serving sentence in said jail for offenses against the United States, for such work or services as may be necessary, in the discretion of the commissioners of said District, in connection with the construction, maintenance, and operation of said workhouse, or the prosecution of any other public work at said institution or in the District of Columbia: *Provided,* That, on the direction of said commissioners, male and female prisoners confined in any existing workhouse existing on March 2, 1911, or in the Washington Asylum and Jail of the District of Columbia shall be delivered into the custody of said superintendent or the authorized deputy or deputies of said superintendent aforesaid, to perform similar work or services to those hereinbefore required of male and female prisoners serving sentences in the District of Columbia Jail: *Provided further,* That the Commissioners of the District of Columbia are hereby vested with jurisdiction over such male and female prisoners from the time they are so delivered into the custody of said superintendent or the duly authorized deputy or deputies of said superintendent, including the time when such prisoners are in transit between the District of Columbia and the site acquired for such workhouse, and during the period such prisoners are on such site or in the District of Columbia until they are released or discharged under due process of law. (Mar. 2, 1911, 36 Stat. 1002, ch. 192.)

COMPILER'S NOTE

This section is a proviso clause in the Appropriations Act of March 2, 1911.

CROSS REFERENCES

Exclusive jurisdiction and control of Board of Public Welfare over certain institutions, § 3–106 et seq.

See note to § 24–401.

NOTES TO DECISIONS

EFFECT OF STATUTORY PROVISION

Provision of the statute authorizing transfer to the workhouse by direction of the commissioners was attached by law to the sentence, and had the same effect as if the court, under statutory authority, had expressed in the sentence that the convict might be transferred to the workhouse under order of the commissioners. *Whittaker* v. *Brannan* ((C. C. A. 4), 252 Fed. 556).

HABEAS CORPUS

District Court had jurisdiction to issue habeas corpus writ, for petitioner was committed by a court of the District to a jail of the District under the control of an official of the District who in turn was personally within the District and within the jurisdiction of the court. *Sanders* v. *Allen* (69 App. D. C. 307, 100 Fed. (2d) 717).

§ 24–404 [6: 404]. Commutation of fine.

In all cases in the District of Columbia where a defendant is sent to jail or to the workhouse in default of the payment of a fine he shall be released upon the payment of the balance of the fine due by him after crediting thereon as paid an amount equal to the proportion the time thus served by him in the jail or workhouse bears to the whole time he was to serve under the sentence. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 936.)

§ 24–405 [6: 405]. Deduction for good conduct—Discharge.

All persons sentenced to and imprisoned in the jail or in the workhouse of the District of Columbia, and confined there for a term of one month or longer who conduct themselves so that no charge of misconduct shall be sustained against them shall have a deduction upon a sentence of not more than one year of five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; and upon a sentence of ten years or more, ten days for each month, and shall be entitled to their discharge so much the earlier upon the certificate of the superintendent of the Washington Asylum and Jail for those confined in the jail, and upon the certificate of the superintendent of the workhouse for those confined in the workhouse, of their good conduct during their imprisonment. When a prisoner has two or more sentences the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 937; Mar. 2, 1911, 36 Stat. 1003, ch. 192; June 6, 1940, 54 Stat. —, ch. 254, § 10.)

AMENDMENTS

The 1911 act combined as one institution, known as the Washington Asylum and Jail, the jail of the District of Columbia and the Washington Asylum, and created the position of Superintendent of the Washington Asylum and Jail and vested in him the powers theretofore vested in and exercised by the warden of the former jail and the superintendent of the former Washington Asylum.

Prior to the 1940 amendment this section provided only for a deduction of five days each month; provided that the Superintendent of the Washington Asylum and Jail should furnish the certificate for those confined in the workhouse; provided for the approval of the judge making the commitment; and required the judge to make a notation of such discharge on his docket. The 1940 amendment also added the last sentence.

CROSS REFERENCE

See § 24–411.

NOTES TO DECISIONS

CITED

This section was cited erroneously as 1901 Code, § 931, in *Harris* v. *Lang* (27 App. D. C. 84, 7 L. R. A. (N. S.) 124, 7 Ann. Cas. 141).

GOOD CONDUCT ALLOWANCE

An allowance on a sentence for good conduct is a privilege and not a vested right. It may be denied as to all cumulative sentences for an infraction of the rules occurring during the service of any of the sentences. *Aderhold* v. *Hudson* ((C. C. A. 5), 84 Fed. (2d) 559).

§ 24–406 [6: 406]. Prisoners in workhouse and reformatory to be returned to and released in District of Columbia.

All inmates of the workhouse and reformatory for the District of Columbia shall be returned to and

released in said District on the day of the expiration of sentence. (June 10, 1910, 36 Stat. 464, ch. 282.)

§ 24–407 [6: 407]. Jail and Washington Asylum combined.

The jail of the District of Columbia and the Washington Asylum of said District shall be combined as one institution, known as the Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CROSS REFERENCE

Exclusive jurisdiction and control of Board of Public Welfare, § 3–106 et seq.

§ 24–408 [6: 408]. Commitments to Washington Asylum and Jail.

Whenever and wherever authority of law exists to sentence, commit, order committed, or confine any person to or in the jail of the District of Columbia or the Washington Asylum of said District, said authority shall be exercised by sentence, commitment, order of commitment, or confinement to or in said Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CROSS REFERENCE

Exclusive jurisdiction of Board of Public Welfare, § 3–106 et seq.

§ 24–409 [6: 409]. Board of Public Welfare to have exclusive management and control of workhouse, reformatory, and Washington Asylum and Jail.

The Board of Public Welfare shall have complete and exclusive management and control of (a) the workhouse at Occoquan in the State of Virginia; (b) the reformatory at Lorton, in the State of Virginia; (c) the Washington Asylum and Jail. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

COMPILER'S NOTE

The entire section of the 1926 act is § 3–106.

STATUTORY REFERENCE

Sites for reformatory and workhouse, acquisition in Maryland and Virginia, and construction of buildings. (Mar. 3, 1909, 35 Stat. 717, ch. 250, § 1.)

§ 24–410 [6: 410]. Detention of United States prisoners in Washington Asylum and Jail.

The Board of Public Welfare is hereby authorized and directed to receive and keep in the Washington Asylum and Jail all prisoners committed thereto for offenses against the United States. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CROSS REFERENCE

See note to § 24–409.

§ 24–411 [6: 411]. Washington Asylum and Jail—Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

The superintendents and all other employees engaged on March 16, 1926 in the operation of the institutions enumerated in section 24–409 shall after March 16, 1926 be subject to the supervision of the Board. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the director of public welfare. The superintendent and all other employees of each of the institutions enumerated in section 24–409 shall be appointed by the Commissioners of the District of Columbia upon nomination by the Board and shall be subject to discharge by the Commissioners upon recommendation of the Board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

COMPILER'S NOTES

This section as compiled in the 1929 code, was a consolidation of the acts of March 2, 1911, 36 Stat. 1003, ch. 192 and March 16, 1926, 44 Stat. 209, ch. 58, § 6, without using the language of either act.

The act of March 16, 1926, by § 15, repealed all acts or parts of acts inconsistent therewith. This would repeal inconsistent provisions of the act of Mar. 2, 1911, but this act in 36 Stat. 1003 contained the following provision which is probably still in force, "Said superintendent shall give bond to the District of Columbia for faithful performance of the duties of his office, as are now (March 2, 1911) or may hereafter be prescribed, in the penal sum of five thousand dollars, with surety or sureties to be approved by the commissioners."

The 1911 act also contains the following provision: "All the duties, discretion and powers now vested in and exercised by the warden of the jail of said District and the Superintendent of the present Washington Asylum are hereby transferred and vested in the superintendent herein provided for."

CROSS REFERENCE

See note to § 24–409.

§ 24–412 [6: 412]. Employment of prisoners.

Persons sentenced to imprisonment in the jail may be employed at such labor and under such regulations as may be prescribed by the Board of Public Welfare and the proceeds thereof applied to defray the expenses of the trial and conviction of any such person. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

AMENDMENT

The 1926 act provides that the Board of Public Welfare shall have complete and exclusive control and management of the Washington Asylum and Jail, and provides further, in § 15 thereof, for the repeal of all acts or parts of acts inconsistent therewith. In accordance therewith, the words "Supreme Court of the District," as contained in the 1901 act, are deleted and the words "Board of Public Welfare" inserted in lieu thereof.

§ 24–413 [6: 413]. Commitment by marshal.

Nothing in sections 24–412, 24–415 shall be construed to impair or interfere with the authority of the marshal of the District to commit persons to the jail or to produce them in open court or before any judicial officer when thereto required. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1193.)

§ 24–414 [6: 414]. Delivery of prisoners to marshal.

It shall be the duty of the superintendent of the Washington Asylum and Jail to receive such prisoners and to deliver them to the marshal or his duly authorized deputy, on the written request of either, for the purpose of taking them before any court or judicial officer, as provided in section 12–413. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1194; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

AMENDMENT

The word of the 1901 act, "warden," has been deleted and the words "superintendent of the Washington Asylum and Jail" inserted in lieu thereof by the 1911 act.

CROSS REFERENCE

See compiler's note to § 24–411.

§ 24–415 [6: 415]. Superintendent of Washington Asylum and Jail accountable for safe-keeping of prisoners.

The superintendent of the Washington Asylum and Jail shall be accountable for the safe-keeping of all prisoners legally committed thereto. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1191; Mar. 2, 1911, 36 Stat. 1003, ch. 192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

AMENDMENTS

The 1901 act provided "The warden shall have exclusive supervision and control of the jail of the District and shall be accountable for the safe-keeping of all prisoners legally committed thereto, and shall have all the power and discharge all the duties legally exercised and discharged over said jail and prisoners prior to the twenty-ninth day of February, eighteen hundred and sixty-four, by the marshal of the District."

The first part of this 1901 section has been repealed by § 15 of the 1926 act, which act vested complete and exclusive management of the Washington Asylum and Jail in the Board of Public Welfare (see § 24–409). The duties provided have been transferred to the Superintendent of the Washington Asylum and Jail by the 1911 act (see compiler's note to § 24–411).

NOTES TO DECISIONS

APPOINTMENT

Defendant is superintendent by virtue of an appointment from the Commissioners of the District, and under his direction and control are the jail building itself and all other buildings used in connection with it, including the hospital building, where the plaintiff was received. All the subordinates of the superintendent receive their appointments from the Commissioners themselves, and are not subject to discharge by the superintendent. *Zinkhan* v. *District of Columbia* (50 App. D. C. 312, 271 Fed. 542).

BOND

Office of warden was abolished and a new office created, viz the office of Superintendent of the Washington Asylum and Jail, under appointment by the Commissioners of the District, and such officer's bond was required to be given to the District. Touching this bond there is no statutory provision that allows action thereon to be brought by a third party. *District of Columbia* v. *Fidelity & Deposit Co.* (50 App. D. C. 309, 271 Fed. 383).

§ 24–416 [6: 416]. Annual report by Superintendent of Washington Asylum and Jail.

The superintendent of the Washington Asylum and Jail shall annually, in the month of November, make a detailed report to the Attorney-General. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1197; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CROSS REFERENCE

See compiler's note to § 24–411.

§ 24–417 [6: 417]. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.

The Superintendent of the Washington Asylum and Jail appointed by the commissioners of the District of Columbia is hereby directed, authorized, and required to execute the judgments of the law prior to March 4, 1923, pronounced and thereafter to be pronounced in the District of Columbia by the courts thereof in all capital cases, and the power prior to March 4, 1923, given to and now vested in such commissioners to appoint such superintendent and all appointments to the position of such superintendent made by such commissioners are hereby ratified and confirmed; and any failure on the part of Congress, either prior to or after March 4, 1923, to make a specific appropriation for the salary or compensation of such superintendent shall not be construed either as an abolition of such position of Superintendent of the Washington Asylum and Jail or as a repeal of the power and authority of such commissioners to appoint such superintendent. (Mar. 4, 1923, 42 Stat. 1533, ch. 292.)

CROSS REFERENCES

Exclusive jurisdiction and control by Board of Public Welfare, §§ 3–106, 3–107.

Method of capital punishment, duty to provide death chamber and apparatus, death sentence to be in writing, persons present at electrocution, see §§ 23–701 to 23–706.

§ 24–418 [6: 429]. Sale of products of workhouse and reformatory.

The commissioners are authorized, under such regulations as they may prescribe, to sell the surplus products of the workhouse and the reformatory. All moneys derived from such sales shall be paid into the treasury of the United States to the credit of the United States and to the credit of the District of Columbia, in the same proportions as the appropriations for such institutions are paid from the treasury of the United States and the revenues of the District of Columbia. All moneys received at the reformatory as income thereof from the sale of brooms to the various branches of the government of the District of Columbia shall remain available for the purchase of material for the manufacture of additional brooms to be similarly disposed of. (June 5, 1920, 41 Stat. 869, ch. 234; Feb. 28, 1923, 42 Stat. 1357, ch. 148.)

AMENDMENT

This section is a composite of the credits given in the history line. The last sentence is from the 1923 act; the rest from the 1920 act.

CROSS REFERENCES

Proportionate credit for amounts paid in treasury, § 47–130.

The Federal Government now makes a lump-sum appropriation for the District, § 47–134.

§ 24–419 [6: 430]. Workhouse—Reformatory—Superintendents and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

The superintendents and all other employees now engaged on March 16, 1926, in the operation of the institutions enumerated in section 24–409 shall thereafter be subject to the supervision of the Board. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the director of public welfare. The superintendent and all other employees of each of the institutions enumerated in section 24–409 shall be appointed by the commissioners of the District of Columbia upon nomination by the board and shall be subject to discharge by the commissioners upon recommendation of the board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

COMPILER'S NOTE

This section as compiled in the 1929 code, was a consolidation of the acts of June 25, 1910 (36 Stat. 786, ch. 385), and of March 16, 1926 (44 Stat. 209, ch. 58, §§ 6 and 7), without using the language of either act.

The act of March 16, 1926, by § 15, repealed all acts and parts of acts inconsistent therewith. This would repeal inconsistent provisions of the act of June 25, 1910, but this act in 36 Stat. 786 contained a sentence authorizing the Commissioners to "require bond from such superintendent for the faithful performance of his duties."

CROSS REFERENCES

See compiler's notes to §§ 24–409, 24–411.

§ 24–420 [6: 431]. Grounds of jail increased.

The buildings and grounds adjoining the Washington Asylum in the District of Columbia, used prior to June 16, 1880, as a Naval and Army magazine are added to the grounds of the Washington Asylum and Jail and subjected to the control of the commissioners of the District of Columbia as part of the asylum until otherwise ordered. (June 16, 1880, 21 Stat. 270, ch. 235; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

AMENDMENT

The 1911 act merged the asylum and jail into one institution.

§ 24–421 [6: 432]. Subsistence of prisoners—Payment by Attorney-General.

There shall be allowed and paid by the Attorney-General for the subsistence of prisoners in the custody of any marshal of the United States and the Superintendent of the Washington Asylum and Jail in the District of Columbia such sum as it reasonably and actually costs to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the Superintendent of the Washington Asylum and Jail in the District of Columbia in relation to their duties under this chapter as will enable him to determine the actual and reasonable expenses incurred. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1204; Mar. 2, 1911, 36 Stat. 1003, ch. 192; Mar. 16, 1926, 44 Stat. 209, ch. 58, §§ 6 and 7.)

AMENDMENTS

The 1911 act merged the asylum and jail into one institution, the Washington Asylum and Jail.

The 1926 act provided for the appointment of the superintendent thereof (see § 24–411).

STATUTORY REFERENCE

This section is U. S. C., title 18, § 432.

§ 24–422 [6: 433]. Maintenance of jail—Support of prisoners—Apportionment between United States and District of Columbia—Estimates to be submitted.

All expenses incurred for maintenance of the jail of the District of Columbia and for support of prisoners therein shall be paid out of the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the annual estimates for the expenses of the government of the District of Columbia. (Aug. 18, 1894, 28 Stat. 417, ch. 301; June 29, 1922, 42 Stat. 668, ch. 249.)

COMPILER'S NOTE

The act of June 29, 1922, 42 Stat. 668, ch. 249, the basis for various sections of the code which provide for 60% payment by the District of certain expenses, was repealed by the act of May 16, 1938 (52 Stat. 375, ch. 223, § 8), adding title X to the act of August 17, 1937 (50 Stat. 673, ch. 690). This repealing act does not provide any substitute provision, and consequently the aforesaid sections are left without foundation in the statutes. The 1922 act, p. 671, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply. The division of expenses between the District and the United States, if any, is apparently controlled by specific statutes or appropriation acts. If there is no division it would seem that the District would pay all expenses, if any, over and above the lump-sum appropriation as apportioned to the various agencies.

§ 24–423 [6: 434]. Cost of care of District of Columbia convicts charged against District—United States reimbursed—Miscellaneous receipts.

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the treasury as "Miscellaneous receipts." (Apr. 29, 1926, 44 Stat. 347, ch. 195, title II.)

STATUTORY REFERENCE

This section is U. S. C., title 18, § 704a.

§ 24–424 [6: 435]. Cost of care of District of Columbia convicts charged against District—Accounts.

The cost of the care and custody of District of Columbia convicts in any federal penitentiary shall be charged against the District of Columbia in quarterly accounts to be rendered by the disbursing officer of said penitentiary; and the amount to be charged against the District of Columbia shall be ascertained by multiplying the average daily number of District of Columbia convicts confined in the penitentiary during the quarter by the per capita cost for all prisoners in such penitentiary for the same quarter but excluding expenses of construction or extraordinary repair of buildings. (Mar. 3, 1915, 38 Stat. 869, ch. 75, § 1.)

§ 24–425. Place of imprisonment—Designation by Attorney General—Transfer.

All prisoners convicted in the District of Columbia for any offense, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, shall be committed, for their terms of imprisonment, and to such types of institutions as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinements where the sentences of all such persons shall be served. The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the District of Columbia Government, the federal government, or otherwise, or whether within or without the District of Columbia. The Attorney General is also authorized to order the transfer of any such person from one institution to another if, in his judgment, it shall be for the well-being of the prisoner or relieve overcrowding or unhealthful conditions in the institution where such prisoner is confined, or for other reasons. (July 15, 1932, ch. 492, § 11, as added June 6, 1940, 54 Stat. 244, ch. 254, § 8.)

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

§ 24–441. Department of Corrections created—Director.

There is created in and for the District of Columbia a Department of Corrections to be in charge of a

Director who shall be appointed by the Commissioners of the District of Columbia. (June 27, 1946, 60 Stat. 320, ch. 507, § 1.)

§ 24–442. Powers of Department over institutions—Rules and regulations.

Said Department of Corrections under the general direction and supervision of the Commissioners of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Department of Corrections with the approval of the Commissioners shall have power to promulgate rules and regulations for the government of such institutions and to establish and conduct industries farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation. (June 27, 1946, 60 Stat. 320, ch. 507, § 2.)

§ 24–443. Board of Public Welfare powers transferred to Department—Officers and employees.

With respect to the said institutions, the Commissioners of the District of Columbia shall succeed to all the powers and authority, and to all the duties and obligations vested in or imposed by law upon the Board of Public Welfare of the District of Columbia. Where powers are vested in or duties are imposed by existing law upon the Director of Public Welfare of the District of Columbia with respect to said institutions, such powers and duties are transferred to and shall be exercised by the Director of the Department of Corrections. The officers and employees and all plant and equipment, official records, furniture, and supplies of the said institutions are hereby transferred to the Department of Corrections. (June 27, 1946, 60 Stat. 321, ch. 507, § 3.)

§ 24–444. Rules and regulations of Board of Public Welfare in effect.

All rules and regulations promulgated by the Board of Public Welfare with respect to said institutions shall continue in force and effect until amended or repealed by the Department of Corrections with the approval of the Commissioners. (June 27, 1946, 60 Stat. 321, ch. 507, § 4.)

§ 24–445. Contracts of Board of Public Welfare not invalidated—Appropriations available.

No contract for services or supplies made by the Board pursuant to authority granted to it by law shall be invalidated by this enactment and the unexpended balances of all appropriations heretofore or hereafter made for the Board with respect to said institutions shall become available for use by the Department of Corrections under the direction of the Commissioners. (June 27, 1946, 60 Stat. 321, ch. 507, § 5.)

§ 24–446. Cost of care and custody of persons confined in institutions managed by Department.

The cost of the care and custody of persons confined in the said institutions charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia shall be charged against the department or agency of the United States primarily responsible for the care and custody of such persons in quarterly accounts to be rendered by the Disbursing Officer of the District of Columbia. The amount to be charged for such care and custody shall be ascertained by multiplying the average daily number of such persons so confined during the quarter by the per capita cost for the same quarter for all prisoners in the institution where confined, excluding expenses of construction or extraordinary repair of buildings. The sum so derived shall be credited to the current appropriation for the maintenance and operation of such institutions. (June 27, 1946, 60 Stat. 321, ch. 507, § 6.)

§ 24–447. Advances to Director, Department of Corrections.

Provided, That the disbursing officer of the District of Columbia is authorized to advance to the Director, Department of Corrections, upon requisitions previously approved by the Auditor of the District of Columbia and upon such security as the Commissioners may require of said Director, sums of money not exceeding $750 at one time, to be used only for expenses in returning escaped prisoners, conditional releasees, and parolees. (July 18, 1950, 64 Stat. 347, ch. 467, § 1).

Chapter 5.—REHABILITATION OF ALCOHOLICS.

Sec.

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§ 24–501. Purpose.

The purpose of this chapter is to establish a program for the rehabilitation of alcoholics, promote temperance, and provide for the medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking on those who pass through the courts of the District of Columbia; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of alcoholic beverages, as is reflected in mounting accident rates, decreased personal efficiency, growing absenteeism, and a general increase in the amount and seriousness of crime in the District of Columbia, and to substitute for jail sentences for drunkenness medical and other scientific methods of treatment which will benefit the

individual involved and more fully protect the public. In order to accomplish this purpose and alleviate the problem of chronic alcoholism, the courts of the District of Columbia are hereby authorized to take judicial notice of the fact that a chronic alcoholic is a sick person and in need of proper medical, institutional, advisory, and rehabilitative treatment, and the court is authorized to direct that he receive appropriate medical, psychiatric, or other treatment as provided under the terms of this chapter. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 1.)

§ 24–502. "Chronic alcoholic" defined.

The term "chronic alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or while under the influence of alcohol endangers the public morals, health, safety, or welfare. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 2.)

§ 24–503. Alcoholic clinic.

(a) The Commissioners of the District of Columbia are hereby authorized and directed to establish and equip a clinic in connection either with some existing hospital or with some correctional institution or other facility for the diagnosis, classification, hospitalization, confinement, treatment, and study of persons who are found to be chronic alcoholics, as defined herein, by the Municipal Court for the District of Columbia.

(b) The Commissioners of the District of Columbia are also directed to utilize the alcoholic clinic services for the treatment of the chronic alcoholic as authorized by this chapter and for the purpose of preparing and administering a program for the rehabilitation of alcoholics and the promotion of temperance through teaching and training of professional personnel and use through community organization. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 3.)

§ 24–504. Suspension of criminal proceedings—Hearing—Commitment to clinic.

In any criminal case, brought to trial before the Municipal Court for the District of Columbia, in which the evidence indicates that the defendant is a chronic alcoholic within the meaning of section 24–502, the judge may suspend the proceedings in the case and order that a hearing be held, upon sufficient notice, to determine whether the defendant is a chronic alcoholic. The hearing shall be conducted by the judge without a jury, unless the defendant requests a jury. The defendant shall be entitled to representation at the hearing by an attorney of his own choice, and if the defendant does not select an attorney, the court shall appoint an attorney to represent the defendant. If, after the hearing, the judge, or the jury, as the case may be, determines that the defendant is a chronic alcoholic, the court may order that he be committed to the clinic for diagnosis, classification, and treatment as his condition may require, provided the term of commitment shall not exceed ninety days. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 4.)

NOTES TO DECISIONS

DISCRETION OF COURT

The statute which provides that the court may order the defendant committed to a clinic clearly indicates that such commitment is generally a matter of discretion of the court. *Peeples* v. *District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

§ 24–505. Classification and diagnostic center.

The director of the clinic shall provide a classification and diagnostic center. Every person committed to the clinic shall first be sent to this classification and diagnostic center for observation, examination, and classification. The classification center shall make a complete study of each person committed, including mental and physical condition, personal traits, pertinent circumstances of school and family life, and any delinquency, criminal experience, or other factors contributing to his addiction to alcohol. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 5.)

§ 24–506. Director's recommendation to committing judge—Court order—Designation of director as representative of Attorney General.

(a) The director may then recommend to the committing judge that the person committed (1) be permitted to remain at liberty conditionally and under supervision, or (2) be placed in an appropriate agency, hospital, institution in the District of Columbia for treatment as a chronic alcoholic, or (3) be returned to the court from which he was committed for trial upon the original offense charged or for such action as the court may deem proper. The court may thereupon, in its discretion, issue such orders as it deems necessary and proper in the case.

(b) The Attorney General of the United States may, in order to carry out the purposes of this act, designate the director of the clinic as his authorized representative under section 24–425. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 6.)

§ 24–507. Discharge at expiration of term—Second hearing on director's recommendation—Recommitment.

At the expiration of the term of commitment the chronic alcoholic must be discharged, unless the director of the clinic recommends to the court prior to the expiration of the term of commitment that he is in need of additional treatment in an appropriate hospital or institution, in which event the court will conduct a second hearing, in the same manner and upon the same conditions as provided in section 24–504 for the first hearing, as to his condition, and may order the chronic alcoholic recommitted for an additional period of ninety days or less as his condition requires. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 7.)

§ 24–508. Supervision of probation officer or other agency.

A chronic alcoholic committed to the clinic and who is permitted to remain at liberty or conditionally released shall be under the supervision of the probation office of the court in which he was committed, or the clinic, or such other agency, public or private, as the court may determine. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 8.)

§ 24–509. Certification of adequate facilities.

No chronic alcoholic shall be committed to a clinic, agency, hospital, or institution under the terms of this chapter until the District Commissioners shall certify to the municipal court for the District of Columbia the extent to which proper and adequate treatment facilities and personnel have been provided to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 9.)

§ 24–510. Voluntary submission for treatment—Admission—Payment of costs—Rules and regulations—Rights as citizen retained.

(a) Any resident of the District of Columbia who is a chronic alcoholic within the meaning of this chapter may voluntarily submit himself for admission, examination, and treatment in the clinic. If he is found to be a chronic alcoholic, the applicant may be admitted to the clinic for such period of time as is estimated by the director as necessary to effect a cure. He may be given such treatment, guidance, and help as the director deems appropriate except that he may not be committed to a correctional institution. Any such chronic alcoholic voluntarily applying may be required to pay the cost of his subsistence, care, and treatment. All such money shall be covered into the credit of the appropriation from which the expenditure was made. The Commissioners may establish or approve such rules and regulations as may be necessary to carry out the provisions of this section.

(b) Any resident of the District of Columbia who voluntarily submits himself for admission and treatment in the clinic shall not forfeit or abridge thereby any of his rights as a citizen of the United States, nor shall the fact that he has submitted himself for admission and treatment or that he has been given help or has submitted himself to any study, treatment, or guidance be used against him in any proceeding in any court. The record of any application under this section by any individual for admission and treatment in the clinic and the record of any study of, or treatment, guidance, or help furnished to, any individual admitted in the clinic under this section shall be confidential, and not be divulged except on order of the court. No order may be made under section 24–506 with respect to any such individual except as provided under the rules and regulations of the Commissioners in effect at the time such individual voluntarily submitted himself for admission and treatment in the clinic. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 10.)

§ 24–511. Contract for treatment by appropriate agency.

The Commissioners of the District of Columbia may contract with any appropriate agency not under its control, which has proper and adequate treatment facilities and personnel to carry out the purposes of this chapter, for the custody, care, subsistence, treatment, and training of persons committed to the alcoholic clinic herein authorized. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 11.)

§ 24–512. Director of clinic—Personnel.

The Commissioners of the District of Columbia are authorized and directed to appoint a director of the clinic, who shall be a qualified physician with such training in psychiatry as they may prescribe, the necessary medical officers, psychiatrists, probation officers, social-case workers, and other personnel needed to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 12.)

§ 24–513. Director's recommendations—Publication of data.

The director of the clinic shall from time to time submit to the Commissioners such recommendations as will further the rehabilitation of chronic alcoholics, prevent the excessive and abusive use of alcoholic beverages, promote temperance, and he shall also gather and publish as complete and accurate data as is possible relating to the physiological, psychological, economic, and social effects of the abusive use of alcoholic beverages and shall prepare and publish materials, data, and information to be used in a program of public education in the District of Columbia directed toward the prevention and use of alcoholic beverages excessively and abusively. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13.)

§ 24–514. Advisory committee.

The Commissioners shall appoint a committee, to be composed of six outstanding residents of the District of Columbia, to advise and consult with the Commissioners and to assist them in carrying out the provisions of this chapter. The members of the committee shall serve without compensation and shall serve for a period of one year and until their successors are appointed. (Aug. 4, 1947, 61 Stat. 747, ch. 472, § 15.)